

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

Carl Alexen
Suzette Cohen
Kristy Crouch
Gelsomino Living Trust
Mildred Jazmin
Sonia Johnson
Johnson Family Trust
Wesley Kuo
Phyllis Kuo
William Kuzneski
Marianne Kuzneski
Martha Phillips IRA
Luis Mendez
Louis Morales
Verna Papotta
Martha Phillips
Ronald Turner IRA
Ruben Villarreal IRA
Michel Sanner
Sonia Johnson IRA
Sonia Johnson TOD
Mary Steele
The Cook & Phillips Family Trust DTD 10/19/2001
Turner Family Trust
Vintch Family Trust DTD 10/23/1992 and the
Christel Vincth IRA
Timothy Wassil
Mitsi Yoss

Case Number: 15-00963

vs.

Respondents

COR Clearing LLC
Wilson-Davis & Company, Inc.

Hearing Site: Los Angeles, California

Counter-Claimant

Wilson-Davis & Company, Inc.

vs.

Counter-Respondents

Kristy Crouch
Wesley Kuo
Phyllis Kuo
Martha Phillips
Martha Phillips IRA
The Cook & Phillips Family Trust DTD 10/19/2001
Timothy Wassil

Nature of the Dispute: Customers vs. Members; and
Member vs. Customers

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Carl Alexen, Suzette Cohen, Kristy Crouch, Gelsomino Living Trust, Mildred Jazmin, Sonia Johnson, Johnson Family Trust, Wesley Kuo, Phyllis Kuo, William Kuzneski, Marianne Kuzneski, Martha Phillips IRA, Luis Mendez, Louis Morales, Verna Papotta, Martha Phillips, Ronald Turner IRA, Ruben Villarreal IRA, Michel Sanner, Sonia Johnson IRA, Sonia Johnson TOD, Mary Steele, The Cook & Phillips Family Trust DTD 10/19/2001, Turner Family Trust, Vintch Family Trust DTD 10/23/1992 and the Christel Vincth IRA, Timothy Wassil, and Mitsi Yoss, hereinafter collectively referred to as "Claimants": Adam J. Gana, Esq., Gana LLP, New York, New York.

For Respondent COR Clearing LLC ("COR Clearing"): David L. Aronoff, Esq., Winston & Strawn LLP, Los Angeles, California.

For Respondent/Counter-Claimant Wilson-Davis & Company, Inc. ("Wilson-Davis"): Mark O. Van Wagoner, Esq., Savage, Yeates & Waldron, P.C., Salt Lake City, Utah.

CASE INFORMATION

Statement of Claim filed on or about: April 29, 2015.

Statement of Answer filed by COR Clearing on or about: June 24, 2015.

Statement of Answer and Counterclaim filed by Wilson-Davis on or about: June 24, 2015.

Claimants' Answer to Counterclaim filed on or about: June 30, 2015.

Amended Statement of Claim filed on or about: September 8, 2015.

Statement of Answer and Counterclaim to Amended Statement of Claim filed by Wilson-Davis on or about: October 28, 2015.

Statement of Answer to Amended Statement of Claim filed by COR Clearing on or about: October 29, 2015.

Claimants' Amended Answer to Wilson-Davis' Amended Counterclaim filed on or about: November 11, 2015.

Carl Alexen signed the Submission Agreement: April 29, 2015.

Christel Vincth IRA signed the Submission Agreement: April 29, 2015.
Suzette Cohen signed the Submission Agreement: April 29, 2015.
Kristy Crouch signed the Submission Agreement: April 29, 2015.
Gelsomino Living Trust signed the Submission Agreement: April 29, 2015.
Mildred Jazmin signed the Submission Agreement: April 29, 2015.
Sonia Johnson signed the Submission Agreement: April 29, 2015.
Phyllis Kuo signed the Submission Agreement: April 29, 2015.
Wesley Kuo signed the Submission Agreement: April 29, 2015.
Luis Mendez signed the Submission Agreement: April 29, 2015.
Louis Morales signed the Submission Agreement: April 29, 2015.
Verna Papotta signed the Submission Agreement: April 29, 2015.
Martha Phillips signed the Submission Agreement: April 29, 2015.
Michel Sanner signed the Submission Agreement: April 29, 2015.
Turner Family Trust signed the Submission Agreement: April 29, 2015.
Vintch Family Trust DTD 10/23/1992 and the Christel Vincth IRA signed the Submission Agreement: April 29, 2015.
Mary Steele signed the Submission Agreement: April 29, 2015.
Timothy Wassil signed the Submission Agreement: April 29, 2015.
Mitsi Yoss signed the Submission Agreement: April 29, 2015.
Ronald Turner IRA signed the Submission Agreement: May 5, 2015.
Ruben Villarreal IRA signed the Submission Agreement: May 5, 2015.
Johnson Family Trust signed the Submission Agreement: May 5, 2015.
Martha Phillips IRA signed the Submission Agreement: May 5, 2015.

