

AWARD
FINRA Dispute Resolution

In the Matter of the Arbitration Between:

Name of Claimant

JT & JT Enterprises, Inc.

vs.

Case Number: 13-02461
Hearing Site: Houston, Texas

Name of Respondent

Sunset Financial, Inc.

NATURE OF THE DISPUTE

Customer vs. Member

This Case Proceeded Under the Optional All-Public Panel Rule / All-Public Panel

REPRESENTATION OF PARTIES

JT & JT Enterprises, Inc. ("Claimant") was represented by Jeff Erez, Esq., Jeffrey Sonn, Esq., Michael Rapaport, Esq., and Stefan Apotheker, Esq., Sonn & Erez, PLC, Miami, Florida.

Sunset Financial, Inc. ("Respondent") was represented by Martin S. Schexnayder, Esq., Winget, Spadafora & Schwartzberg, LLP, Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about August 20, 2013. The Submission Agreement of Claimant was signed on or about August 18, 2013.

The Statement of Answer was filed by Respondent on or about October 18, 2013. The Submission Agreement of Respondent was signed on or about September 4, 2013.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; negligence; negligent supervision; fraud; and breach of contract. Claimant alleged that one of Respondent's brokers solicited Claimant to invest \$2,000,000.00 in the Behringer Harvard Strategic Opportunity Fund 1, LP ("Behringer Harvard Fund"). Claimant alleged that the Behringer Harvard Fund was both an unsuitable and speculative Regulation D private

placement, and that Respondent and its broker failed to adequately disclose the true level of risk associated with the Behringer Harvard Fund. Claimant further alleged that on August 22, 2012, Behringer Harvard announced that the Fund was underwater and that the units of the funds owned by Claimant were worthless.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$ 2,000,000.00
Exemplary/Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary/Non-Monetary Relief, if any	Unspecified
Specific Performance	Rescission

At the hearing, Claimant requested well managed damages of \$6,189,761.00 or statutory damages of \$4,963,566.79, which included interest. (Interest was requested on simple annual interest of 5% from the transaction date until March 2, 2015.) In addition, Claimant requested costs of \$88,504.00, attorneys' fees of 300 hours at the local rate, punitive damages at the Panel's discretion and all forum fees assessed to Respondent.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees. In Respondent's Statement of Answer, it requested that all references to this claim be expunged from its records and from the unnamed broker's records maintained by the Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED & DECIDED

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

On or about April 3, 2014, Respondent filed a Motion to Dismiss. On or about May 1, 2014, Claimant filed an Opposition to Respondent's Motion to Dismiss. On or about May 13, 2014, Respondent filed a Reply in Support of its Motion to Dismiss. On or about July 22, 2014, the Panel entered an Order denying Respondent's Motion to Dismiss.

After the presentation of Claimant's case-in-chief, Respondent made an oral Motion to Dismiss. Claimant objected. The Panel denied Respondent's Motion to Dismiss on the record at the hearing.

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 the evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's claims, each and all, are hereby denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated, including punitive damages, expungement and attorneys' fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution will retain the non-refundable filing fee* for each claim:

Initial Claim filing fee = \$ 1,800.00

**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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party Sunset Financial, Inc. is assessed the following:

Member surcharge = \$ 2,800.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$ 5,000.00

Discovery-Related Motion Fees

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

Two (2) Decisions on discovery-related motions on the papers with one (1) arbitrator @ \$200.00	= \$	400.00
Respondent submitted one (1) discovery-related motion		
<u>Claimant submitted one (1) discovery-related motion</u>		
Total Discovery-Related Motion Fees	= \$	400.00

The Panel has assessed \$200.00 of the discovery-related motion fees to JT & JT Enterprises, Inc.

The Panel has assessed \$200.00 of the discovery-related motion fees to Sunset Financial, Inc.

Contested Motion for Issuance of a 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		
<u>With one (1) arbitrator @ \$200.00 (maximum of \$600)</u>	= \$	200.00
Total Contested Motion for Issuance of Subpoenas Fee	= \$	200.00

The Panel has assessed \$100.00 of the contested motion for issuance of subpoenas fees to JT & JT Enterprises, Inc.

The Panel has assessed \$100.00 of the contested motion for issuance of subpoenas fees to Sunset Financial, Inc.

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each hearing 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:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$	450.00
Pre-hearing conference: October 30, 2014	1 session	
Three (3) Pre-hearing sessions with Panel x \$1,200.00	= \$	3,600.00
Pre-hearing conferences: February 21, 2014	1 session	
July 22, 2014	1 session	
January 8, 2015	1 session	

Thirteen (13) Hearing sessions x \$1,200.00		= \$ 15,600.00
Hearing Dates:	March 2, 2015	3 sessions
	March 3, 2015	3 sessions
	March 4, 2015	3 sessions
	March 5, 2015	2 sessions
	March 6, 2015	2 sessions
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Total Hearing Session Fees		= \$ 19,650.00

The Panel has assessed \$9,825.00 of the hearing session fees to JT & JT Enterprises, Inc.

The Panel has assessed \$9,825.00 of the hearing session fees to Sunset Financial, Inc.

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

ARBITRATION PANEL

Maryanne M. Esser - Public Arbitrator, Presiding Chair
Jason Kyle Beale - Public Arbitrator
Michele N. O'Brien - 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:

/s/ Maryanne M. Esser
Maryanne M. Esser
Public Arbitrator, Presiding Chair

3/13/15
Signature Date

/s/ Jason Kyle Beale
Jason Kyle Beale
Public Arbitrator

3/13/15
Signature Date

/s/ Michele N. O'Brien
Michele N. O'Brien
Public Arbitrator

3/13/15
Signature Date

3/13/15
Date of Service (For FINRA office use only)

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