

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant  
Kirsten H. Green, individually and on behalf of her  
IRA

Case Number: 16-01243

vs.

Respondent  
EDI Financial, Inc.

Hearing Site: Columbia, South Carolina

vs.

Third-Party Respondent  
Robert Mark Star

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Nature of the Dispute: Customer vs. Member vs. Associated Person

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimant Kirsten H. Green, individually and on behalf of her IRA ("Green"): Michael D. Kennedy, Esq., The White Law Group, LLC, Chicago, Illinois.

For Respondent EDI Financial, Inc. ("EDI"): Martin Prinz, EDI Financial, Inc., Irving, Texas.

For Third-Party Respondent Robert Mark Star ("Star"): Kevin Galbraith, Esq., The Law Office of Kevin Galbraith, LLC, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: April 25, 2016.  
Green signed the Submission Agreement: April 19, 2016.

Answer and Third-Party Statement of Claim Against Robert M. Star filed by Respondent EDI on or about: July 28, 2016.  
EDI signed the Submission Agreement: July 27, 2016.

Answer to Respondent EDI's Third-Party Claim and Counterclaim [against Respondent EDI] filed by Third-Party Respondent Star on or about: September 23, 2016.  
Star signed the Submission Agreement: September 26, 2016.

Answer to Counterclaim of Third-Party Respondent Star filed by Respondent EDI on or about: October 26, 2016.

Motion to Dismiss Respondent EDI's Third-Party Claims ("Motion to Dismiss") filed by Third-Party Respondent Star on or about: September 30, 2016.

Opposition to Third-Party Respondent Star's Motion to Dismiss filed by Respondent EDI on or about: November 11, 2016.

Reply in Support of Motion to Dismiss Respondent EDI's Third-Party Claims filed by Third-Party Respondent Star on or about: November 23, 2016.

Motion for Sanctions Against Respondent EDI ("Motion for Sanctions") filed by Claimant on or about: May 3, 2017.

Motion for Telephonic Hearing filed by Claimant on or about: May 8, 2017.

Motion Requesting Expungement filed by Third-Party Respondent Star on or about: June 6, 2017.

Opposition to Motion for Expungement filed by Claimant on or about: June 13, 2017.

Reply Brief in Further Support of Motion Requesting Expungement filed by Third-Party Respondent Star ("Reply in Support of Expungement") on or about: June 20, 2017.

### **CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability; continuing fraud; failure to supervise; violation of common law fraud; breach of fiduciary duty; negligent failure to supervise; and negligence. The causes of action relate to losses Claimant suffered as a result of allegedly unsuitable investments in private placements, Real Estate Investment Trusts ("REITs"), and other high-risk alternative investments.

Unless specifically admitted in the Answer and Third-Party Statement of Claim Against Robert M. Star, Respondent EDI denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In its Third-Party Claim, Respondent EDI asserted the following causes of action: contractual indemnification; indemnification; and contribution. The causes of action relate to a previously executed agreement between Respondent EDI and Third-Party Respondent Star which allegedly required Third-Party Respondent Star to indemnify Respondent EDI for any fees or liabilities incurred in connection with this arbitration.

Unless specifically admitted in the Answer to Respondent EDI's Third-Party Claims and Counterclaim, Third-Party Respondent Star denied the allegations made in the Third-Party Statement of Claim and asserted various affirmative defenses. In his counterclaim, Third-Party Respondent Star asserted the cause of action of breach of settlement agreement. The cause of action relates to Respondent EDI's alleged breach of a previously-executed settlement agreement by bringing a Third-Party claim against Third-Party Star in this arbitration.

Unless specifically admitted in the Answer to Third-Party Respondent Star's Counterclaim, Respondent EDI denied the allegations made in the Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Actual damages to Claimant as proven at the final hearing in an amount between \$100,000.00 and \$499,999.00;
2. Interest and all of Claimant's costs, expenses and disbursements, including expert witness fees; and
3. Such other relief as the Panel deemed just and proper under the circumstances.

In its Answer and Third-Party Statement of Claim Against Robert M. Star, Respondent EDI requested an Award:

1. Dismissing all claims against Respondent EDI and denying all relief sought by Claimant with prejudice;
2. Awarding Respondent EDI the costs, expenses and disbursements of the defense in this proceeding, including reasonable attorneys' fees;
3. Awarding expungement in accordance with applicable FINRA Rules;
4. Awarding Respondent EDI the relief requested in its Third-Party Statement of Claim against Robert M. Star; and
5. Awarding such other and further relief in favor of Respondent EDI as the Panel deemed just, equitable and proper.

