

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

The Van Dierendonk Family Trust
Edmond W. Van Dierendonk
Susanna M. Van Dierendonk

Case Number: 19-02711

vs.

Respondents

ProEquities, Inc.
Narinder Kaur Singh
Transamerica Financial Advisors, Inc.

Hearing Site: Phoenix, Arizona

Cross-Claimant

ProEquities, Inc.

vs.

Cross-Respondent

Narinder Kaur Singh

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: Customers vs. Members and Associated Person

Member vs. Associated Person

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants The Van Dierendonk Family Trust, Edmond W. Van Dierendonk, and Susanna M. Van Dierendonk (“Claimants”): Jeffrey A. Feldman, Esq., Law Offices of Jeffrey A. Feldman, San Francisco, California.

For Respondent/Cross-Claimant ProEquities, Inc. (“ProEquities”): Stephen C. Jackson, Esq., Maynard, Cooper & Gale, P.C., Birmingham, Alabama.

For Respondent Transamerica Financial Advisors, Inc (“Transamerica”): Shawn M. McGraw, Esq., Koehler Fitzgerald LLC, Cleveland, Ohio.

Respondent/Cross-Respondent Narinder Kaur Singh (“Singh”) appeared pro se.

Hereinafter, Proequities, Transamerica and Singh are collectively referred to as “Respondents.”

CASE INFORMATION

Statement of Claim filed on or about: September 6, 2019.
Claimants signed the Submission Agreement: September 5, 2019.

Statement of Answer filed by Transamerica on or about: December 3, 2019.
Transamerica signed the Submission Agreement: September 25, 2019.

Statement of Answer and Cross-Claim filed by ProEquities on or about: November 8, 2019.
ProEquities signed the Submission Agreement: November 6, 2019.

Statement of Answer filed by Singh on or about: December 5, 2019.
Singh signed the Submission Agreement: December 6, 2019.

CASE SUMMARY

Claimants asserted the following causes of action: violation of the Arizona and California Securities Acts; breach of fiduciary duty; negligent supervision; misrepresentation; fraud; constructive fraud; breach of contract; violation of the Arizona Consumer Fraud Act; conversion; and elder abuse under the California Welfare and Institutions Code. The causes of action relate to an investment contract in Express Asset and Wealth Management (“Investment Contract”) that resulted from cash generated from the sale of Claimants’ home in California.

In the Statement of Answer, Transamerica denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In the Statement of Answer and Cross-Claim, ProEquities denied the allegations made in the Statement of Claim, asserted various affirmative defenses and asserted a cross-claim against Singh for breach of contract, contractual indemnity and common law indemnity and contribution.

In the Statement of Answer, Singh denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested an award against Respondents in an amount between \$1,000,000.00 and \$2,000,000.00 as follows:

1. Rescission of the investment contracts sold to Claimants together with 10% interest from the dates of the investments;
2. In the alternative, with respect to the investment contracts, lost principal in the amount of \$412,500.00 and well managed account damages relating to that sum;

3. Reasonable attorneys' fees pursuant to the Arizona Securities Act, Arizona Consumer Fraud Act, and the California Welfare and Institutions Code relating to elder abuse;
4. Treble damages pursuant to California Civil Code Section 3345;
5. All reasonable costs incurred during this arbitration;
6. Punitive and exemplary damages according to proof at the arbitration hearing; and
7. Such other relief as the Panel deems just and proper.

In the Statement of Answer, Transamerica requested:

1. Denial of Claimants' claims in their entirety; and
2. Such relief as the Panel deems just.

In the Statement of Answer and Cross-Claim, ProEquities requested:

1. Rejection of Claimants' Statement of Claim in its entirety by the Panel;
2. Judgment against Singh; and
3. An award of all damages available under the law, including but not limited to its attorneys' fees in this case.

In the Statement of Answer, Singh did not set forth a specific request for relief.

At the hearing, Claimants requested a finding of fraud and/or breach of fiduciary duty.

OTHER ISSUES CONSIDERED AND DECIDED

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

On May 6, 2020, Claimants filed a notice of partial settlement advising that all claims against Transamerica and ProEquities were dismissed with prejudice.

On May 21, 2020, the parties filed a stipulation to have the evidentiary hearing held via videoconferencing. By Order dated June 21, 2020, the Panel granted the parties' request. On July 20 and 21, 2020, the Panel held the evidentiary hearing in this matter via videoconference.

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

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. Singh is liable for and shall pay to Claimants the sum of \$207,620.70 in compensatory damages.
2. Singh is liable for and shall pay to Claimants interest in the amount of \$103,125.00, at the rate of 5% on the sum of compensatory damages and costs, accruing from January 1, 2019 through July 6, 2020, pursuant to the Investment Contract.
3. Singh is liable for and shall pay to Claimants the sum of \$100,000.00 in punitive damages pursuant to *Thompson v. Better-Bilt Aluminum Products Co.*, 171 Ariz. 550, 832 P2d 203.

The Panel found that Singh's conduct in this matter constituted fraud and/or breach of a fiduciary duty to Claimants, which is the basis for the punitive damages award.

4. Singh is liable for and shall pay to Claimants the sum of \$83,048.00 in attorneys' fees pursuant to the ARS Section 12-341.01.
5. Singh is liable for and shall pay to Claimants the sum of \$484.71 in costs.
6. Singh is liable for and shall pay to ProEquities the sum of \$67,500.00 in compensatory damages.
7. Singh is liable for and shall pay to ProEquities the sum of \$45,350.80 in attorneys' fees pursuant to the contract agreement between Respondent and ProEquities, and *Goetel vs. WSI-Cunningham, 194 Arizona 236, 980 P2d 489*.
8. Any and all claims for relief not specifically addressed herein are denied.

FEES

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

Filing Fees

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

Initial Claim Filing Fee	= \$ 2,000.00
Cross Claim Filing Fee	= \$ 2,125.00

**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 parties:

Transamerica is assessed the following:

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

Proequities is assessed the following:

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

Discovery-Related Motion Fees

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

One (1) decision on a discovery-related motion on the papers with one (1) Arbitrator @ \$200.00/decision	= \$200.00
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Singh submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees	= \$200.00
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The Panel has assessed the total discovery-related motion fees to Singh.

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:

One (1) pre-hearing session with the Panel @ \$1,400.00/session	= \$1,400.00
Pre-hearing Conference: January 6, 2020	1 session

Three (3) hearing sessions with the Panel @ \$1,400.00/session	= \$4,200.00
Hearing Dates: July 20, 2020	2 sessions
July 21, 2020	1 session

Total Hearing Session Fees	= \$5,600.00
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The Panel has assessed the total hearing session fees to Singh.

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

ARBITRATION PANEL

John H. Fearnow	-	Public Arbitrator, Presiding Chairperson
Michael Kelley	-	Public Arbitrator
Floyd Gerry Hoffman	-	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

John H. Fearnow

John H. Fearnow
Public Arbitrator, Presiding Chairperson

08/13/2020

Signature Date

Michael Kelley

Michael Kelley
Public Arbitrator

08/13/2020

Signature Date

Floyd Gerry Hoffman

Floyd Gerry Hoffman
Public Arbitrator

08/14/2020

Signature Date

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August 14, 2020

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