

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

Jenny Atkins
Lee Atkins
Steven Beaulieu
Vicki Currie
Robert Jerald Delany as POA for Emma Mae Smith
Dr. Mark Friloux
Virginia Harrell
Janice Jeffrey
Howard Kerce
Chasidy Lee Lenoir
Robert O. Love
Terri Rejcek f/k/a Terri Cluck
Kathryn Rheiner
Richard Rheiner
Aubrey Sanford
Edward Simmons
Robert G. Spring
Jean Smith

Case Number: 18-00651

vs.

Respondent

Pershing LLC

Hearing Site: Jackson, Mississippi

Consolidated with:

Claimants

Dr. Michael Borne
Susan Brooker
Maynard Bryant
Christy Camp
Clifford Camp, II
Earl Davis
Janet Davis
F. David Fowler
Dr. Kent Kebert
Lynn Kebert
Beth Rowlett
Larry Weissman as Trustee for the Alan B. Platkin
Credit Shelter Trust
Samuel G. Williams
Judith Wormser

Case Number: 18-03797

Judy T. Wormser as the member of Wormser
Financial LLC
Judy T. Wormser as Trustee of the Harold
Wormser and Judy Wormser RLT 02/01/50
Carla Vida as Executrix of the Estate of Lavoy J.
Reed

vs.

Respondent
Pershing LLC

Nature of the Dispute: Customers vs. Member
Customers vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Lee Atkins (“L Atkins”), Jenny Atkins (“J Atkins”), Steven Beaulieu (“Beaulieu”), Dr. Michael Borne (“Borne”), Susan Brooker (“Brooker”), Maynard Bryant (“Bryant”), Christy Camp (“Ch Camp”), Clifford Camp, II (“C Camp”), Vicki Currie (“Currie”), Earl Davis (“E Davis”), Janet Davis (“J Davis”), F. David Fowler (“Fowler”), Dr. Mark Friloux (“Friloux”), Virginia Harrell (“Harrell”), Janice Jeffrey (“Jeffrey”), Dr. Kent Kebert (“K Kebert”), Lynn Kebert (“L Kebert”), Howard Kerce (“Kerce”), Chasidy Lee Lenoir (“Lenoir”), Robert O. Love (“Love”), Larry Weissman as Trustee for the Alan B. Platkin Credit Shelter Trust (“Platkin Trust”), Terri Rejcek f/k/a Terri Cluck (“Rejcek”), Kathryn Rheiner (“K Rheiner”), Richard Rheiner (“R Rheiner”), Beth Rowlett (“Rowlett”), Aubrey Sanford (“Sanford”), Edward Simmons (“Simmons”), Robert Jerald Delany as POA for Emma Mae Smith (“E Smith”), Jean Smith (“J Smith”), Robert G. Spring (“Spring”), Samuel G. Williams (“Williams”), Judith Wormser (Wormser), Judy T. Wormser as the member of Wormser Financial LLC (“Wormser Financial”), Judy T. Wormser as Trustee of the Harold Wormser and Judy Wormser RLT 02/01/50 (“Wormser Trustee”) and Carla Vida as Executrix of the Estate of Lavoy J. Reed (“Reed Estate”): Charles E. Scarlett, Esq. and Scott D. Hirsch, Esq., Scarlett & Hirsch, P.A., Boca Raton, Florida and Donald L. Ferguson, Esq., Attorney at Law, New Portland, Maine.

For Respondent Pershing LLC: Jeffrey J. Chapman, Esq. and Thomas M. Farrell, Esq., McGuireWoods LLP, New York, New York.

CLARIFICATION OF PARTIES

Master Consolidated Case 18-00651

Based on the Initial Statement of Claim, J Atkins, L Atkins, Friloux, Harrell, Kerce, Lenoir, Love, K Rheiner, R Rheiner, Rejcek, Sanford, Simmons, E Smith, J Smith and Spring are collectively referred to as the “Original Claimants in Case 18-00651.”

Following the Amended Statement of Claim, Friloux, Kerce, Lenoir, K Rheiner, R Rheiner, Rejcek, Sanford, Simmons, E Smith and Spring are collectively referred to as "Amended Claimants in Case 18-00651."

Following the Second Amended Statement of Claim, the Amended Claimants in Case 18-00651 and Beaulieu, Currie and Jeffrey are collectively referred to as the "Second Amended Claimants in Case 18-00651."