In his Answer to Third-Party Claims and Counterclaim, Third-Party Respondent Star requested that the Panel:

1. Dismiss Respondent EDI's Third-Party claim;
2. Grant Third-Party Respondent Star's counterclaim for breach of the Settlement Agreement and Mutual Release;
3. Award attorneys' fees;
4. Assess all costs against Respondent EDI;
5. Award punitive damages against Respondent EDI; and
6. Award all such further damages as it deemed appropriate.

In its Answer to Third-Party Respondent Star's Counterclaim, Respondent EDI requested an Award:

1. Dismissing the Counterclaim with prejudice;
2. Costs, expenses, fees, and damages;
3. Attorneys' fees; and
4. Any other and further relief in its favor as deemed appropriate.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On or about September 30, 2016, Third-Party Respondent Star filed a Motion to Dismiss in which he argued, among other things, that Respondent EDI's third-party claim for indemnification should be dismissed because Third-Party Respondent Star had been previously released from indemnification pursuant to a Settlement Agreement and Mutual Release between Respondent EDI and Third-Party Respondent Star from a previous arbitration. On or about November 11, 2016, Respondent EDI filed an Opposition to Third-Party Respondent Star's Motion to Dismiss in which it argued, among other things, that the aforementioned Settlement Agreement and Mutual Release was clearly intended and drafted only to cover the issues in the unrelated arbitration dispute, and therefore did not release Third-Party Star from indemnification in this arbitration. On or about November 23, 2016, Third-Party Respondent Star filed a Reply in Support of Motion to Dismiss in which he reiterated his argument that the Settlement Agreement and Mutual Release relieved him of any indemnification in this arbitration. On January 6, 2017, the Panel heard oral arguments on Third-Party Respondent Star's Motion to Dismiss during a recorded telephonic conference. On January 24, 2017, the Panel issued an Order which denied Third-Party Respondent Star's Motion to Dismiss in its entirety with prejudice.

On or about May 3, 2017, Claimant filed a Motion for Sanctions in which she argued, among other things, that Respondent EDI should be sanctioned because it failed to produce any documents during discovery. Specifically, Claimant requested any and all documents from the FINRA Discovery Guide, Document Production List 1, items 1 through 22, among other documents. Respondent EDI did not provide a response to the Motion for Sanctions. The Panel held Claimant's Motion for Sanctions in abeyance until the final evidentiary hearing on May 23, 2017, then ultimately granted Claimant's Motion for Sanctions at the May 23, 2017, hearing by precluding Respondent EDI from presenting any witnesses or evidence at the hearing.

On or about May 8, 2017, Claimant filed a Motion for Telephonic Hearing in which she argued, among other things, that in lieu of an in-person hearing, a telephonic hearing should be held because Respondent EDI had not submitted any correspondence in the case since February 23, 2017. Third-Party Respondent Star did not object to the Motion for Telephonic Hearing, and Respondent EDI did not file a response. On or about May 9, 2017, the Panel granted the Motion for Telephonic Hearing. The Panel conducted a recorded telephonic evidentiary hearing on May 23, 2017.

Respondent EDI did not appear at the May 23, 2017, recorded telephonic evidentiary hearing. Upon review of the file and the representations made by Claimant, the Panel determined that Respondent EDI has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the Code of Arbitration Procedure (the "Code").

At the May 23, 2017, recorded telephonic evidentiary hearing, Third-Party Respondent Star made an oral Motion to Dismiss Respondent EDI's Third-Party Claim against him on the basis that Respondent EDI did not appear at the hearing. The Panel granted Third-Party Respondent Star's Motion to Dismiss on the grounds that Respondent EDI (1) failed to respond to discovery requests, (2) violated the Panel's January 24, 2017,

Order, and (3) had been precluded from presenting evidence or witnesses at the hearing as a result of the discovery sanctions the Panel previously imposed.

