

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

Paul Hessong and Beatrice Hessong

Case Number: 15-01225

vs.

Respondents

Cape Securities Inc.
Costa Tzotzis
Buda Yao
Jeff Bodner
James Randall Webb
Michael Allen Lovett

Hearing Site: Baltimore, Maryland

Nature of the Dispute: Customers vs. Member and Associated Persons

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Paul Hessong and Beatrice Hessong, hereinafter collectively referred to as "Claimants": Jennifer Tarr, Cold Spring Advisory Group, New York, New York.

For Respondents Cape Securities Inc. ("Cape Securities"), Costa Tzotzis ("Tzotzis"), Buda Yao ("Yao"), Jeff Bodner ("Bodner"), James Randall Webb ("Webb"), and Michael Allen Lovett ("Lovett"), hereinafter collectively referred to as "Respondents": Judy Newcomb, Esq., Murchison and Newcomb, LLC, Foley, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: May 21, 2015.

Reply to Counterclaim filed on or about: September 9, 2015.

Paul & Beatrice Hessong signed the Submission Agreement: May 21, 2015.

Joint Statement of Answer and Counterclaim filed by Respondents on or about: July 27, 2015.

Cape Securities Inc. signed the Submission Agreement: July 27, 2015.

Costa Tzotzis signed the Submission Agreement: July 27, 2015.

Buda Yao signed the Submission Agreement: July 27, 2015.

Jeff Bodner signed the Submission Agreement: July 27, 2015.

James Randall Webb signed the Submission Agreement: July 27, 2015.

Michael Allen Lovett signed the Submission Agreement: July 27, 2015.

CASE SUMMARY

Claimant asserted the following causes of action: churning; suitability; unauthorized trading; breach of fiduciary duty; breach of contract; elder abuse; disciplinary history and failure to supervise and disgorgement (quantum meruit). The causes of action relate to various securities.

Unless specifically admitted in their Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In their Counterclaim, Respondents asserted the following causes of action: breach of contract; defamation; interference with business relationships or expected relationships; abuse of process; and slander.

Unless specifically admitted in their Answer, Claimants denied the allegations made in the Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested compensatory damages in the amount of \$123,553.46; interest; lost opportunity damages; punitive damages; attorneys' fees; costs including expert and witness fees; and such other further and different relief that is fair, just, and equitable.

In the Statement of Answer, Respondents requested dismissal of the Statement of Claim in its entirety; costs; attorneys' fees; expungement of this matter from Respondents' CRD records; the Panel specifically find that no crime was committed and that Respondents be awarded damages for the defamation suffered; forum fees; and such other and further relief that the Panel deems just and appropriate.

In their Counterclaim, Respondents Cape Securities, Tzotzis, Yao, Bodner, and Webb requested unspecified compensatory damages; attorneys' fees; costs; and expungement of their respective CRD records.

Claimants requested dismissal of the Counterclaim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

By correspondence dated July 28, 2016, Respondents filed a Motion for Sanctions pursuant to FINRA Rule 12212(c) for Claimants failure to comply with a discovery order and Claimants objected.

By correspondence dated July 30, 2016, Claimants filed a Motion for Sanctions pursuant to FINRA Rules 12205 and 12212(a) for Respondents failure to comply with a discovery order and Respondents objected.

After due deliberation and by Order dated August 10, 2016, the Panel denied both Claimants' Motion for Sanctions and Respondents' Motion for Sanctions for failure to comply with a discovery order.

At the August 8, 2016 hearing, Respondents made an oral Motion for Sanctions for Claimants failure to appear at the hearings and Claimants objected.

At the August 8, 2016 hearing, Respondents made an oral Motion to Dismiss for Claimants failure to appear at the hearing and Claimants objected.

At the August 9, 2016 hearing, Respondents made an oral Motion for Sanctions for Claimants failure to appear at the hearings and Claimants objected.

At the August 9, 2016 hearing, Respondents made an oral Motion to Dismiss for Claimants failure to appear at the hearing and Claimants objected.

