

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Lucy Chua and John Byrnes, as Trustees of
the Yife Tien Irrevocable Dynasty Trust and
Rocky Vista University, LLC

Case Number: 18-02134

vs.

Respondents

INTL FCStone Financial, Inc., Stifel, Nicolaus &
Company, Inc., RBC Capital Markets, LLC,
Jandra Stephen Lubovich, Jon Cary Cooper, and
Aaron Chaim Lupuloff

Hearing Site: Miami, Florida

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 Persons

This case was decided by an all-public panel.

The evidentiary hearing was conducted partially by videoconference.

REPRESENTATION OF PARTIES

For Claimants Lucy Chua and John Byrnes, as Trustees of the Yife Tien Irrevocable Dynasty Trust and Rocky Vista University, LLC (“Claimants”): Hendrik G. Milne, Esq. and Craig P. Kalil, Esq., Aballi Milne Kalil, P.A., Miami, Florida and Jonathan B. Butler, Esq., Jupiter, Florida.

For Respondents INTL FCStone Financial, Inc. (“FCStone”), Stifel, Nicolaus & Company, Inc. (“Stifel”), Jandra Stephen Lubovich (“Lubovich”), Jon Cary Cooper (“Cooper”), and Aaron Chaim Lupuloff (“Lupuloff”), collectively, “Respondents”: Peter S. Fruin, Esq., Kathryn Roe Eldridge, Esq., T. Brannon Parker, Esq., and Matthew Bowness, Esq., Maynard Nexsen, Birmingham, Alabama.

For Respondent RBC Capital Markets LLC (“RBC”): Katherine C. Donlon, Esq., Johnson, Newlon & Decort, P.A., Tampa, Florida.

CASE INFORMATION

Statement of Claim filed on or about: June 8, 2018.

Amended Statement of Claim filed on or about: August 16, 2018.

Claimants signed the Submission Agreement: June 4, 2018.

Statement of Answer to Amended Statement of Claim filed by Respondents on or about: October 8, 2018.

FCStone and Lupuloff signed the Submission Agreement: October 8, 2018.

Lubovich signed the Submission Agreement: October 8, 2017.

Stifel and Cooper signed the Submission Agreement: October 9, 2018.

Statement of Answer to Statement of Claim filed by RBC on or about: August 7, 2018.

Statement of Answer to Amended Statement of Claim filed by RBC on or about: September 4, 2018.

RBC signed the Submission Agreement: July 30, 2018.

CASE SUMMARY

In the Amended Statement of Claim, Claimants asserted the following causes of action: fraudulent misrepresentation and omissions; fraudulent inducement; conversion; civil theft; breach of fiduciary duty; failure to supervise; and breach of commercial honor and just and equitable principals of trade. The causes of action related to Claimants' allegation that Respondents fraudulently sold to Claimants privately offered taxable revenue bonds, IREP Series 2014-A Bonds, misrepresenting and concealing numerous existing ongoing non-public financial and operating problems of the bond's issuer.

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

In the Statement of Answer to Amended Statement of Claim, RBC stated that there were no substantive claims asserted by Claimants against RBC.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimants requested compensatory damages of \$5,005,000.00, together with pre-judgment and post-judgment interest; punitive damages of \$15,015,000.00 pursuant to Fla. Stat. § 768.73(1)(a)1; treble damages of \$15,015,000.00 pursuant to Fla. § Sec. 772.11; rescission of the purchase agreement; attorneys' fees, costs, forum fees, filing fees, arbitrator fees, expert fees, and other costs of investigation and arbitration; declaratory judgment; and such further and additional relief as the Panel may deem just and equitable, and as may be requested by Claimants at the final hearing.

In the Statement of Answer to Amended Statement of Claim, Respondents requested that the relief requested in the Statement of Claim be denied in all respects; that all references to this matter be expunged from Central Registration Depository ("CRD") registration records for Lubovich, Lupuloff, and Cooper; and that the costs of this proceeding be assessed against Claimants.

In the Statement of Answer to Amended Statement of Claim, RBC requested that the Panel dismiss it from the arbitration.

At the hearing, Claimants requested damages of \$18,848,229.00.

