

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant/Counter-Respondent
Harry Beres

Case Number: 16-00395

vs.

Respondent/Counter-Claimant
Wilbanks Securities, Inc.

Hearing Site: Denver, Colorado

Nature of the Dispute: Customer vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant/Counter-Respondent Harry Beres, hereinafter referred to as "Claimant": Mark Fitapelli, Esq. and Jonathan Kurta, Esq., Fitapelli Kurta, New York, New York

For Respondent/Counter-Claimant Wilbanks Securities, Inc., hereinafter referred to as "Respondent": Aaron B. Wilbanks, President, CEO, Wilbanks Securities, Inc., Oklahoma City, Oklahoma

CASE INFORMATION

Statement of Claim filed by Claimant on: February 2, 2016
Statement of Answer to the Counterclaim filed on or about: April 5, 2016
Amended Statement of Claim filed on or about: April 8, 2016
Statement of Answer to the Counterclaim filed on or about: May 2, 2016
Claimant signed the Submission Agreement: February 9, 2016

Statement of Answer and Counterclaim filed by Respondent on or about: April 4, 2016
Statement of Answer to the Amended Statement of Claim and Counterclaim filed on or about: April 28, 2016
Respondent signed the Submission Agreement: April 7, 2016

CASE SUMMARY

Claimant asserted the following causes of action in the Statements of Claim: common law fraud, breach of contract, negligent supervision, breach of fiduciary duty, and violation of the Colorado Securities Act. The causes of action relate to Claimant's investment in an ING Landmark Variable Annuity.

Unless specifically admitted in the Statements of Answer, Respondent denied the allegations made in the Statements of Claim and asserted various affirmative defenses. In its Counterclaim, Respondent asserted that Claimant filed ineligible and time-barred causes of action which, it alleged, is an abuse of process.

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

RELIEF REQUESTED

In the Statements of Claim, Claimant requested:

1. Compensatory damages in an unspecified amount;
2. Punitive damages;
3. Pre-judgment interest, attorneys' fees and costs, filing and forum fees incurred herein; and
4. Such other and further relief which the Panel deems just and proper under the circumstances.

In the Statements of Answer and Counterclaim, Respondent requested:

1. Dismissal of the Claimant's claims in full;
2. Costs and attorneys' fees related to the defense of this claim;
3. Forum fees; and
4. Such other and further relief for which the Respondent may show itself to be justly entitled.

In the Statement of Answer to the Counterclaim, Claimant requested:

1. Dismissal of the Counterclaim;
2. Costs, attorneys' fees and disbursements; and
3. Such other and further relief as the Panel deems just and proper.

At the close of the hearing, Claimant requested compensatory damages in the amount of \$130,788.88.

OTHER ISSUES CONSIDERED AND DECIDED

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

On April 8, 2016, Claimant filed an Amended Statement of Claim, which provided additional facts to the original Statement of Claim. Since Claimant filed the claim before the Panel's appointment, pursuant to the Code of Arbitration Procedure ("Code") Rule 12309(a), the Amended Statement of Claim became part of the record.

On September 30, 2016, Respondent filed a Motion to Dismiss pursuant to Rule 12206 of the Code. On October 31, 2016, Claimant submitted a response opposing Respondent's motion. On February 7, 2017, the Panel heard oral arguments on Respondent's motion. By Order dated February 8, 2017, the Panel denied Respondent's motion.

After Claimant presented his case-in-chief at the evidentiary hearing, Respondent reasserted its Motion to Dismiss under the eligibility rule, which had previously been decided by the Panel. After due deliberation, pursuant to Rule 12206(b)(6), the Panel denied the renewed motion.

The Statement of Answer and Counterclaim, Statement of Answer and Counterclaim to the Amended Statement of Claim, and Motion to Dismiss were filed by counsel who withdrew from representing Respondent on March 8, 2017.

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. Respondent is liable for and shall pay to Claimant compensatory damages in the sum of \$130,789.00, plus interest at the rate of 8% compounded annually from the date the award is served until the amount of \$130,789.00 is paid in full.
2. Respondent's Counterclaim is denied in its entirety.
3. Respondent and Claimant's requests for attorneys' fees are denied.
4. Any and all claims for relief not specifically addressed herein, including punitive damages, 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
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 party, Wilbanks Securities, Inc. is assessed the following:

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

January 24 – 27, 2017, adjournment by Respondent = \$ 1,125.00

Total Adjournment Fees = \$ 1,125.00

The Panel has assessed \$1,125.00 of the adjournment fees to Respondent.

Last Minute Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within ten calendar days before the start of a scheduled hearing session:

January 24 - 27, 2017, adjournment by Respondent = \$ 1,800.00

Total Last Minute Cancellation Fees = \$ 1,800.00

The Panel has assessed \$1,800.00 of the last minute cancellation fees to Respondent.

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:

Five (5) pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 5,625.00

Pre-hearing conferences:

June 9, 2016	1 session
June 20, 2016	1 session
December 7, 2016	1 session
January 24, 2017	1 session
February 7, 2017	1 session

Five (5) hearing sessions @ \$1,125.00/session = \$ 5,625.00

Hearing Dates:

April 10, 2017	2 sessions
April 11, 2017	2 sessions
April 12, 2017	1 session

Total Hearing Session Fees = \$11,250.00

The Panel has assessed \$11,250.00 of the hearing session fees to Respondent.


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

ARBITRATION PANEL

Richard Djokic	-	Public Arbitrator, Presiding Chairperson
Rey Hernandez Julian	-	Public Arbitrator
Rebecca Sone O'Rourke	-	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



Richard Djokic
Public Arbitrator, Presiding Chairperson



Signature Date

Rey Hernandez Julian
Public Arbitrator

Signature Date

Rebecca Sone O'Rourke
Public Arbitrator

Signature Date

April 20, 2017
Date of Service (For FINRA Office of Dispute Resolution office use only)

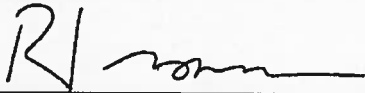
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Richard Djokic	-	Public Arbitrator, Presiding Chairperson
Rey Hernandez Julian	-	Public Arbitrator
Rebecca Sone O'Rourke	-	Public Arbitrator

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Concurring Arbitrators' Signatures

Richard Djokic
Public Arbitrator, Presiding Chairperson



Signature Date

April 19, 2017

Rey Hernandez Julian
Public Arbitrator

Signature Date

Rebecca Sone O'Rourke
Public Arbitrator

Signature Date

April 20, 2017
Date of Service (For FINRA Office of Dispute Resolution office use only)

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Richard Djokic
Public Arbitrator, Presiding Chairperson

Signature Date

Rey Hernandez Julian
Public Arbitrator

Signature Date

Rebecca O'Rourke

Rebecca Sone O'Rourke
Public Arbitrator

4/18/2017

Signature Date

April 20, 2017
Date of Service (For FINRA Office of Dispute Resolution office use only)