In the Matter of the Arbitration Between:

Claimants                                   Case Number: 18-03791
James N. Heald                              Hearing Site: Charlotte, North Carolina
Sandra M. Gizzi                             TCM Securities, Inc. D/B/A Taylor Capital
Jerry F. Heath                              Management Inc.
Janet M. Heath                              
Joseph W. Taborek                           

vs.

Respondents
James Hal Heafner
TCM Securities, Inc. D/B/A Taylor Capital
Management Inc.

Nature of the Dispute: Customers vs. Member and Associated Person
This case was decided by an all-public panel.

REPRESENTATION OF PARTIES


For Respondent TCM Securities, Inc. D/B/A Taylor Capital Management Inc. (“TCM”): Preston Spears, President, TCM, Woodstock, Georgia.

Respondent James Hal Heafner (“Heafner”) appeared pro se.

Hereinafter, TCM and Heafner are collectively referred to as “Respondents.”

CASE INFORMATION

Statement of Claim filed on or about: November 1, 2018.
Amended Statement of Claim filed on or about: February 5, 2019.
Heald signed the Submission Agreement: August 31, 2018.
Gizzi signed the Submission Agreement: August 27, 2018.
Taborek signed the Submission Agreement: September 5, 2018.
JF and JM Heath signed the Submission Agreement: September 12, 2018.

Statement of Answer filed by TCM on or about: January 31, 2019.
Statement of Answer to the Amended Statement of Claim filed by TCM on or about: March 1, 2019.
TCM signed the Submission Agreement: January 31, 2019.

Heafner did not submit a Statement of Answer or sign the Submission Agreement.

CASE SUMMARY

In the Statement of Claim, Heald asserted the following causes of action: violations of federal securities laws; violations of the North Carolina Securities Act; breach of contract; common law fraud; breach of fiduciary duty; and negligence and gross negligence. In the Amended Statement of Claim, Gizzi, JF Heath, JM Heath and Taborek were added as Claimants. The causes of action relate to Claimants’ investment in 1 Global Capital, LLC.

Unless specifically admitted in the Statements of Answer, TCM denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim, Heald requested:
  1. Recovery of damages in the amount of at least $268,015.79;
  2. Bargain damages;
  3. Lost opportunity costs;
  4. Model portfolio damages;
  5. Prejudgment interest;
  6. Costs;
  7. Reasonable attorneys’ fees;
  8. Punitive damages; and
  9. Such other relief as is deemed necessary and proper.

In the Amended Statement of Claim, Claimants requested recovery of damages in the amount of at least $595,772.79, and reiterated the remaining relief requests in the Statement of Claim.

In the Statements of Answer, TCM requested that to the extent any damages are proven to exist, those damages be apportioned among TCM, Heafner, 1 Global Capital, LLC and other third parties in proportion to the share of the alleged damages for which each individual or entity is allegedly responsible.

At the close of the hearing, Claimants requested compensatory damages in the following amounts: Heald requested $202,347.40; Gizzi requested $144,864.65; JF and JM Heath requested $41,704.07; and Taborek requested $80,926.03. Claimants also requested punitive damages of at least $250,000.00; costs and expenses of litigation of $6,480.97; and attorneys’ fees of thirty-three and one-third (33 1/3) percent of the award.

OTHER ISSUES CONSIDERED AND DECIDED
The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On February 5, 2019, Claimants filed an Amended Statement of Claim before the Panel's appointment to the case. Therefore, in accordance with the Code of Arbitration Procedure (“Code”) Rule 12309(a), Claimants’ Amended Statement of Claim became part of the record.

Heafner did not file with FINRA ODR a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code and, having appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On September 3, 2019, Claimants filed Emergency Motions for Entry of Default (“Motion for Default”) against Respondents, and a Motion to Allow Telephonic Testimony (“Motion for Telephonic Testimony”) of Taborek during the evidentiary hearing. On September 5, Claimants filed an Amended Motion for Default against Heafner. Neither TCM nor Heafner filed responses to these motions. On September 11, the Panel heard oral argument from Claimants and Heafner only, since TCM did not appear at the pre-hearing conference. By Order dated September 12, 2019, the Panel denied Claimants’ Motions for Default against Respondents; however, under Code Rule 12212, the Panel determined to impose the following sanctions against Heafner:

1. The Panel shall draw a negative inference that the required document production would have been adverse to the Respondent Heafner.
2. Respondent Heafner is precluded from presenting any evidence (documentary or otherwise) at the Final Hearing.
3. Respondent Heafner is precluded from calling any witnesses as [sic] the Final Hearing.
4. Specifically, Respondent Heafner is precluded from calling any witnesses not identified and tendering any documents not produced per Rule 12514 (c).”