OTHER ISSUES CONSIDERED AND DECIDED

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

On August 23, 2019, Claimants filed a motion to compel against Lubovich in which Claimants requested sanctions against Lubovich for failure to comply with discovery orders (“Request for Sanctions”). On September 6, 2019, Lubovich filed a response in opposition to the Request for Sanctions. The Panel conducted prehearing conferences on September 27, 2019, and October 8, 2019, and, in an Order dated October 8, 2019, denied the Request for Sanctions.

On February 21, 2020, Claimants filed a Motion for Sanctions, or in the Alternative, Motion in Limine (“Motion for Sanctions). On March 2, 2020, Respondents filed an Opposition to the Motion for Sanctions. In an Order dated March 12, 2020, the Panel ruled that the Motion for Sanctions would be heard at the evidentiary hearing. At the hearing, the Panel denied the Motion for Sanctions.

On May 6, 2020, RBC filed a Motion to Dismiss, or in the Alternative, for Declaratory Relief (“Motion to Dismiss”). On May 22, 2020, Claimants filed a Response to the Motion to Dismiss. In a Stipulated Order entered by the Panel on or about September 30, 2020, RBC was dismissed without prejudice from the case. Accordingly, the Motion to Dismiss became moot.

On the record at the hearing, Respondents made an oral motion for a directed verdict (“Motion for Directed Verdict”). On May 14, 2022, Claimants filed correspondence relating to the Motion for Directed Verdict. On May 18, 2022, Respondents submitted authorities in support of the Motion for Directed Verdict. The same day, Claimants filed a Supplemental Response to the Motion for Directed Verdict. In an Order dated June 2, 2022, the Panel granted Respondents' Motion for Directed Verdict as to Counts VIII and IX of the Amended Statement of Claim, Breach of Commercial Honor and Just and Equitable Principals [sic] of Trade (FCStone and Stifel, respectively). The Order provided that, per the parties' representations at the hearing, Counts X and XI for Declaratory Relief [of the Amended Statement of Claim] were dismissed as moot. All other aspects of Respondents' Motion for Directed Verdict were denied without prejudice.

The Panel conducted a recorded hearing by videoconference on August 24, 2023, so the parties could present oral argument and evidence on Lubovich, Cooper, and Lupuloff's request for expungement.

Claimants and their counsel participated in the expungement hearing and opposed the request for expungement.

The Panel reviewed Lubovich, Lupuloff, and Cooper's BrokerCheck® Reports. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrences in the CRD.

In recommending expungement, the Panel relied upon the following documentary or other evidence: testimony at the final hearing and documents submitted into evidence during the hearing.

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

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are denied in their entirety.
2. Count IV of Claimants' Amended Statement of Claim alleged Civil Theft. Respondents were the prevailing parties on the Civil Theft claim. The Panel has determined that, pursuant to the Florida Civil Theft Statute (F.S. §772.11), Respondents are entitled to recover their attorneys' fees and costs and that the claims in the Amended Statement of Claim are inextricably intertwined. Pursuant thereto, Claimants are jointly and severally liable for and shall pay to Respondents the sum of \$1,800,000.00 in attorneys' fees and \$294,024.51 in costs.
3. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 1996695) from registration records maintained by the CRD for Respondent Aaron Lupuloff (CRD Number 1866423), with the understanding that, pursuant to Notice to Members 04-16, Respondent Aaron Lupuloff must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code of Arbitration Procedure ("Code"), the Panel has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

The Panel has made the above Rule 2080 findings based on the following reasons:

Lupuloff was a sales representative at Sterne Agee when the events that are the subject of the claims occurred. Lupuloff was instrumental in selling the IREP Series 2014-A Bonds to JN, Claimants' Registered Investment Advisor ("RIA").

The Panel finds that expungement is warranted as the claim or allegation is clearly erroneous as Lupuloff did not engage in the fraudulent sale of taxable revenue bonds. The Panel also finds that expungement is warranted as the claim or allegation is false.