Subordinate Case 18-03797

Based on the Initial Statement of Claim, Borne, Brooker, Bryant, C Camp, Ch Camp, E Davis, J Davis, Fowler, K Kebert, L Kebert, Reed Estate, Rowlett, Williams and Wormser are collectively referred to as the "Original Claimants in Case 18-03797."

Following the Amended Statement of Claim, Borne, Brooker, Bryant, C Camp, Ch Camp, E Davis, J Davis, Fowler, K Kebert, L Kebert, Patkin Trust, Reed Estate, Rowlett, Williams, Wormser Financial and Wormser Trustee are collectively referred to as "Amended Claimants in Case 18-03797."

Consolidated Case

After the Master Consolidated Case 18-00651 and Subordinate Case 18-03797 were consolidated, the Second Amended Claimants in Case 18-00651 and the Amended Claimants in Case 18-03797 are collectively referred to as the "Final Claimants."

CASE INFORMATION

Master Consolidated Case 18-00651

Initial Statement of Claim filed on or about: February 16, 2018.

Amended Statement of Claim filed on or about: September 17, 2018.

Second Amended Statement of Claim filed on or about: October 25, 2018.

Original Claimants in Case 18-00651 signed the Submission Agreement: February 11, 2018.

Beaulieu, Currie and Jeffrey did not sign Submission Agreements.

Statement of Answer to the Amended Statement of Claim filed by Respondent on or about: September 24, 2018.

Statement of Answer to the Second Amended Statement of Claim filed on or about: November 5, 2018.

Respondent signed the Submission Agreement: September 25, 2018.

Subordinate Case 18-03797

Initial Statement of Claim filed on or about: November 1, 2018.

Amended Statement of Claim filed on or about: November 14, 2018.

Original Claimants in Case 18-03797 signed the Submission Agreement: November 8, 2018.

Amended Claimants in Case 18-03797 signed the Submission Agreement: November 16, 2018.

Statement of Answer to the Amended Statement of Claim filed by Respondent on or about: December 28, 2018.

Respondent signed the Submission Agreement: December 21, 2018.

CASE SUMMARY

Master Consolidated Case 18-00651

In the Initial Statement of Claim, the Original Claimants in Case 18-00651 asserted the following causes of action: aiding and abetting common law fraud and breach of fiduciary duty; negligence (gross negligence); breach of contract; violations of FINRA Conduct Rule 3310 (anti-money laundering) and Rule 2120 (manipulative, deceptive and fraudulent devices); violations of NASD Conduct Rule 2110 (commercial honor and principles of trade) and Rule 3010(a) (negligent supervision); and civil conspiracy to defraud.

In the Amended Statement of Claim, J Atkins, L Atkins, Harrell, Love and J Smith were all removed as claimants from the case.

In the Second Amended Statement of Claim, Beaulieu, Currie and Jeffrey were added as claimants to the case.

The causes of action relate to allegations that Respondent aided and abetted Mr. S, a broker who allegedly ran a Ponzi scheme, by acting as custodian and a clearing firm for Mr. S, and wiring hundreds of millions of dollars to Mr. S' wholly owned off-shore bank in Antigua ("SI Bank") and to other controlled accounts in the United States, Canada and Great Britain.

Unless specifically admitted in the Statements of Answer, Respondent denied the allegations made in the Amended and Second Amended Statements of Claim and asserted various affirmative defenses.

Subordinate Case 18-03797

The Original Claimants in Case 18-03797 asserted the same causes of action and allegations as the Original Claimants in Case 18-00651. In the Amended Statement of Claim, Wormser was removed from the case in an individual capacity and Wormser Financial, Wormser Trustee and the Patkin Trust were added as claimants to the case.

Unless specifically admitted in the Statement of Answer to the Amended Statement of Claim, Respondent denied the allegations made in the Amended Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Master Consolidated Case 18-00651

In the Statement of Claim, the Original Claimants in Case 18-00651 requested:

1. Full rescission of the certificates of deposit (“CDs”) issued by the SI Bank;
2. Compensatory damages of approximately \$4,164,000.00;
3. Punitive damages as permitted under Mississippi law;
4. Pre-judgment and post-judgment interest at the legal rate for the loss of use of capital, as permitted under Mississippi law;
5. Costs and fees incurred in this action including all forum fees, expert witness-related fees and any additional costs/fees incurred by counsel; and
6. Such further relief as the Panel deems just and appropriate.

In the Amended Statement of Claim, the Amended Claimants in Case 18-00651 requested compensatory damages of approximately of \$2,325,000.00, and reiterated the remaining relief requests in the Initial Statement of Claim.