The Panel also granted Claimants’ Motion for Telephonic Testimony and Taborek testified telephonically during the evidentiary hearing.

On September 16, 2019, Heafner filed a request to participate telephonically during the evidentiary hearing. On September 18, Claimants filed an opposition to Heafner’s request. TCM did not respond to Heafner’s request. By Order dated September 19, 2019, the Panel granted Heafner’s request and he participated telephonically during the evidentiary hearing.

TCM did not appear at the evidentiary hearing. Upon review of the file and the representations made by Claimants, the Panel determined that TCM received due notice of the hearing, and that arbitration of the matter would proceed without said respondent present, in accordance with the Code.

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:

I. Compensatory Damages

   a. Respondents are jointly and severally liable for and shall pay to Heald the sum of $202,347.40 in compensatory damages.

   b. Respondents are jointly and severally liable for and shall pay to Gizzi the sum of $144,864.65 in compensatory damages.

   c. Respondents are jointly and severally liable for and shall pay to Taborek the sum of $80,926.03 in compensatory damages.

   d. Respondents are jointly and severally liable for and shall pay to JF and JM Heath the sum of $41,704.07 in compensatory damages.

II. Punitive Damages

   e. Respondents are jointly and severally liable for and shall pay to Heald the sum of $100,000.00 in punitive damages.

   f. Respondents are jointly and severally liable for and shall pay to Gizzi the sum of $100,000.00 in punitive damages.

   g. Respondents are jointly and severally liable for and shall pay to Taborek the sum of $100,000.00 in punitive damages.

   h. Respondents are jointly and severally liable for and shall pay to JF and JM Heath the sum of $100,000.00 in punitive damages.

   i. The Panel awarded punitive damages pursuant to NCGS § 1D-5(5), and the Federal Arbitration Act, which provides authority pursuant to case law based on fraud, intentional misrepresentation, reckless disregard of high risk and reckless disregard of securities statutes by selling unregistered securities.

III. Attorneys’ Fees

   j. Respondents are jointly and severally liable for and shall pay to Claimants the sum of $156,614.05 in attorneys’ fees, pursuant to NCGS § 78-A56(a).

IV. Costs

   k. Respondents are jointly and severally liable for and shall pay to Claimants the sum of $6,480.97 in costs.
V. Filing Fee

I. Respondents are jointly and severally liable for and shall pay to Claimants the sum of $425.00 to reimburse Claimants for the non-refundable portion of the filing fee previously paid to FINRA ODR.

VI. Remaining Claims

m. Any and all claims for relief not specifically addressed herein are denied.

n. The Arbitrators have provided an explanation of their decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

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 = $1,725.00

*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, TCM is assessed the following:

Member Surcharge = $2,475.00
Member Process Fee = $5,075.00

Discovery-Related Motion Fee
Fees apply for each decision rendered on a discovery-related motion.

Two (2) decisions on discovery-related motions on the papers with one (1) arbitrator @ $200.00/decision = $400.00

Claimants submitted two (2) discovery-related motions

Total Discovery-Related Motion Fees = $400.00

The Panel has assessed $400.00 of the discovery-related motion fees jointly and severally to 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), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with the Panel @ $1,300.00/session = $2,600.00
Pre-hearing conferences: March 26, 2019 1 session
September 11, 2019 1 session

Two (2) hearing sessions @ $1,300.00/session = $2,600.00
Hearing Date: September 23, 2019 2 sessions

Total Hearing Session Fees = $5,200.00

The Panel has assessed $5,200.00 of the hearing session fees jointly and severally to Respondents.

All balances are payable to FINRA ODR and are due upon receipt.
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ARBITRATION PANEL

Joe E. Manuel - Public Arbitrator, Presiding Chairperson
David F. Simon - Public Arbitrator
Daniel Lee Tedrick - 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

Joe E. Manuel
Public Arbitrator, Presiding Chairperson
Signature Date

David F. Simon
Public Arbitrator
Signature Date

Daniel Lee Tedrick
Public Arbitrator
Signature Date

October 3, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)
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Joe E. Manuel
Public Arbitrator, Presiding Chairperson

Signature Date

Signature Date

10-3-19

David F. Simon
Public Arbitrator

Signature Date

Daniel Lee Tedrick
Public Arbitrator

Signature Date

October 3, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)