Specifically, JN testified at the hearing that she did not believe Lupuloff intentionally lied to her and that she always felt that he was an upstanding individual. Since the fraud alleged against Lupuloff was based on fraudulent representations and/or omissions he allegedly made when selling the bonds to JN, and JN specifically testified that she did not think that he lied to her, expungement is warranted under Rule 2080.

4. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 1995014) from registration records maintained by the CRD for Respondent Jandra Stephen Lubovich (CRD Number 5874882), with the understanding that, pursuant to Notice to Members 04-16, Respondent Jandra Stephen Lubovich must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code, the Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

The Panel has made the above Rule 2080 finding based on the following reasons:

Lubovich was an investment banker at Sterne Agee when the events that are the subject of the claims occurred. Lubovich was involved from an investment banker perspective with the sale of the IREP Series 2014-A Bonds to JN, Claimants' RIA.

The Panel finds that expungement is warranted as the claim or allegation is false. There was no evidence or testimony during the hearing that Lubovich committed fraud, met any of the elements of conversion or civil theft, or had a fiduciary duty to Claimants or Claimants' agents. The Panel relied on the below evidence in determining that expungement is warranted.

Lubovich never spoke to Claimants or their agents at Gables Capital Management ("Gables"). Lubovich did email JN of Gables before the closing date of the bond offering to answer any questions that she had. JN was also copied on numerous emails before the transaction closed discussing the transaction. JN never asked any questions of Lubovich or any other persons at Sterne Agee after her initial conversations with Lupuloff in April 2014. While Lubovich assisted in the preparation of the Limited Offering Memorandum and the Bond Purchase Agreement ("BPA"), none of the Claimants read the documents, JN did not read any of the documents before the sale and Mr. M testified that he read the BPA, made changes to it but never asked any questions of Lubovich. Mr. M testified that he knew the offering was a private placement, knew it was potentially illiquid and tried to "bust the trade" based on the structure.

The Panel has found that there was no fraud on the part of Lubovich and that no fiduciary duty was owed by Lubovich. Therefore, based on these findings and the evidence

discussed above, the Panel finds that the claims of fraudulent misrepresentation and omissions, fraudulent inducement, conversion, civil theft, and breach of fiduciary duty against Lubovich are false and should be expunged.

5. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2021952) from registration records maintained by the CRD for Respondent Jon Cary Cooper (CRD Number 2643432) with the understanding that, pursuant to Notice to Members 04-16, Respondent Jon Cary Cooper must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code, the Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

The Panel has made the above Rule 2080 finding based on the following reasons:

Cooper was employed by Sterne Agee for 17 years, from 1998 to 2015. The events that are the subject of the claims occurred during 2014, while Cooper was a supervisor in the Public Finance Group at Sterne Agee.

The Panel finds that expungement is warranted as the claim or allegation is false. There was no evidence or testimony during the hearing that Cooper committed fraud, met any of the elements of conversion or civil theft, or had a fiduciary duty to Claimants or Claimants' agents. Furthermore, the two counts for failure to supervise in the Amended Statement of Claim specifically name "Respondent FCStone" (Count VI) and "Respondent Stifel" (Count VII) and specifically do not name Cooper. The Panel relied on the below evidence in determining that expungement is warranted.

Cooper supervised Lubovich; however, Cooper did not deal directly with the Claimants or their RIA. No evidence was presented that Cooper made any fraudulent misrepresentations or fraudulently omitted information. In fact, evidence was presented that Cooper had such high regard for the company issuing the bond that he tried to buy an ownership interest in the company approximately one year after the bond was sold.

The Panel has found that there was no fraud on the part of Cooper and that no fiduciary duty was owed by Cooper. Therefore, based on these findings and the evidence discussed above, the Panel finds that the claims of fraudulent misrepresentation and omissions, fraudulent inducement, conversion, civil theft, breach of fiduciary duty, and negligent supervision against Cooper are false and should be expunged.

6. Any and all claims for relief not specifically addressed herein, including any requests for sanctions, punitive damages or treble damages, are denied.