On or about June 6, 2017, Third-Party Respondent Star filed a Motion Requesting Expungement arguing, among other things, that any allegation that Third-Party Respondent Star provided "improper recommendations" to Claimant is clearly erroneous. On or about June 13, 2017, Claimant filed an Opposition to Expungement arguing, among other things, that Third-Party Respondent Star could not satisfy the stringent requirements for expungement set forth in FINRA Rule 2080. On or about June 20, 2017, Third-Party Respondent Star filed a Reply in Support of Expungement reiterating that the allegations against him were factually impossible and clearly erroneous.

The Panel conducted a recorded telephonic hearing on July 6, 2017, so the parties could present oral argument and evidence on Third-Party Respondent Star's request for expungement. Respondent EDI did not participate in the expungement hearing. Claimant appeared at the expungement hearing and opposed Third-Party Respondent Star's request for expungement.

The parties present 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 recorded telephonic hearings, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent EDI is liable for and shall pay to Claimant the sum of \$432,515.00 in compensatory damages.
2. Respondent EDI is liable for and shall pay to Claimant interest on the above-stated sum at the rate of 7.75% per annum from the date the Award is issued through payment of the Award in full.
3. Respondent EDI is liable for and shall pay to Claimant \$300.00, which represents the non-refundable portion of Claimant's filing fee in this arbitration.
4. Respondent EDI is liable for and shall pay to Third-Party Respondent Star \$375.00, which represents the non-refundable portion of Third-Party Respondent Star's counterclaim filing fee in this arbitration.
5. Claimant's request for attorneys' fees and costs shall be determined by a court of competent jurisdiction.
6. Respondent EDI's request for expungement is denied in its entirety.
7. Respondent Star's request for attorneys' fees and costs shall be determined by a court of competent jurisdiction.

8. Third-Party Respondent Star's Counterclaim is denied, except with regard to attorneys' fees and costs as described in item 7 above.
9. Third-Party Respondent Star's request for expungement of his Central Registration Depository ("CRD") records is denied.
10. Any and all claims for relief not specifically addressed herein, including Respondent EDI's request for attorneys' fees and Third-Party Star's request for punitive damages, are 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	=\$ 1,575.00
Third-Party Filing Fee	=\$ 2,125.00

*\*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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent EDI is assessed the following:

Member Surcharge	=\$ 1,900.00
Member Process Fee	=\$ 3,750.00

#### **Discovery-Related Motion Fee**

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

One (1) decision on a discovery-related motion on the papers with one (1) arbitrator @ \$200.00/decision	=\$ 200.00
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Claimant submitted one (1) discovery-related motion

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Total Discovery-Related Motion Fees	=\$ 200.00
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The Panel has assessed the entire \$200.00 of discovery-related motion fees to Respondent EDI.

#### **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 arbitrator(s), including a pre-hearing

conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-hearing conferences: August 31, 2016	1 session
January 6, 2017	1 session
One (1) hearing session @ \$1,125.00/session	= \$ 1,125.00
Hearing Date: May 23, 2017	1 session
One (1) hearing session on expungement request @ \$1,125.00/session	= \$ 1,125.00
Hearing Date: July 6, 2017	1 session
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Total Hearing Session Fees	= \$ 4,500.00

The Panel has assessed \$3,375.00 of the hearing session fees to Respondent EDI.

The Panel has assessed the entire \$1,125.00 expungement hearing session fee to Third-Party Respondent Star.


All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

Walter J. Wylie	-	Public Arbitrator, Presiding Chairperson
Daniel Lee Tedrick	-	Public Arbitrator
Janice Helsley Blach	-	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**

  
\_\_\_\_\_  
Walter J. Wylie  
Public Arbitrator, Presiding Chairperson

8/17/17  
Signature Date

  
\_\_\_\_\_  
Daniel Lee Tedrick  
Public Arbitrator

8-14-17  
Signature Date

\_\_\_\_\_  
Janice Helsley Blach  
Public Arbitrator

\_\_\_\_\_  
Signature Date

August 17, 2017

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



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Daniel Lee Tedrick - Public Arbitrator  
Janice Helsley Blach - Public Arbitrator

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Signature Date

\_\_\_\_\_  
Daniel Lee Tedrick  
Public Arbitrator

\_\_\_\_\_  
Signature Date

*Janice Helsley Blach*  
\_\_\_\_\_  
Janice Helsley Blach  
Public Arbitrator

*8/11/17*  
\_\_\_\_\_  
Signature Date

August 17, 2017

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