In the Matter of the Arbitration Between:

Claimant
Nancy Oss, as Limited Guardian of the person and property of John P. Ireland

vs.

Respondents
The GMS Group, LLC
Jason L. Figueroa
Brett D. Ellis
Carmine C. Capone

Case Number: 18-02748
Hearing Site: Boca Raton, Florida

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

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

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Nancy Oss, as Limited Guardian of the person and property of John P. Ireland: Michael J. Gore, Esq., Jones, Foster, Johnston & Stubbs, P.A., West Palm Beach, Florida.

For Respondents The GMS Group, LLC (“GMS”), Brett D. Ellis (“Ellis”) and Carmine C. Capone (“Capone”): John E. Jenkins, Esq., Lubiner, Schmidt & Palumbo, LLC, Cranford, New Jersey.

Respondent Jason L. Figueroa (“Figueroa”) did not appear.

*FINRA recorded the appearance of Claimant’s counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimant may have ended with the parties’ settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimant’s counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: August 2, 2018.
Nancy Oss, as Limited Guardian of the person and property of John P. Ireland signed the Submission Agreement: August 1, 2018.
Statement of Answer filed jointly by Respondents GMS, Ellis and Capone on or about: October 26, 2018.
Ellis signed the Submission Agreement: October 13, 2018.
Capone signed the Submission Agreement: October 13, 2018.
GMS did not sign the Submission Agreement.

Respondent Figueroa did not file a Statement of Answer or a signed Submission Agreement.

Amended Statement of Claim filed on or about: February 28, 2019.

**CASE SUMMARY**

In the Statement of Claim, as amended, Claimant asserted the following causes of action: fraud, misrepresentation and negligent misrepresentation; breach of fiduciary duty; unsuitable recommendations, over-concentration and churning; direct liability, agency, respondeat superior/vicarious liability or, in the alternative, aiding and abetting; negligence, gross negligence and negligent supervision; breach of contract; and unjust enrichment/constructive trust/accounting. The causes of action relate to Claimant’s investments in Puerto Rican bonds.

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

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested compensatory damages in excess of $1,000,000.00, inclusive of: lost opportunity or market adjusted damages; pre and post-award interest at the statutory rate; attorneys’ fees in an amount to be proven at hearing; costs, including FINRA filing fees, arbitration session fees, expert witness fees, and other costs in bringing this arbitration; such other and further relief deemed just and equitable, including, but not limited to, disgorgement of all commissions and other profits realized by Respondents; rescission; accounting of profits; if necessary, equitable tolling or other means of tolling pursuant to the continuing torts doctrine and/or fraudulent concealment; and punitive damages.

In the Amended Statement of Claim, Claimant requested compensatory damages in excess of $1,000,000.00, inclusive of: lost opportunity or market adjusted damages; pre and post-award interest at the statutory rate; attorneys’ fees in an amount to be proven at hearing; costs, including FINRA filing fees, arbitration session fees, expert witness fees, and other costs in bringing this arbitration; such other and further relief deemed just and equitable, including, but not limited to, disgorgement of all commissions and other profits realized by Respondents; accounting of profits; if necessary, equitable tolling or other means of tolling pursuant to the continuing torts doctrine and/or fraudulent concealment; and punitive damages.

In their Statement of Answer to the Statement of Claim, Respondents GMS, Ellis and Capone requested dismissal of the Statement of Claim in its entirety and such other
relief deemed just and proper by the Panel.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent GMS did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

Respondent Figueroa did not file a properly executed Submission Agreement or a Statement of Answer, but is required to submit to arbitration pursuant to the Code. Additionally, as stated in its January 8, 2010 Order, the Panel found that “…all reasonable efforts have been made to serve Respondent Figueroa and therefore service is sufficient for purposes of continuing this case against him.” Accordingly, Respondent Figueroa is bound by the determination of the Panel on all issues submitted.

On or about February 28, 2019, Claimant filed a Motion for Leave to Amend the Statement of Claim for the purpose of adding churning and direct liability, and removing rescission, as causes of action in this matter. Respondents did not file a response. On or about April 3, 2019, the Panel issued an Order granting the Motion.

On March 12, 2020, Claimant and Respondents GMS, Ellis and Capone filed a Stipulated Withdrawal and Dismissal of Claims against Respondents Capone and Ellis, with prejudice, as well as a notice of settlement that contained a request for the file to remain open in order for Respondents Ellis and Capone to pursue expungement of this matter from their Central Registration Depository (“CRD”) records. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim against Respondents GMS, Ellis and Capone.

On March 13, 2020, Claimant filed a release of all claims against Respondent Figueroa, which Claimant clarified on May 13, 2020, to be a dismissal with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim against Respondent Figueroa.

