

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Richard Long

Case Number: 16-02678

vs.

Respondents
Ruben Cavada
J.P. Morgan Securities LLC
J.P. Morgan Securities Inc.

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer vs. Members and Associated Person

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Richard Long (“Claimant”): I. Donald Weissman, Esq., Weissman Law Firm, Tarzana, California.

For Respondents Ruben Cavada (“Cavada”) and J.P. Morgan Securities LLC (“JPMS”), and J.P. Morgan Securities Inc.: Neal S. Robb, Esq., Keesal Young & Logan, Long Beach, California.

Cavada and JPMS are hereinafter collectively referred to as “Respondents.”

CASE INFORMATION

Statement of Claim filed on or about: September 9, 2016.
Claimant signed the Submission Agreement: September 9, 2016.

Statement of Answer filed by Respondents on or about: February 10, 2017.
JPMS signed the Submission Agreement: January 4, 2017.
Cavada signed the Submission Agreement: January 10, 2017.
J.P. Morgan Securities Inc. did not sign the Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: fraud and deceit; negligent misrepresentation; breach of contract; breach of fiduciary duty; unjust enrichment; and breach of good faith and fair dealing. The causes of action relate to Claimant’s investment in the JPMorgan Income Builders Fund (“JNBAX”).

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. General damages;
2. Special damages;
3. Rescission;
4. Return of monies from the alleged unjust enrichment;
5. Punitive damages;
6. Costs of suit; and
7. Such other and further relief as the Panel may deem proper.

In the Statement of Answer, Respondents requested:

1. Claimant take nothing by his claim, and this matter be dismissed in its entirety with prejudice;
2. Claimant be taxed with the costs of this proceeding, including arbitrators' fees, expert fees, and expenses;
3. An order directing the expungement of this matter from Cavada's Form U4 or U5, Central Registration Depository ("CRD") record and/or RE-3s; and
4. Such other relief as the Panel deems just and equitable

At the close of the hearing, Claimant requested the following amounts: for breach of contract, the amount of \$85,769.44 (being, \$70,884.68 + \$14,884.76 in prejudgment interest at 7%); and for fraud, the amount of \$199,650.00 in compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

The Statement of Claim named Cavada and J.P. Morgan Securities Inc. as Respondents. On December 28, 2016, the parties filed a stipulation agreeing to the following: Claimant inadvertently and mistakenly named J.P. Morgan Securities Inc. as a respondent; the proper respondent is JPMS and not J.P. Morgan Securities Inc.; the case will proceed against JPMS and that the inadvertently named entity J.P. Morgan Securities Inc. will be removed from this matter and replaced by JPMS.

At the commencement of the December 4, 2017 evidentiary hearing, the parties agreed that the court reporter transcript would be the official record of the proceeding.

During the December 4, 2017 recorded evidentiary hearing, and following the close of Claimant's case-in-chief, Respondents made a written motion to dismiss based on the statutes of limitation and laches pursuant to Rule 12504(b) of the Code of Arbitration Procedure (the "Code"). Upon receipt of the motion, the Panel conducted an executive session and thereafter adjourned the December 5, 2017 hearing to allow Claimant the opportunity to research the issues and submit a written opposition. On December 5, 2017, Claimant filed a memorandum of points and authorities in opposition to the motion

and on December 6, 2017, the parties argued the motion. After due deliberation, the Panel denied the motion to dismiss without prejudice on the record.

During closing argument, Respondents requested the Panel revisit the previously denied motion to dismiss. Claimant opposed the request and briefly restated his position in opposition to the motion. The Panel deferred a decision on the motion. Following final deliberations, the Panel determined to deny the motion to dismiss.

During the recorded in-person evidentiary hearing, the parties presented oral argument and evidence on Cavada's request for expungement. Claimant challenged the expungement request.

The Panel reviewed the BrokerCheck® Report for Cavada. The Panel noted that Occurrence Number 1713713 on Cavada's BrokerCheck® report also references a Superior Court action (docket/case #LC103220) involving these same parties ("Civil Litigation"). The Panel determined that the expungement ruling applies to both the above-captioned arbitration and the Civil Litigation.

In recommending expungement, the Panel relied upon the following documentary or other evidence: testimony from Cavada and Claimant; and more than thirty separate exhibits, including various account forms (some of which included Cavada's annotations), WM Financial new account form, Chase Customer Account Transfer Form, Banklink/Referenced Account Request, Personal Consultation Acknowledgment, JP Morgan Personal Profile, Chase Specialty Fund Acknowledgment, Oral Complaint Transmittal Form, Variable Annuity "switch letters," monthly statements for Claimant's prior and current investments, including the at-issue investment, profit and loss charts, and estimated damage calculations.

