

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

David L. Smith, Individually and as Executor of
the Estate of Clara M. Bell

Case Number: 20-01072

vs.

Respondents

Provident Private Capital Partners, Inc. and
Donald L. Smith

Hearing Site: Cleveland, Ohio

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 Person

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant David L. Smith, Individually and as Executor of the Estate of Clara M. Bell (“Claimant”): Scott A. Lane, Esq., Law Office of Scott Lane, LLC, Ingomar, Pennsylvania and Eric J. Purchase, Esq., Purchase, George & Murphey, P.C., Erie Pennsylvania.

For Respondents Provident Private Capital Partners, Inc. (“Provident”) and Donald L. Smith (“DLS”), collectively, “Respondents”: G. Clinton Kelley, Esq., Pittsburgh, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on or about: April 1, 2020.

Statement of Answer to Counterclaim filed on or about: June 15, 2020.

Amended Statement of Claim filed on or about: January 12, 2021.

Amended Statement of Answer to Counterclaim filed on or about: January 26, 2021.

Claimant signed the Submission Agreement: March 30, 2020 and January 12, 2021.

Statement of Answer and Counterclaim filed on or about: May 26, 2020.

Respondents signed the Submission Agreements: May 26, 2020.

CASE SUMMARY

In the Statement of Claim, as amended, Claimant asserted the following causes of action: violation of The Pennsylvania Unfair Trade Practices and Consumer Protection Law, negligence/unsuitability, fraud, violations of FINRA Rules 2010 and 2020, violation of the Pennsylvania Securities Act of 1972, fraudulent concealment, and breach of contract. The causes of action related to Claimant's allegations that their mother provided his brother DLS with funds to invest prudently and conservatively, and upon her death, to divide the principal and interest equally among her three sons, but DLS, who is the president and sole owner of Provident, instead used the funds to purchase a home in his own name, which he subsequently lost in foreclosure.

Unless specifically admitted in the Statement of Answer and Counterclaim, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses and alleged that David L. Smith, in his capacity as Provident's Operations Manager and Compliance Manager, engaged in a pattern and practice of misappropriating Respondents' funds and making unauthorized payments to himself, Respondents' employees, and others.

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

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimant requested an award in the amount of \$50,000.00 plus statutory interest at a rate of six (6) percent per year from 2005, plus reasonable attorneys' fees, FINRA filing fees, hearing session fees, all other costs and expenses of this proceeding, and such further and additional relief as the Panel may deem just and proper. In the alternative, Claimant requested an award in the amount of \$31,666.00, plus statutory interest at a rate of six (6) percent per year from 2005, plus reasonable attorneys' fees, FINRA filing fees, hearing session fees, and all other costs and expenses of this proceeding, and such further and additional relief as the Panel may deem just and proper.

In the Statement of Answer and Counterclaim, Respondents requested that the arbitration panel issue an order dismissing Claimant's Statement of Claim in its entirety, expunging any record of this claim, and granting such other and further relief as the Panel may deem just and proper. In the Counterclaim, Respondents requested that the Panel award of \$110,173.95, together with legal fees, costs, expenses incurred in the amount of \$379,757.73, for a total of \$489,931.68, plus future legal fees, costs, expenses through the conclusion of this matter, and allowable interest.

In the Amended Statement of Answer to Counterclaim, Claimant requested that the Counterclaim be dismissed and that Claimant's request for damages shall include statutory interest at the rate of six (6) percent per year from 2005 to the present, plus reasonable attorney's fees, FINRA filing fees, hearing session fees, and all other costs and expenses of this proceeding, and such further and additional relief as the Panel may deem proper and just.

At the hearing, Claimant's final damage request was for compensatory damages in the amount of \$31,666.00; interest; costs; attorneys' fees in the amount of \$15,400.00 to Scott Lane, Esq. and \$181,460.00 to Eric J. Purchase, Esq. (both inclusive of various costs); and other costs.

Claimant also requested that Respondents' Counterclaim be dismissed and that all forum fees be assessed against Respondents.

At the hearing, Respondents requested that Claimant's claim be dismissed; compensatory damages on the Counterclaim in the amount of \$441,493.81; attorneys' fees in the amount of \$46,000.00; expert witness fees in the amount of \$4,750.00; other costs; punitive damages in the amount of either \$2,953,346.80 or, alternatively, \$5,414,681.90; and that all forum fees be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 3, 2020, Claimant filed a Motion to Dismiss Counterclaim. On August 14, 2020, Respondents filed a response opposing the Motion to Dismiss Counterclaim ("Response to Motion to Dismiss Counterclaim"). On August 19, 2020, Claimant filed a reply to the Response to Motion to Dismiss Counterclaim.

On July 3, 2020, Respondents filed a Motion to Dismiss Pursuant to FINRA Rule 12206(b) ("Motion to Dismiss"). On August 14, 2020, Claimant filed a response opposing the Motion to Dismiss.

On August 28, 2020, the Panel heard oral arguments on the Motion to Dismiss Counterclaim and Motion to Dismiss. In an Order dated September 15, 2020, the Panel denied the Motion to Dismiss Counterclaim and the Motion to Dismiss.