Inasmuch as Respondent Capone did not file a Motion for Expungement, the Panel deemed Respondent Capone’s request to be withdrawn.

On or about April 13, 2020, Respondent Ellis filed a Motion for Expungement, to which no response was filed.

The Panel conducted a recorded, telephonic hearing on May 18 2020, so the parties could present oral argument and evidence on Respondent Ellis’s request for expungement.

Claimant opted not to participate in the expungement hearing and did not oppose the request for expungement.
Respondents GMS, Capone and Figueroa did not participate in the expungement hearing and did not oppose the request for expungement.

The Panel reviewed the BrokerCheck® Report for Respondent Ellis. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

The Panel also reviewed the settlement documents, considered the amount of payments made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Panel noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Respondent Ellis did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Statement of Claim and Answer; Respondent Ellis’s credible testimony; and texts regarding bond confirmations.

The Award in this matter may be executed in counterpart copies.

**AWARD**

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

1. The Panel recommends the expungement of all references to the above-captioned arbitration/Occurrence Number 1996290 from registration records maintained by the CRD for Respondent Ellis (CRD Number 5293493) with the understanding that, pursuant to Notice to Members 04-16, Respondent Ellis 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 Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

The Panel has made the above Rule 2080 finding based on the following reasons:

Claimant alleged he was damaged because Respondent Ellis assured him that the Puerto Rican bonds at issue were entirely safe and were "safe income-producing assets." Claimant further alleged he was looking for conservative investments. Claimant argued that not only was he misled about the nature of the assets, but that they were an unsuitable investment for him.
However, the uncontroverted and credible testimony, as well as the documentary evidence, is that, from the outset, Respondent Ellis urged Claimant to sell off the riskier assets, and repeatedly warned him that the assets were highly speculative. For example, confirmations for some of the bond purchases included texts expressly notifying Claimant that the bonds were speculative, high risk investments.

The record reflects that Claimant’s abiding interest was to generate income through highly speculative assets, of which he was knowledgeable based on his past experience. The record further reflects that Claimant was warned and well aware of the danger of his course of action when insisting on buying speculative assets.

**FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**
FINRA Dispute Resolution Services assessed a filing fee* for each claim:

<table>
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<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Initial Claim Filing Fee</td>
<td>$2,000.00</td>
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*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 GMS is assessed the following:

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<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Member Surcharge</td>
<td>$3,025.00</td>
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<tr>
<td>Member Process Fee</td>
<td>$6,175.00</td>
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</tbody>
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**Postponement Fees**
Postponements granted during these proceedings for which fees were assessed or waived:

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<tr>
<th>Description</th>
<th>Amount</th>
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<tr>
<td>August 19-30, 2019, postponement requested by Claimant and Respondents GMS, Ellis and Capone</td>
<td>$1,400.00</td>
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**Total Postponement Fees**

<table>
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<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Total Postponement Fees</td>
<td>$1,400.00</td>
</tr>
</tbody>
</table>

The Panel has assessed $700.00 of the postponement fees to Claimant.

The Panel has assessed $700.00 of the postponement fees jointly and severally to Respondents GMS, Ellis and Capone.
**Last Minute Cancellation Fees**
Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

March 13, 2020, settled by parties

Total Last-Minute Cancellation Fees

The Panel has assessed $900.00 of the total last minute cancellation fees to Claimant.

The Panel has assessed $900.00 of the last minute cancellation fees jointly and severally to all Respondents.

**Discovery-Related Motion Fees**
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

Claimant submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees

The Panel has assessed $100.00 of the discovery-related motion fees to Claimant.

The Panel has assessed $100.00 of the discovery-related motion fees jointly and severally to all Respondents.

**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), which lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) pre-hearing sessions with a single Arbitrator @ $450.00/session
Pre-hearing Conferences: April 30, 2019 1 session
May 6, 2019 1 session
May 24, 2019 1 session
October 22, 2019 1 session

One (1) pre-hearing session with the Panel @ $1,400.00/session
Pre-hearing Conference: December 31, 2018 1 session

One (1) hearing session on expungement request @ $1,400.00/session
Hearing Date: May 18, 2020 1 session

Total Hearing Session Fees
The Panel has assessed $1,600.00 of the hearing session fees to Claimant.

The Panel has assessed $1,600.00 of the hearing session fees jointly and severally to all Respondents.

The Panel has assessed the total expungement hearing session fee of $1,400.00 solely to Respondent Ellis.

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

Donald Theodore Ryce, Jr. 06/04/2020
Donald Theodore Ryce, Jr.
Public Arbitrator, Presiding Chairperson

Anne H. Orr 06/04/2020
Anne H. Orr
Public Arbitrator

Carl Henry Perdue 06/03/2020
Carl Henry Perdue
Public Arbitrator

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