By Order dated August 10, 2016, the Panel granted Respondents' Motions for Sanctions based on Claimants failure to appear at the August 8, 2016 and August 9, 2016 in person evidentiary hearings and Paul Hassong's failure to comply with the Panel's subpoena. The Panel instructed the Respondents to submit to FINRA an Affidavit of Damages.

By Orders dated August 10, 2016, the Panel denied Respondents' Motions to Dismiss.

By correspondence dated August 19, 2016, Respondents filed an Affidavit of Damages for Claimants failure to appear at the August 8, 2016 and August 9, 2016 hearings.

By correspondence dated August 23, 2016, Claimants filed a Motion for Sanctions, Motion to Strike Respondents' Affidavit of Damages, and a Motion to Set Aside Sanctions Order dated August 10, 2016. Respondents objected to Claimants' Motions. After due deliberation and by Order dated September 7, 2016, the Panel denied Claimants' Motions.

By Order dated September 7, 2016, the Panel ordered Claimants to pay \$7,500.00 on Respondents' Motion for Sanctions which was previously granted by Order dated August 10, 2016.

By correspondence dated November 1, 2016, Claimants filed a Motion for Reconsideration of the Panel's Order to pay Sanctions in the amount of \$7,500.00 and Respondents objected. After due deliberation and by Order dated November 8, 2016, the Panel denied Claimants' Motion for Reconsideration.

By correspondence dated November 10, 2016, Claimants notified FINRA that their claims against Respondents are withdrawn with prejudice.

By correspondence dated November 11, 2016, Respondent Yao withdrew his counterclaims and his request for expungement of his CRD records.

By correspondence dated November 11, 2016, Respondent Lovett withdrew his request for expungement of his CRD records.

The Panel heard oral argument on Respondents' Counterclaims and Respondent Tzotzis' Motion for expungement during the November 14-16, 2016 hearings. Claimants Paul Hessong and Beatrice Hessong appeared telephonically at the November 15, 2016 hearing and did not appear at the November 14, 2006 and November 16, 2016 hearings. Claimants' representative appeared telephonically at the November 14-16, 2016 hearings.

Claimants did not contest Respondent Tzotzis' request for expungement.

The Panel reviewed the BrokerCheck Report for Respondent Tzotzis. The Panel noted that Respondent Tzotzis did not previously file a claim requesting expungement of the same disclosure from the CRD.

In recommending expungement the Panel relied upon the following documentary or other evidence: pleadings, exhibits, and the testimony of Respondent Tzotzis.

At the hearing, Cape Securities, Bodner, and Webb withdrew their respective requests for expungement.

By correspondence dated November 15, 2016, Respondents filed a Motion for Sanctions. By correspondence dated November 21, 2016, Claimants objected to Respondents' Motion and filed a Cross-Motion for Sanctions. Respondents objected to Claimants' Motion.

The parties at the hearing have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants are liable for and shall pay to Respondents Cape Securities and Tzotzis compensatory damages in the amount of \$37,500.00.
2. Claimants are liable for and shall pay to Respondents \$7,500.00 pursuant to the Panel's September 7, 2016 order granting Respondents' Motion for Sanctions.
3. Respondents' Motion for Sanctions dated November 15, 2016 is denied.
4. Claimants' Motion for Sanctions dated November 21, 2016 is denied.

5. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Costa Tzotzis' (CRD # 3102114) registration records maintained by the Central Registration Depository ("CRD"), with the understanding that, pursuant to Notice to Members 04-16, Respondent Costa Tzotzis must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code, the arbitration panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation or information is factually impossible or clearly erroneous.

The Panel does not find the Claimants' allegations credible. Mr. Hessong's claim that he did not have an email account and did not contact Respondent Tzotzis by email was clearly false. Records presented by Respondents, including a copy of an email message from Mr. Hessong contradict with the Hessong's claim that they were elderly unsophisticated investors naïve to modern electronic communications and investment strategies. Over half of the purchases made by the Hessongs were unsolicited. Records show that with regards to a number of trades, Respondent Tzotzis recommended that "stop loss" orders be used. Respondent Tzotzis contacted Cape Securities' Compliance Department for advice before completing certain trades.

