

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Anthony F. Garvin

Case Number: 15-00036

vs.

Respondents
Burnham Securities Inc.
David S. Gilio
Jon M. Burnham

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

For Claimant Anthony F. Garvin: Barry R. Lax, Esq., Lax & Neville LLP, New York, New York.

Respondent Burnham Securities Inc. did not appear at the hearing in this matter.

Respondent David S. Gilio appeared pro se.

For Respondent Jon M. Burnham: Eric S. Hutner, Esq., Hutner Klarish LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: January 5, 2015.

Claimant signed the Submission Agreement: December 20, 2014.

Amended Statement of Claim filed on or about: March 25, 2016.

Joint Statement of Answer filed by Respondents Burnham Securities Inc. and David S. Gilio on or about: April 20, 2015.

Burnham Securities Inc. signed the Submission Agreement: April 20, 2015.

David S. Gilio signed the Submission Agreement: April 21, 2015.

Answer to the Amended Statement of Answer filed by Respondent Jon M. Burnham on or about: June 15, 2016.

Jon M. Burnham signed the Submission Agreement: July 19, 2016.

CASE SUMMARY

Claimant asserted the following causes of action: breach of express and/or implied contract; unjust enrichment and/or restitution; quantum meruit; violation of New York Labor Law; breach of the implied covenant of good faith and fair dealing; failure to provide competent professional services; breach of contractual and legal duties; negligence; and conversion.

Unless specifically admitted in the Statement of Answer, Respondents Burnham Securities Inc. and David S. Gilio denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in the Answer to the Amended Statement of Claim, Respondent Jon M. Burnham denied the allegations made in the Amended Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimant requested unspecified compensatory damages plus interest, punitive damages, liquidated damages, attorneys' fees, costs, and for such other relief as deemed just, equitable and proper.

In their Statement of Answer, Respondents Burnham Securities Inc. and David S. Gilio requested that Claimant's claims be denied in their entirety, attorneys' fees, costs, and any and all other relief as deemed just and proper.

In his Statement of Answer, Respondent Jon M. Burnham requested that the Amended Statement of Claim be dismissed, attorneys' fees, costs, that forum fees be assessed against Claimant, and if not Claimant, against Respondent Burnham Securities Inc., and for such other relief as deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent Burnham Securities Inc. did not appear at the evidentiary hearing. Upon review of the file and the representations made on behalf of the Claimant, the Panel determined that Respondent Burnham Securities Inc. has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the Code.

On December 5, 2016, Claimant notified FINRA that the claim against Respondent Jon M. Burnham was settled.

The parties present at the hearing 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. Respondents Burnham Securities Inc. and David S. Gilio are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$348,125.00 plus interest at the rate of 9% per annum from December 15, 2016 until the award is paid in full.
2. Respondents Burnham Securities Inc and David S. Gilio are jointly and severally liable for and shall pay to Claimant accrued interest in the amount of \$121,352.00.
3. Respondents Burnham Securities Inc and David S. Gilio are jointly and severally liable for and shall pay to Claimant costs in the amount of \$5,721.00.
4. Respondents Burnham Securities Inc and David S. Gilio are jointly and severally liable for and shall pay to Claimant attorneys' fees in the amount of \$90,000.00. The Panel awarded attorneys' fees as all parties requested attorneys' fees.
5. Any and all claims for relief not specifically addressed herein, including punitive damages and Respondents' request for 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	=\$ 1,575.00
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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, Burnham Securities Inc. is assessed the following:

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

March 21 – 24 & 29, 2016 adjournment by Respondents Burnham Securities Inc. and David S. Gilio	= \$ 1,125.00
August 1 – 5, 2016 adjournment by Respondent Jon M. Burnham	= \$ 1,125.00
Total Adjournment Fees	= \$ 2,250.00

1. The Panel has assessed \$1,125.00 of the adjournment fees to Respondent Jon M. Burnham.
2. The Panel has assessed \$1,125.00 of the adjournment fees jointly and severally to Respondents Burnham Securities Inc. and David S. Gilio.

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:

Four (4) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$ 4,500.00
Pre-hearing conferences: August 18, 2015	1 session
March 10, 2016	1 session
March 21, 2016	1 session
June 15, 2016	1 session
Four (4) hearing sessions @ \$1,125.00/session	= \$ 4,500.00
Hearing Dates: December 12, 2016	2 sessions
December 15, 2016	2 sessions
Total Hearing Session Fees	= \$ 9,000.00

1. The Panel has assessed \$4,500 of the hearing session fees to Claimant.
2. The Panel has assessed \$562.50 of the hearing session fees jointly and severally to Respondents.
3. The Panel has assessed \$3,937.50 of the hearing session fees jointly and severally to Respondents Burnham Securities Inc. and David S. Gilio.

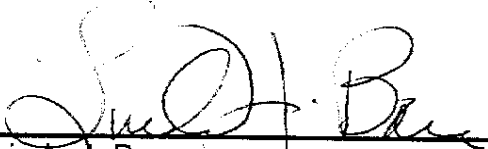
All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

Linda J. Baer	-	Public Arbitrator, Presiding Chairperson
Edmund Siejka	-	Public Arbitrator
Joseph Leo Calabrese	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures



Linda J. Baer
Public Arbitrator, Presiding Chairperson



Signature Date

Edmund Siejka
Public Arbitrator

Signature Date

Joseph Leo Calabrese
Non-Public Arbitrator

Signature Date

December 28, 2016
Date of Service (For FINRA Office of Dispute Resolution office use only)

ARBITRATION PANEL

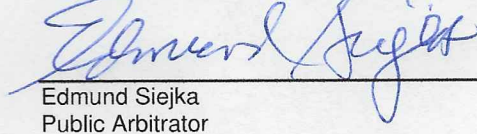
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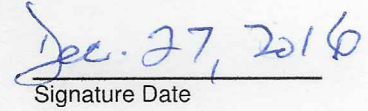
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