The parties 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. Claimant's claims are denied in their entirety.
2. The Panel recommends the expungement of all references to Occurrence Number 1713713 (being the above-captioned arbitration and Civil Litigation, docket/case #LC103220 for the Superior Court of the State of California Los Angeles County Northwest District California) from registration records maintained by the CRD, for Ruben Cavada (CRD# 5043062), with the understanding that, pursuant to Notice to Members 04-16, Ruben Cavada 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:

The crux of Claimant's complaint involves an alleged oral representation or representations Cavada made to Claimant to induce the latter to sell Claimant's inherited position of Eaton Vance Limited Duration Fund ("EVV") in favor of purchasing JPMorgan Income Builder Fund ("JNBAX"), to wit: JNBAX would likely provide a monthly income stream of approximately \$4,500.00 per month. Claimant maintains that this optimistic amount, or an amount very close to it, was the sole reason he accepted Cavada's recommendation to purchase the JNBAX. Claimant believed Cavada's representation was reasonable due to Cavada's persuasive personality, Cavada's polished presentation and because Cavada had the earmarks of reliability considering his association or employment with a well-known and substantial financial institution. When Claimant's EVV fund position was transferred to JPMS the fund had a cost basis of \$300,000.00 but a current value of \$241,177.82. Therefore, it was liquidated at a loss of \$58,822.18. Cavada advised Claimant that Claimant could reduce the JNBAX sales commission from roughly \$8,400.00 to \$7,500.00 by making a larger, \$300,000.00 contribution. This would require an additional \$60,000.00 to raise the current value realized from the transferred and liquidated EVV position. Claimant complied by raising the \$60,000.00 and insists that this money formed the basis of an unnecessary monetary loss - because had he not sold his EVV position, he would not have sustained a loss.

The facts adduced at the hearing do not bear out the alleged misrepresentation of \$4,500.00 per month income from Claimant's JNBAX purchase, nor is the claimed loss of \$60,000.00 associated with Claimant's JNBAX purchase supported by a contextual view of the record. Documentation unassailably provided to Claimant at or near the time of his JNBAX acquisition makes no mention of a specific income stream, let alone a potential monthly income of \$4,500.00 per month. There is also no doubt that Claimant was painfully aware from the very first JNBAX statement - which he acknowledged receiving - that the monthly income payout to him was approximately one-third, if not less, than the subject \$4,500.00 amount. Claimant first decided to take a guarded "wait-and-see" approach thinking that the significantly smaller monthly payouts (\$1,500.00 or less) were likely due to a downturn in the stock market rather than Cavada's misrepresentation. Not until many months of carefully watching the stock market did Claimant eventually ask for an explanation and complain to Cavada's superiors.

The above scenario is undisputed. Even assuming Cavada deliberately misrepresented the prospective monthly income of the JNBAX solely to make a sale

and receive a commission, the monthly payout was improbable and Claimant's reliance upon any such amount was unreasonable and unjustified. The alleged eighteen (18) percent return necessary for the \$4,500.00 monthly income was well-beyond that of any other similar mutual fund contemporaneous with the JNBAX purchase. Parenthetically, it may be that a higher monthly return was somehow confused or conflated with purchasing or making a much larger investment position, but the record is devoid of any specific evidence supporting such an inference.

Claimant conceded that none of the documentation, including self-serving JNBAX promotional sales literature, referenced a \$4,500.00 monthly payout or anything close to that amount. In point of fact, this would have plainly, flatly and positively contradicted any such alleged oral misrepresentation. The allegedly promised \$4,500.00 per month was far less than any monthly proceeds received from Claimant's prior EVV position. Moreover, since JNBAX is and was an openly traded mutual fund, Claimant had numerous opportunities to confirm any suspected deceit or misstatement via easily accessible sources, including other brokers and/or financial advisors and various news outlets. As an aside, Claimant testified to a belief that Cavada was receiving a monthly commission for the JNBAX, but the record only indicated a one-time commission.

Claimant's argument that he was reasonably relying upon Cavada's misrepresentation is also without merit. Claimant insists that due to his investment naïveté and limited computer skills he had all the more reason to rely upon Cavada's alleged representation and that accordingly, Cavada knew or should have known that Claimant was vulnerable to Cavada's suggestion. Both arguments fail considering that once Claimant had the slightest inkling that he had been duped, Claimant could have independently verified the truth of any alleged misrepresentation. To reiterate, the record strongly supports a finding that Cavada did *not* intentionally or negligently misrepresent facts regarding Claimant's purchase and retention of JNBAX. So strong is the evidence presented that this claim or allegation was not merely unproven, but is found to be false. To be sure, Claimant's belief in the misrepresentation is doubtlessly sincere, but we find his belief to be contrary to the overwhelming evidence found in the record.