In the Second Amended Statement of Claim, the Second Amended Claimants in Case 18-00651 requested compensatory damages of approximately \$2,975,000.00, and reiterated the remaining relief requests in the Initial and Amended Statements of Claim.

In the Statements of Answer, Respondent requested that the claims be denied.

Subordinate Case 18-03797

In the Initial Statement of Claim, the Original Claimants in Case 18-03797 requested:

1. Full rescission of the CDs issued by SI Bank;
2. Compensatory damages of approximately \$2,300,000.00;
3. Punitive damages as permitted under Mississippi law;
4. Costs and fees incurred including all forum fees, expert witness-related fees and any additional costs/fees incurred by counsel; and
5. Such further relief as the Panel deems just and appropriate.

In the Amended Statement of Claim, the Amended Claimants in Case 18-03797 requested compensatory damages of approximately \$3,173,810.00, and reiterated the remaining relief requests in the Initial Statement of Claim.

In the Statement of Answer to the Amended Statement of Claim, Respondent requested that the claims be denied.

OTHER ISSUES CONSIDERED AND DECIDED

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

Master Consolidated Case 18-00651

On August 8, 2018, the Original Claimants in Case 18-00651 filed a Motion to File Amended Statement of Claim. On August 9, Respondent advised that it did not oppose the motion. By Order dated September 17, 2018, the Panel granted the motion and the Amended Statement of Claim became part of the record.

On September 24, 2018, Respondent filed a Motion to Exclude Purported Evidence (“Motion to Exclude”). On October 3, the Amended Claimants in Case 18-00651 filed an opposition to the motion. On October 8, Respondent filed a reply in support of its Motion to Exclude.

Also on September 24, 2018, Respondent filed a Motion to Dismiss Claims that are Ineligible for Submission to FINRA Arbitration Pursuant to FINRA Rule 12206 (“Motion to Dismiss”). On October 24, the Amended Claimants in Case 18-00651 filed an opposition to the motion. On October 29, Respondent filed a reply in support of its Motion to Dismiss.

On October 12, 2018, the Amended Claimants in Case 18-00651 filed a Second Motion to Amend the Statement of Claim. On October 24, Respondent advised that it did not oppose the motion. By Order dated October 25, 2018, the Panel granted the motion and the Second Amended Statement of Claim became part of the record.

Beaulieu, Currie and Jeffrey did not file with FINRA Office of Dispute Resolution properly executed Submission Agreements. The Panel found that since Beaulieu, Currie and Jeffrey filed a Second Amended Statement of Claim, and appeared and testified at the hearing, are therefore bound by the determination of the Panel on all issues submitted.

On December 11, 2018, the Panel held a recorded pre-hearing conference to hear oral argument on Respondent’s Motion to Exclude and Motion to Dismiss. By Order that same date, the Panel unanimously denied the Motion to Exclude, without ruling in advance on any evidentiary objections which might be raised at the evidentiary hearing, and denied the Motion to Dismiss.

On January 24, 2019, Respondent filed a Motion for Leave to Designate Responsible Third Parties (“Motion to Designate Responsible Third Parties”). On February 5, the Second Amended Claimants in Case 18-00651 filed an opposition to the motion. On February 11, Respondent filed a reply in support of its Motion to Designate Responsible Third Parties. The Panel has determined to deny Respondent’s Motion to Designate Responsible Third Parties.

Subordinate Case 18-03797

On November 14, 2018, the Original Claimants in Case 18-03797 filed an Amended Statement of Claim before the Panel’s appointment to that case. Therefore, in accordance with the Code of Arbitration Procedure (“Code”) Rule 12309(a), the Amended Statement of Claim became part of the record.

Consolidated Cases

On January 7, 2019, Respondent filed a Motion to Consolidate FINRA Arbitration Cases 18-00651 and 18-03797 pursuant to FINRA Rule 12314 (“Motion to Consolidate”). On January 15, the Second Amended Claimants in Case 18-00651 filed an opposition to the motion. On January 21, Respondent filed a reply in support of the Motion to

Consolidate. On February 15, 2019, the Panel in Case 18-00651 heard oral argument on the Motion to Consolidate and by Order that same date unanimously ruled as follows:

“1. If Respondent stipulates, by not later than close of business Wednesday, February 20, 2019, that had the specific securities been as represented they would have been suitable for each Claimant, but because they were not as represented they were unsuitable for every Claimant, then the panel grants the Motion to consolidate [sic]. In that event the consolidated case will proceed to trial as currently scheduled, to begin in Jackson, MS on March 25, 2019.