Sonia Johnson IRA signed the Submission Agreement: May 5, 2015.
Sonia Johnson TOD signed the Submission Agreement: May 5, 2015.

The Cook & Phillips Family Trust DTD 10/19/2001 signed the Submission Agreement: May 5, 2015.
Wilson-Davis signed the Submission Agreement: June 23, 2015.
COR Clearing signed the Submission Agreement: June 24, 2015.
Marianne Kuzneski signed the Submission Agreement: November 4, 2015.
William Kuzneski signed the Submission Agreement: November 4, 2015.

CASE SUMMARY

In the Statement of Claim, Claimants, with the exception of William Kuzneski and Marianne Kuzneski (“the Kuzneskis”) who had not yet been added as claimants to the arbitration, asserted the following causes of action: unsuitable recommendations; breach of fiduciary duty; violation of FINRA Rules 2010, IM-2310-2 and 2020; unauthorized trading; fraudulent or negligent material misrepresentation and omissions of material information; violation of the California Consumer Legal Remedies Act; violation of California Business and Professions Code §§17200 et seq.; aiding and abetting fraud and breach of fiduciary duty; failure to supervise, control person liability under section 20(a) of the Securities Exchange Act of 1934 and California Corporations Code §§25504 and 25504.1 and respondeat superior; negligent or intentional misstatements in Form U5 filings, failure to warn clients, and failure to warn regulators. The causes of action relate to Claimants’ investments in VGTel, Inc shares.

In the Amended Statement of Claim, the Kuzneskis were added as claimants to the arbitration. The causes of action remained unchanged.

Unless specifically admitted in their Statements of Answer, Wilson-Davis and COR Clearing denied the allegations made in the Statements of Claim and asserted various affirmative defenses.

In its Counterclaim against Martha Phillips IRA, Martha Phillips, and The Cook & Phillips Family Trust DTD 10/19/2001 (“Phillips”), Kristy Crouch (“Crouch”), Wesley Kuo and Phyllis Kuo (“the Kuos”), and Timothy Wassil, hereinafter referred to as the “Counterclaim Respondents,” Wilson-Davis asserted a cause of action for indemnification in connection with the VGTel, Inc. investments.

Unless specifically admitted in their Statements of Answer to Wilson-Davis’ Counterclaim, the Counterclaim Respondents denied the allegations made in the Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimants requested:

1. Compensatory damages for a sum of \$6,000,000;
2. Interest at the statutory rate;
3. Attorneys’ Fees;
4. Expert Fees;
5. Forum Fees;
6. Punitive Damages;
7. Treble Damages; and
8. Such other and further relief as this Panel deems just and proper.

In the Statement of Answer, as amended, COR Clearing requested all claims against it be rejected.

In the Statement of Answer and Counterclaim, as amended, Wilson-Davis requested:

1. Dismissal of the Statement of Claim against Wilson-Davis in its entirety and with prejudice;
2. Unspecified losses and damages as alleged in the Counterclaim;
3. Reasonable attorneys’ fees and costs, including expert fees and forum fees; and
4. Such other, further and different relief as the Panel deems proper.

In the Statements of Answer to the Counterclaim, the Counterclaim Respondents denied that Wilson-Davis is entitled to the relief sought or any relief whatsoever, and requested judgment dismissing the Counterclaim against them, together with costs, attorneys’ fees, disbursements, and such other relief as the Panel deems just and appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

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

On September 8, 2015, Claimants filed a Motion to Amend the Statement of Claim to add two Claimants, the Kuzneskis. On September 18, 2015, Wilson-Davis filed an opposition to the Motion, and on September 22, 2015, Claimants filed a reply to their Motion. October 7, 2015, the Panel granted Claimants' Motion to Amend the Statement of Claim.

On August 30, 2016, Claimants advised that they had settled with COR Clearing.

During the evidentiary hearing, Wilson-Davis withdrew its Counterclaim. Also, Claimants' counsel advised that the only remaining Claimants in the matter were Crouch; the Kuos; the Kuzneskis; and Phillips, hereinafter collectively referred to as "the Remaining Claimants."

Also during the recorded evidentiary hearing, after the conclusion of the Remaining Claimants' case-in-chief, Wilson-Davis moved to dismiss the claims asserted against it. The Remaining Claimants opposed the motion. The Panel denied the motion to dismiss finding that at least one of the Remaining Claimants had made a showing of right to recovery.

At the close of the evidentiary hearing, Crouch requested \$125,990.54, the Kuos requested \$595,461.09, the Kuzneskis requested \$182,277.68, and Phillips requested \$546,145.13. All amounts included claims for interest and attorneys' fees.

