

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

Angelo Benedetto
Kenneth DeFelice
Ana DeFelice
Edward and Helen Kobal
John Eichelberger
Gail Eichelberger
John Hocking
Jane Hocking
Herbert Kittner
Gloria Kittner
James Lake
Barbara Lake
Eugene Mahon
Marjann Mahon
Thomas and Arlene Richardson
Harold Warner
Grace Warner

Case Number: 16-01293

vs.

Respondents

First Allied Securities, Inc.
Anthony Diaz

Hearing Site: Philadelphia, Pennsylvania

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

REPRESENTATION OF PARTIES

For Claimants Angelo Benedetto, Kenneth DeFelice, Ana DeFelice, Edward and Helen Kobal, John Eichelberger, Gail Eichelberger, John Hocking, Jane Hocking, Herbert Kittner, Gloria Kittner, James Lake, Barbara Lake, Eugene Mahon, Marjann Mahon, Thomas and Arlene Richardson, Harold Warner, and Grace Warner: Adam Gana, Esq, and Adam J. Weinstein, Esq., Gana LLP, New York, New York.

For Respondent First Allied Securities, Inc. ("First Allied"): Marni Rae Robin, Esq., Winget, Spadafora & Schwartzberg, LLP, New York, New York.

Respondent Anthony Diaz did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: May 6, 2016.
Amended Statement of Claim filed on or about: June 15, 2016.
Second Amended Statement of Claim filed on or about: November 15, 2016.
Third Amended Statement of Claim filed on or about: April 4, 2017.
Angelo Benedetto signed the Submission Agreement: May 6, 2016.
Ana DeFelice signed the Submission Agreement: May 6, 2016.
Kenneth DeFelice signed the Submission Agreement: May 6, 2016.
John Hocking signed the Submission Agreement: May 6, 2016.
Jane Hocking signed the Submission Agreement: May 6, 2016.
James Lake signed the Submission Agreement: May 6, 2016.
Barbara Lake signed the Submission Agreement: May 6, 2016.
Harold Warner signed the Submission Agreement: May 6, 2016.
Grace Warner signed the Submission Agreement: May 6, 2016.
Edward and Helen Kobal did not sign the Submission Agreement.
John Eichelberger did not sign the Submission Agreement.
Gail Eichelberger did not sign the Submission Agreement.
Herbert Kittner did not sign the Submission Agreement.
Gloria Kittner did not sign the Submission Agreement.
Eugene Mahon did not sign the Submission Agreement.
Marjann Mahon did not sign the Submission Agreement.
Thomas and Arlene Richardson did not sign the Submission Agreement.

Statement of Answer to Amended Statement of Claim filed by Respondent First Allied on or about: October 21, 2016.
Statement of Answer to Third Amended Statement of Claim filed on or about April 26, 2017.
First Allied signed the Submission Agreement: October 10, 2016.

Anthony Diaz did not submit an Answer or sign the Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: damages arising from suitability, fraud, negligent misrepresentation and omission, violation of FINRA rules and Blue Sky laws, lack of supervision, and respondeat superior. The causes of action relate to various securities.

Unless specifically admitted in the Statement of Answer, Respondent First Allied denied the allegations made in the Amended Statement of Claim and Third Amended Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested compensatory damages in the amount of \$999,999.00 or recessionary damages, statutory damages, interest at the statutory rate, attorneys' fees, expert fees, forum fees, punitive damages, and any and all relief available to Claimants, in law or equity or otherwise, which may be granted to them by the Panel.

In the Amended Statement of Claim, Second Amended Statement of Claim, and Third Amended Statement of Claim, Claimants requested compensatory damages in the amount of \$2,400,000.00 or recessionary damages, statutory damages, interest at the statutory rate, attorneys' fees, expert fees, forum fees, punitive damages, and any and all relief available to Claimants, in law or equity or otherwise, which may be granted to them by the Panel.

In the Statement of Answer to the Amended Statement of Claim and Third Amended Statement of Claim, Respondent First Allied requested dismissal of the Claims with prejudice, that all fees be assessed against Claimants, and such other and further relief as the Panel deems just, equitable and proper.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges that she has read the pleadings and other materials filed by the parties.

Respondent Anthony Diaz 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, is bound by the determination of the Panel on all issues submitted.

On or about November 3, 2017, Claimants and Respondent First Allied entered into a settlement agreement.

On November 30, 2017, Claimants filed a Motion for Default Proceedings against Respondent Anthony Diaz pursuant to Rule 12801 of the Code of Arbitration Procedure.

Previously a Panel of three arbitrators was appointed to this matter. After initiating the Default Proceedings, the Chair presided as the sole arbitrator pursuant to the Code of Arbitration Procedure.

The Arbitrator determined that Respondent Anthony Diaz was served notice of the Statement of Claim, Overdue Notice, and Notification of Arbitrator by regular mail and is therefore bound by the Arbitrator's ruling and determination.

AWARD

The undersigned Arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Diaz is liable for and shall pay to Claimants compensatory damages in the amount of \$1,033,166.00.
2. Respondent Diaz is liable for and shall pay to Claimants punitive damages in the amount of \$2,892,864.00. The Chair awarded punitive damages pursuant to US Supreme Court *Mastrobucchi vs. Shearson Lehman Hutton, Inc.*, 514, U.S. 52 (1995) and *Feld vs. Merriam* 506 Pa. 383 (1984).
3. Respondent Diaz is liable for and shall pay to Claimants attorneys' fees in the amount of \$413,266.00 pursuant to contract.
4. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee	=\$ 2,000.00
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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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, First Allied Securities, Inc. is assessed the following:

Member Surcharge	=\$ 3,025.00
Member Process Fee	=\$ 6,175.00

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 one discovery-related motion
Respondent First Allied Securities submitted one discovery-related motion

Total Discovery-Related Motion Fees = \$ 400.00

The Arbitrator has assessed \$200.00 of the discovery-related motion fees jointly and severally to Claimants.

The Arbitrator has assessed \$200.00 of the discovery-related motion fees to Respondent First Allied.

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 arbitrators, including a pre-hearing conference with the arbitrators, 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: September 8, 2017 1 session

One (1) pre-hearing session with the Panel @ \$1,400.00/session = \$1,400.00
Pre-hearing conference: October 25, 2016 1 session

Decision on the papers: = \$ 300.00

Total Hearing Session Fees = \$2,150.00

The Arbitrator has assessed \$925.00 of the hearing session fees jointly and severally to Claimants.

The Arbitrator has assessed \$225.00 for the September 8, 2017 pre-hearing conference call to First Allied.

The Arbitrator has assessed \$700.00 of the hearing session fees jointly and severally to Respondents.

The Arbitrator has assessed the \$300.00 paper decision fee to Respondent Diaz.

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

ARBITRATOR

Rochelle K. Kaplan

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Sole 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.

Arbitrator's Signature



Rochelle K. Kaplan
Sole Public Arbitrator



Signature Date

January 19, 2018

Date of Service (For FINRA Office of Dispute Resolution office use only)