Secondarily, the evidence presented does not support Claimant's related allegations concerning a \$60,000.00 loss prompted by Cavada's alleged misrepresentation. Claimant labored under a logical fallacy that had he retained his EVV holding and not sold the position, he would not have incurred an approximate \$60,000.00 loss. However, unchallenged evidence establishes that the fund's value has not dramatically increased since he sold it for a loss and it is pure conjecture whether the fund will eventually climb in value so as to break even or exceed Claimant's original \$300,000.00 cost basis. It is also undisputed from the record presented that Claimant increased his position in JNBAX to qualify for a \$1,100.00 commission discount. It is unclear whether Cavada or Claimant openly discussed or considered the purchase of any lesser amount of JNBAX, or possibly retaining a smaller EVV position; however, by the same token, there is no evidence that Claimant was at any relevant time prevented from selling or repurchasing any of the subject investments to avoid or mitigate losses. Lastly, it cannot be ignored that Claimant's JNBAX fund outperformed the EVV fund by \$22,395.00 considering both capital gains and

income over the 3-year timeframe. By comparison, at the time of hearing, Claimant's EVV position remains valued at less than his cost basis.

Based upon the documentary record and testimony presented, this Panel unanimously finds that expungement is warranted under Rule 2080 (b)(1)(C) and accordingly recommends expungement of Occurrence Number 1713713 from Cavada's record.

3. Any and all claims for relief not specifically addressed herein, including 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	= \$ 1,575.00
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**The filing fee is made up of a non-refundable and a refundable portion.*

FINRA Office of Dispute Resolution previously deferred the Claimant's filing fee of \$1,575.00. Upon conclusion of the matter, the Panel determined to assess the fee.

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, JPMS is assessed the following:

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

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

December 5, 2017, postponement by Claimant	= \$ 1,125.00
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Total Postponement Fees	= \$ 1,125.00
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The Panel has assessed \$1,125.00 of the adjournment fees to Claimant.

Last Minute Cancellation Fees

Fees apply when a hearing on the merits is postponed within ten calendar days before the start of a scheduled hearing session:

December 5, 2017, postponement requested by Claimant	= \$ 1,800.00
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Total Last Minute Cancellation Fees = \$1,800.00

The Panel has assessed \$1,800.00 of the last minute cancellation fees to Claimant.

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

Respondents submitted (2) discovery-related motions

Total Discovery-Related Motion Fees = \$400.00

1. The Panel has assessed \$200.00 of the discovery-related motion fees to Claimant.
2. The Panel has assessed \$200.00 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:

One (1) pre-hearing session with a single arbitrator @ \$450.00/session = \$450.00
Pre-hearing conference: November 20, 2017 1 session

One (1) pre-hearing session with the Panel @ \$1,125.00/session = \$1,125.00
Pre-hearing conference: April 6, 2017 1 session

Six (6) hearing sessions @ \$1,125.00/session = \$6,750.00
Hearing Dates: December 4, 2017 2 sessions
December 6, 2017 2 sessions
December 7, 2017 2 sessions

Total Hearing Session Fees = \$8,325.00

1. The Panel has assessed \$7,537.50 of the hearing session fees to Claimant.
2. The Panel has assessed \$787.50 of the hearing session fees jointly and severally to Respondents.

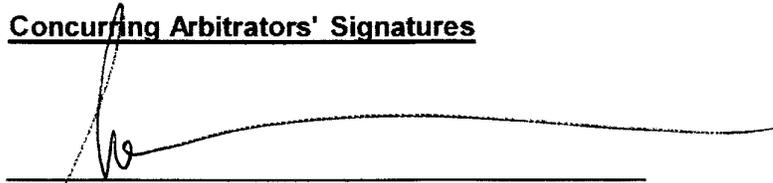
All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

Elliott David Finkel	-	Public Arbitrator, Presiding Chairperson
Michael John Florio	-	Public Arbitrator
John R Sustersic	-	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

	December 29, 2017
_____ Elliott David Finkel Public Arbitrator, Presiding Chairperson	_____ Signature Date

_____ Michael John Florio Public Arbitrator	_____ Signature Date
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_____ John R Sustersic Public Arbitrator	_____ Signature Date
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January 3, 2018
Date of Service (For FINRA Office of Dispute Resolution office use only)

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Michael John Florio	-	Public Arbitrator
John R Sustersic	-	Public Arbitrator

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Elliott David Finkel
Public Arbitrator, Presiding Chairperson

Signature Date



Michael John Florio
Public Arbitrator

12-29-17

Signature Date

John R Sustersic
Public Arbitrator

Signature Date

January 3, 2018

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Elliott David Finkel
Public Arbitrator, Presiding Chairperson

Signature Date

Michael John Florio
Public Arbitrator

Signature Date

John R. Sustersic

John R Sustersic
Public Arbitrator

12-29-2017

Signature Date

January 3, 2018
Date of Service (For FINRA Office of Dispute Resolution office use only)