6. Any and all relief not specifically addressed herein is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Office of Dispute Resolution assessed a filing fee* for each claim:

Initial Claim Filing Fee	= \$ 1,425.00
Counterclaim Filing Fee	= \$ 1,700.00

**The filing fee is made up of a non-refundable and a refundable portion.*

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, Cape Securities, Inc. is assessed the following:

Member Surcharge	= \$ 1,700.00
Member Process Fee	= \$ 3,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

August 10-11, 2016, adjournment by Claimants	= \$ 1,125.00
October 5-7 and 10, 2016, adjournment by Claimants	= \$ 1,125.00

The Panel has assessed the \$2,250.00 adjournment fees jointly and severally to Claimants.

Last Minute Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within ten calendar days before the start of a scheduled hearing session:

August 10-11, 2016, adjournment by Claimants	= \$ 300.00
October 5-7 and 10, 2016, adjournment by Claimants	= \$ 300.00

The Panel has assessed the \$600.00 three-day cancellation fees jointly and severally to Claimants.

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

One (1) Decision on discovery-related motion on the papers with one (1) arbitrator @ \$200.00	= \$ 200.00
--	-------------

Respondents submitted one (1) discovery-related motion	
<hr/> Total Discovery-Related Motion Fees	= \$ 200.00

The Panel has assessed the \$200.00 discovery-related motion fees jointly and severally to Claimants.

Contested Motion for Issuance of a Subpoena Fees

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) Decision on contested motion for issuance of subpoena fees with one (1) arbitrator @ \$250.00	= \$ 250.00
--	-------------

Respondents submitted one (1) contested motion for issuance of subpoena	
<hr/> Total Contested Motion for Issuance of Subpoenas Fees	= \$ 250.00

The Panel has assessed the \$250.00 contested motion for issuance of subpoenas fees jointly and severally to Claimants.

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$	450.00
Pre-hearing conference: July 1, 2016	1 sessions	
Two (2) Pre-hearing sessions with Panel @ \$1,125.00	= \$	2,250.00
Pre-hearing conferences: November 4, 2015	1 session	
October 7, 2016	1 session	
Seven (7) Hearing sessions @ \$1,125.00	= \$	7,875.00
Hearing Dates: August 8, 2016	1 session	
August 9, 2016	1 session	
November 14, 2016	2 sessions	
November 15, 2016	2 sessions	
November 16, 2016	1 session	
<hr/>		
Total Hearing Session Fees		= \$10,575.00


The Panel has assessed the \$10,575.00 hearing session fees jointly and severally to Claimants.

ARBITRATION PANEL

Jane Tam	-	Public Arbitrator, Presiding Chairperson
David L. Ruderman	-	Public Arbitrator
Harold Craig Cohen	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures



Jane Tam
Public Arbitrator, Presiding Chairperson

1/3/17

Signature Date

David L. Ruderman
Public Arbitrator

Signature Date

Harold Craig Cohen
Public Arbitrator

Signature Date

January 6, 2017
Date of Service (For FINRA Office of Dispute Resolution office use only)

ARBITRATION PANEL

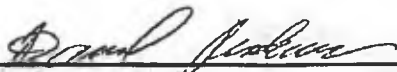
Jane Tam	-	Public Arbitrator, Presiding Chairperson
David L. Ruderman	-	Public Arbitrator
Harold Craig Cohen	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures

Jane Tam
Public Arbitrator, Presiding Chairperson

Signature Date



David L. Ruderman
Public Arbitrator

12/30/16

Signature Date

Harold Craig Cohen
Public Arbitrator

Signature Date

January 6, 2017

Date of Service (For FINRA Office of Dispute Resolution office use only)

ARBITRATION PANEL

Jane Tam	-	Public Arbitrator, Presiding Chairperson
David L. Ruderman	-	Public Arbitrator
Harold Craig Cohen	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures

Jane Tam
Public Arbitrator, Presiding Chairperson

Signature Date

David L. Ruderman
Public Arbitrator

Signature Date

Harold C. Cohen

Harold Craig Cohen
Public Arbitrator

December 30, 2016
Signature Date

January 6, 2017

Date of Service (For FINRA Office of Dispute Resolution office use only)