On January 12, 2021, Claimant filed a Motion to Amend Statement of Claim ("Motion to Amend"), to which no response was filed. In an Order dated February 8, 2021, the Panel granted the Motion to Amend.

On January 26, 2021, Claimant filed a Motion to Amend Response to Respondents' Counterclaim ("Motion to Amend Response to Counterclaim"). On February 5, 2021, Respondent filed a Response to the Motion to Amend Response to Counterclaim. On February 10, 2021, Claimant filed a Reply in support of the Motion to Amend Response to Counterclaim. In an Order dated February 17, 2021, the Panel granted the Motion to Amend Response to Counterclaim.

On the record at the hearing, Respondents made an oral Motion to Dismiss ("Motion") on the basis of Rule 12206 of the Code of Arbitration Procedure ("Code"), and in principle part, reasserted their arguments in the Motion to Dismiss which was previously denied by the Panel in the Order dated September 15, 2020. Respondents further asserted that the Motion should be granted because of the facts based upon the documents and testimony in evidence. Claimant opposed the motion based upon the facts and the law. On the record, the Panel denied the Motion without prejudice.

During Respondents' presentation of rebuttal evidence in support of their Counterclaim, Respondents orally moved to amend their Counterclaim to include, as an element of damages, umbrella insurance coverage expenses to cover Provident or Donald Smith for data breach for

either intentional or negligent loss. Claimant opposed the oral Motion to Amend. On the record, the Panel denied the Motion to Amend without prejudice.

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

AWARD

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

1. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$31,666.00 in compensatory damages.
2. Respondents are jointly and severally liable for and shall pay to Claimant interest on the above-stated sum at the rate of 6% simple interest per annum from January 1, 2021, through and including the date the Award is paid in full.
3. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$12,000.00 in attorneys' fees for legal services performed by Scott A. Lane, Esq. and the sum of \$50,000.00 in attorneys' fees for legal services performed by Eric J. Purchase, Esq., pursuant to 42 Pa. C.S. § 2503(7) and the request of both sides for attorneys' fees.
4. Respondents' Counterclaim is denied.
5. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and treble damages, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee	= \$	600.00
Counterclaim Filing Fee	= \$	2,125.00

**The filing fee is made up of a non-refundable and a refundable portion.*

FINRA Dispute Resolution Services previously deferred Claimant's filing fee of \$ 600.00. Upon conclusion of the matter, the Panel determined to waive 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, Provident is assessed the following:

Member Surcharge	= \$	750.00
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Member Process Fee = \$ 3,250.00

Postponement Fees

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

March 9, 2021, postponement requested jointly by the parties Waived
August 16 and 18, 2022, postponement requested by Respondents Waived

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 9, 2021, cancellation requested jointly by the parties = \$ 1,800.00
July 1 and 2, 2021, cancellation requested jointly by the parties = \$ 1,800.00
August 16 and 18, 2022, cancellation requested by Respondents = \$ 1,800.00

Total Last-Minute Cancellation Fees = \$ 5,400.00

The Panel has waived \$3,600.00 of the last-minute cancellation fees.

The Panel has assessed \$1,800.00 of the last-minute cancellation 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), which lasts four (4) hours or less. Fees associated with these proceedings are:

Six (6) pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 6,750.00
Pre-Hearing Conferences: July 30, 2020 1 session
August 28, 2020 1 session
September 21, 2020 1 session
February 16, 2021 1 session
March 14, 2022 1 session
August 12, 2022 1 session

Forty-six (46) hearing sessions @ \$1,125.00/session = \$ 51,750.00
Hearings: February 22, 2021 2 sessions
February 23, 2021 2 sessions
February 24, 2021 2 sessions
February 25, 2021 2 sessions
March 8, 2021 1 session
March 10, 2021 2 sessions
March 11, 2021 2 sessions
March 23, 2021 2 sessions
April 7, 2021 2 sessions
April 8, 2021 2 sessions
April 9, 2021 2 sessions
April 20, 2021 2 sessions

April 21, 2021	2 sessions
May 11, 2021	2 sessions
May 12, 2021	2 sessions
May 13, 2021	2 sessions
June 30, 2021	2 sessions
June 27, 2022	2 sessions
June 28, 2022	1 session
June 29, 2022	2 sessions
June 30, 2022	2 sessions
October 31, 2022	2 sessions
November 1, 2022	2 sessions
December 7, 2022	2 sessions

Total Hearing Session Fees = \$ 58,500.00

The Panel has assessed \$7,312.50 of the hearing session fees to Claimant.

The Panel has assessed \$51,187.50 of the hearing session fees jointly and severally to Respondents.

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

ARBITRATION PANEL

Jeffrey M. Bain	-	Public Arbitrator, Presiding Chairperson
Gary Lee Ainley	-	Public Arbitrator
Karl Strohbehn	-	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

Jeffrey M. Bain

Jeffrey M. Bain
Public Arbitrator, Presiding Chairperson

01/19/2023

Signature Date

Gary Lee Ainley

Gary Lee Ainley
Public Arbitrator

01/19/2023

Signature Date

Karl Strohbehn

Karl Strohbehn
Public Arbitrator

01/19/2023

Signature Date

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January 19, 2023

Date of Service (For FINRA Dispute Resolution Services use only)