FEES

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

Filing Fees

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

Initial Claim Filing Fee	=\$ 2,250.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as parties, FCStone, Stifel, and RBC are each assessed the following:

Member Surcharge	=\$ 4,025.00
Member Process Fee	=\$ 7,000.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

October 14-18, 2019, postponement requested by the parties	=\$ 1,500.00
December 9-13, 2019, postponement requested by Respondents	=\$ 1,500.00
April 6-8, 2020, postponement requested by the parties	Waived
September 28, 2021-October 1, 2021, postponement requested by Claimants	Waived
June 10 and August 22-24 and 26, 2022, postponement requested by Claimants and Respondents	Waived

Total Postponement Fees	=\$ 3,000.00
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The Panel has assessed \$1,500.00 of the postponement fees jointly and severally to Claimants.

The Panel has assessed \$1,500.00 of the postponement fees jointly and severally to Respondents.

Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within three calendar days before the start of a scheduled hearing session:

June 10 and August 22-24 and 26, 2022, cancellation requested by Claimants and Respondents	Waived
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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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Claimants submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees	= \$	200.00
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The Panel has assessed \$100.00 of the discovery-related motion fees jointly and severally to Claimants.

The Panel has assessed \$100.00 of the discovery-related motion fees jointly and severally to Respondents.

Contested Motion for Issuance of Subpoena Fees

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
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Total Contested Motion for Issuance of Subpoena Fees	= \$	250.00
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The Panel has assessed the total contested motion for issuance of subpoena fees jointly and severally to Claimants.

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:

Seven (7) pre-hearing sessions with a single Arbitrator @ \$450.00/session	= \$	3,150.00
Pre-Hearing Conferences:		
July 16, 2019	1 session	
August 29, 2019	1 session	
September 27, 2019	1 session	
October 8, 2019	1 session	
October 22, 2019	1 session	
December 12, 2019	1 session	
May 14, 2020	1 session	

Eight (8) pre-hearing sessions with the Panel @ \$1,500.00/session	= \$	12,000.00
Pre-Hearing Conferences:		
November 13, 2018	1 session	
August 29, 2019	1 session	
June 15, 2020	1 session	
July 27, 2020	1 session	
October 20, 2020	1 session	
March 17, 2021	1 session	
May 26, 2021	1 session	
July 7, 2021	1 session	

Fifty-five (55) hearing sessions @ \$1,500.00/session	= \$	82,500.00
Hearings:		
July 12, 2021	2 sessions	
July 13, 2021	2 sessions	
July 14, 2021	2 sessions	

July 15, 2021	2 sessions
July 16, 2021	2 sessions
July 19, 2021	2 sessions
July 20, 2021	2 sessions
July 21, 2021	3 sessions
July 22, 2021	2 sessions
July 23, 2021	1 session
September 27, 2021	1 session
January 24, 2022	2 sessions
January 25, 2022	2 sessions
January 26, 2022	2 sessions
January 27, 2022	2 sessions
January 28, 2022	1 session
May 9, 2022	2 sessions
May 10, 2022	2 sessions
May 11, 2022	2 sessions
May 12, 2022	2 sessions
June 6, 2022	2 sessions
June 7, 2022	2 sessions
June 8, 2022	2 sessions
June 9, 2022	3 sessions
August 25, 2022	3 sessions
December 14, 2022	1 session
June 8, 2023	2 sessions
June 9, 2023	2 sessions

One (1) hearing session on expungement request @ \$1,500.00/session =\$ 1,500.00
 Hearing: August 24, 2023 1 session

Total Hearing Session Fees =\$ 99,150.00

The Panel has assessed \$48,825.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$48,825.00 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed \$1,500.00 of the hearing session fees jointly and severally to Lubovich, Lupuloff, and Cooper.

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

ARBITRATION PANEL

Nanci Sondra Landy	-	Public Arbitrator, Presiding Chairperson
Meah Rothman Tell	-	Public Arbitrator
Seth L. Finkel	-	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

Nanci Sondra Landy

Nanci Sondra Landy
Public Arbitrator, Presiding Chairperson

09/26/2023

Signature Date

Meah Rothman Tell

Meah Rothman Tell
Public Arbitrator

10/05/2023

Signature Date

Seth L. Finkel

Seth L. Finkel
Public Arbitrator

09/26/2023

Signature Date

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.

October 05, 2023

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