2. If Respondent fails to agree to the proposed stipulation by the date indicated, the panel denies the Motion to Consolidate.”

On February 19, 2019, in response to the Panel’s February 15, 2019 Order, Respondent stipulated to the following: “[h]ad the specific securities been as represented, they would have been suitable for each Claimant, but because they were not as represented, they were unsuitable for every Claimant.” Accordingly, pursuant to the Panel’s February 15, 2019 Order, Case 18-00651 was consolidated with Case 18-03797 and became the Master Consolidated Case.

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 hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to K Kebert and L Kebert the sum of \$500,000.00 in compensatory damages.
2. Respondent is liable for and shall pay to Rowlett the sum of \$330,000.00 in compensatory damages.
3. Respondent is liable for and shall pay to Beaulieu the sum of \$200,000.00 in compensatory damages.
4. Respondent is liable for and shall pay to Lenoir the sum of \$200,000.00 in compensatory damages.
5. Respondent is liable for and shall pay to the Reed Estate the sum of \$200,000.00 in compensatory damages.
6. For the award of compensatory damages in 1-5 above, the Panel found Respondent liable based on negligence.

7. Respondent is liable for and shall pay to the Original Claimants in Case 18-00651 \$750.00 as reimbursement for the non-refundable portion of the initial claim filing fee previously paid to FINRA.
8. The remaining Final Claimants' claims are denied in their entirety.
9. Any and all claims for relief not specifically addressed herein, including the 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	=\$ 2,250.00
--------------------------	--------------

**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 is assessed the following:

Member Surcharge	=\$ 4,025.00
Member Process Fee	=\$ 7,000.00

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:

Four (4) pre-hearing sessions with the Panel @ \$1,500.00/session	=\$ 6,000.00
---	--------------

Pre-hearing conferences:	September 17, 2018	1 session
	December 11, 2018	1 session
	February 15, 2019	1 session
	March 15, 2019	1 session

Twelve (12) hearing sessions @ \$1,500.00/session	=\$18,000.00
---	--------------

Hearing Dates:	March 25, 2019	2 sessions
	March 26, 2019	2 sessions
	March 27, 2019	2 sessions
	March 28, 2019	2 sessions
	March 29, 2019	2 sessions
	April 1, 2019	2 sessions

Total Hearing Session Fees =\$24,000.00

The Panel has assessed \$750.00 of the hearing session fees to the Amended Claimants in Case 18-00651.

The Panel has assessed \$750.00 of the hearing session fees to the Final Claimants.

The Panel has assessed \$22,500.00 of the hearing session fees to Respondent.

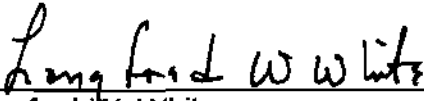
All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

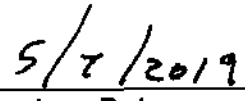
Langfred W. White	-	Public Arbitrator, Presiding Chairperson
Mauricio Arcadier	-	Public Arbitrator
Avery B. Goodman	-	Public Arbitrator

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



Langfred W. White
Public Arbitrator, Presiding Chairperson



Signature Date

Mauricio Arcadier
Public Arbitrator

Signature Date

Avery B. Goodman
Public Arbitrator

Signature Date

May 7, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)

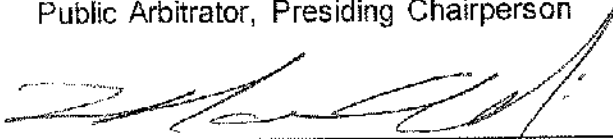
ARBITRATION PANEL

Langfred W. White	-	Public Arbitrator, Presiding Chairperson
Mauricio Arcadier	-	Public Arbitrator
Avery B. Goodman	-	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

Langfred W. White
Public Arbitrator, Presiding Chairperson



Mauricio Arcadier
Public Arbitrator

Signature Date

5/7/19

Signature Date

Avery B. Goodman
Public Arbitrator

Signature Date

May 7, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)

ARBITRATION PANEL

Langfred W. White	-	Public Arbitrator, Presiding Chairperson
Mauricio Arcadier	-	Public Arbitrator
Avery B. Goodman	-	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

Langfred W. White
Public Arbitrator, Presiding Chairperson

Signature Date

Mauricio Arcadier
Public Arbitrator

Signature Date

/s/Avery B. Goodman/ABG/
Avery B. Goodman
Public Arbitrator

May 7, 2019
Signature Date

May 7, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)