Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants
James Higbee, IRA and Anna Shursen, IRA

vs.

Respondents
SCF Securities, Inc. and Bobby Glenn James

Case Number: 19-01425
Hearing Site: Dallas, Texas

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

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants James Higbee, IRA and Anna Shursen, IRA (collectively “Claimants”):
Richard A. Lewins, Esq., LewinsLaw, PC, Dallas, Texas.


For Respondent Bobby Glenn James (“James”): Jacob Brian Kring, Esq. and Katharine Battaia Clark, Esq., Hedrick Kring, PLLC, Dallas, Texas.

CASE INFORMATION

Statement of Claim filed on or about: May 22, 2019.
Claimants signed the Submission Agreement: May 22, 2019.

Statement of Answer and Motion for More Definite Statement filed by SCF on or about: July 12, 2019.
SCF signed the Submission Agreement: July 12, 2019.

Statement of Answer filed by James on or about: July 8, 2019.
James did not sign the Submission Agreement.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: fraud and negligence. The causes of action relate to Claimants’ allegation that James solicited Claimants to invest almost all of their retirement savings in an unsuitable private placement, Aluma Graphics, LP, without written approval from his employer. Claimants’ further allege that James eventually became a general partner of Alumna Graphics, LP, which put him in conflict with the limited partners.
Unless specifically admitted in the Statement of Answer and Motion for More Definite Statement, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

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

**RELIEF REQUESTED**

In the Statement of Claim, Claimants requested an award of $275,000.00 in compensatory damages, plus all costs and fees, including attorneys’ fees.

In the Statement of Answer and Motion for More Definite Statement, SCF requested that the Panel order Claimants to amend their Statement of Claim to identify the specific causes of action alleged against SCF and the factual basis for such claims; dismiss Claimants’ claims in full; award costs, attorneys’ fees and expert fees incurred; and grant any and all further relief to which Claimants may show they are justly entitled.

In the Statement of Answer, James requested that this matter be summarily dismissed for all such further relief, at law or in equity, to which he is justly entitled.

**OTHER ISSUES CONSIDERED AND DECIDED**

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

James did not file with FINRA Office of Dispute Resolution 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.

On or about August 2, 2019, James filed a Motion to Dismiss Claims as Ineligible Pursuant to Rules 12101 and 12206 of the Code (“James’ Motion to Dismiss”). On or about September 24, 2019, Claimants filed a Response to James’ Motion to Dismiss. On or about October 4, 2019, James filed a Reply in Support of his Motion to Dismiss.

On or about September 27, 2019, SCF filed a Motion to Dismiss pursuant to Rules 12206 and 12504 of the Code (“SCF’s Motion to Dismiss”). On or about October 23, 2019, Claimant filed a Response to SCF’s Motion to Dismiss. On or about October 28, 2019, SCF filed a Reply to Claimant’s Response to SCF’s Motion to Dismiss.

On November 7, 2019, the Panel heard oral arguments on James’ and SCF’s Motions to Dismiss.

In a written order dated November 22, 2019, the Panel requested that the parties submit additional briefs. On or about November 22, 2019, James filed a Supplemental Reply in Support of his Motion to Dismiss, SCF filed a letter to the Panel, and Claimant filed a brief in support of their position.
The Panel herein grants James’ and SCF’s Motions to Dismiss on the following grounds:

Rule 12206 provides that no claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim.

The event or occurrence that gave rise to this claim was the purchase of a private placement investment by Anna Shursen on November 25, 2008 and the purchase of the same private placement investment by James Higbee on February 25, 2009.

The Statement of Claim was filed on May 22, 2019.

As the elapsed time between the purchase of the private placements by Claimants and the filing of the Statement of Claim exceeds the six year eligibility period, the Panel rules that the claim is ineligible for arbitration.

James’ and SCF’s Motions to Dismiss pursuant to Rule 12206 of the Code are granted by the Panel without prejudice to any right the Claimants have to file in court; the Claimants are not prohibited from pursuing their claims in a court pursuant to Rule 12206(b) of the Code.

**AWARD**

After considering the pleadings, James’ and SCF’s Motions to Dismiss, including all responsive pleadings, documents, and exhibits submitted therewith, and the arguments presented at the pre-hearing conference, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants’ claims against SCF and James are dismissed in their entirety pursuant to FINRA Rule 12206.

2. Other than forum fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter.

3. Any and all claims for relief not specifically addressed herein, including attorneys’ fees, 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

*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 person at the time of the events giving rise to the dispute. Accordingly, as a party, SCF is assessed the following:

<table>
<thead>
<tr>
<th>Fee Type</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Member Surcharge</td>
<td>$1,900.00</td>
</tr>
<tr>
<td>Member Process Fee</td>
<td>$3,750.00</td>
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**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: September 25, 2019 1 session
  - November 7, 2019 1 session

| Total Hearing Session Fees | $2,250.00 |

The Panel has assessed $1,125.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed $1,125.00 of the hearing session fees jointly and severally to SCF and James.

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

Robert J. Gregory  -  Public Arbitrator, Presiding Chairperson
Louis J. Weber, Jr. -  Public Arbitrator
Larry Adair  -  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

Robert J. Gregory  12/13/2019
Robert J. Gregory
Public Arbitrator, Presiding Chairperson

Louis J. Weber, Jr.  12/17/2019
Louis J. Weber, Jr.
Public Arbitrator

Larry Adair  12/15/2019
Larry Adair
Public Arbitrator

December 17, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)