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. Wilson-Davis is liable for and shall pay to Crouch the sum of \$75,855.16 in compensatory damages. The Panel notes that the sum awarded reflects an offset of the amount Crouch received in settlement of her claims from COR Clearing.
2. Wilson-Davis is liable for and shall pay to Crouch the sum of \$23,586.08 in pre-judgment interest.
3. Wilson-Davis is liable for and shall pay to Crouch interest on the above-stated compensatory damages and pre-judgment interest sum of \$99,441.24 at the rate of 10% per annum accruing from 15 days after the date of service of this award, until the award of \$99,441.24 is paid in full.
4. The Kuos', the Kuzneskis', and Phillips' claims are denied in their entirety.
5. Any and all claims for relief not specifically addressed herein, including punitive and treble damages and attorneys' fees, 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	=\$ 2,250.00
Counterclaim Filing Fee	=\$ 1,700.00

**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 parties, COR Clearing and Wilson-Davis are each assessed the following:

<u>COR Clearing</u>	
Member Surcharge	=\$ 4,025.00
Member Process Fee	=\$ 7,000.00

<u>Wilson-Davis</u>	
Member Surcharge	=\$ 4,025.00
Member Process Fee	=\$ 7,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:
September 20-23, 27-30, 2016, adjournment by Claimants and Wilson-Davis=\$1,500.00

Total Adjournment Fees	=\$1,500.00
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1. The Panel has assessed \$750.00 of the adjournment fees jointly and severally to Claimants.
2. The Panel has assessed \$750.00 of the adjournment fees to COR Clearing.

Discovery-Related Motion Fee

Fees apply for each decision rendered on a discovery-related motion.

Five (5) decisions on discovery-related motions on the papers
With one arbitrator @ \$200.00/decision =\$1,000.00

Claimants submitted three discovery-related motions
COR Clearing submitted one discovery-related motion
Non-party American Equity Investment Corporation submitted one discovery-related motion

Total Discovery-Related Motion Fee	=\$1,000.00
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The Panel has assessed \$1,000.00 of the discovery-related motion fees to Wilson-Davis.

Contested Motion for Issuance of Subpoena Fee

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) Decision on a contested motion for the issuance of a subpoena
with one arbitrator @ \$250.00 = \$250.00

Total Contested Motion for Issuance of Subpoena Fee = \$250.00

The Panel has assessed \$250.00 of the contested motion for issuance of subpoenas fees to Wilson-Davis.

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 a single arbitrator @ \$450.00/session = \$900.00
Pre-hearing conferences: May 25, 2016 1 session
July 28, 2016 1 session

Four (4) pre-hearing sessions with the Panel @ \$1,500.00/session = \$6,000.00
Pre-hearing conferences: September 16, 2015 1 session
October 6, 2015 1 session
July 11, 2016 1 session
July 27, 2016 1 session

Sixteen (16) hearing sessions @ \$1,500.00/session = \$24,000.00
Hearing Dates: October 4, 2016 2 sessions
October 5, 2016 2 sessions
October 6, 2016 2 sessions
October 7, 2016 2 sessions
October 10, 2016 2 sessions
October 11, 2016 2 sessions
October 12, 2016 2 sessions
October 19, 2016 2 sessions

Total Hearing Session Fees = \$30,900.00

The Panel has assessed the \$30,900.00 of the hearing session fees to Wilson-Davis.


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

ARBITRATION PANEL


Kenneth E. Owen	-	Public Arbitrator, Presiding Chairperson
Eric Gad Forster	-	Public Arbitrator
Daniel James Yee	-	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



Kenneth E. Owen
Public Arbitrator, Presiding Chairperson



Signature Date

Eric Gad Forster
Public Arbitrator

Signature Date

Daniel James Yee
Public Arbitrator

Signature Date

November 22, 2016
Date of Service (For FINRA Office of Dispute Resolution office use only)

ARBITRATION PANEL

Kenneth E. Owen	-	Public Arbitrator, Presiding Chairperson
Eric Gad Forster	-	Public Arbitrator
Daniel James Yee	-	Public Arbitrator

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Concurring Arbitrators' Signatures

Kenneth E. Owen
Public Arbitrator, Presiding Chairperson



Signature Date

11/17/16

Eric Gad Forster
Public Arbitrator

Signature Date

Daniel James Yee
Public Arbitrator

Signature Date

November 22, 2016
Date of Service (For FINRA Office of Dispute Resolution office use only)

ARBITRATION PANEL

Kenneth E. Owen	-	Public Arbitrator, Presiding Chairperson
Eric Gad Forster	-	Public Arbitrator
Daniel James Yee	-	Public Arbitrator

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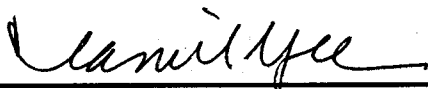
Concurring Arbitrators' Signatures

Kenneth E. Owen
Public Arbitrator, Presiding Chairperson

Signature Date

Eric Gad Forster
Public Arbitrator

Signature Date



Daniel James Yee
Public Arbitrator

November 21, 2016

Signature Date

November 22, 2016
Date of Service (For FINRA Office of Dispute Resolution office use only)