

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant Laurita P. Chmielewski, as Trustee of the Laurita P. Chmielewski Revocable Trust Case Number: 19-00624

vs.

Respondents Voya Financial Advisors, Inc.
IFS Securities
James Travis Flynn
Ashley Charles Woodard Hearing Site: Boca Raton, 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: Customer vs. Members and Associated Persons

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Laurita P. Chmielewski, as Trustee of the Laurita P. Chmielewski Revocable Trust (“Claimant”): Daniel J. Broxup, Esq., Mika Meyers, PLC, Grand Rapids, Michigan.

For Respondent Voya Financial Advisors, Inc. (“Voya”): Steven E. Mellen, Esq. and Jessica Levine, Esq., Winget, Spadafora & Schwartzberg, LLP, New York, New York.

For Respondent IFS Securities (“IFS”): Richard E. Brodsky, Esq., The Brodsky Law Firm, Coral Gables, Florida.

Respondent James Travis Flynn (“Flynn”) did not enter an appearance.

For Respondent Ashley Charles Woodard (“Woodard”): Terrance A. Bostic, Esq., Marshall Dennehey Warner Coleman & Goggin, Tampa, Florida.

CASE INFORMATION

Statement of Claim filed by Claimant on or about: March 1, 2019.
Claimant signed the Submission Agreement: February 28, 2019.

Statement of Answer filed by Respondent Voya on or about: May 30, 2019.
Respondent Voya signed the Submission Agreement: March 30, 2022.

Statement of Answer filed by Respondent IFS on or about: May 14, 2019.
Respondent IFS signed the Submission Agreement: May 16, 2019.

Respondent Flynn did not file a Statement of Answer or sign the Submission Agreement.

Statement of Answer filed by Respondent Woodard on or about: May 28, 2019.
Respondent Woodard signed the Submission Agreement: May 7, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: negligence (unsuitable investment recommendations); breach of fiduciary duty; violations of the Michigan Uniform Securities Act (2002); violations of the Florida Securities and Investor Protection Act; and negligent supervision. The causes of action relate to Claimant's portfolio being invested in high-risk, high-fee, illiquid investments.

Unless specifically admitted in their respective Statements of Answer, Respondents Voya, IFS, and Woodard denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: compensatory damages; punitive damages; interest; and statutory attorneys' fees and costs.

In their Statement of Answer, Respondent Voya requested that the Panel dismiss Claimant's claims in their entirety and grant such further relief as the Panel deems just and proper.

In their Statement of Answer, Respondent IFS requested that Claimant's claims be dismissed, and Respondent IFS be awarded or reimbursed for all appropriate fees and costs.

In his Statement of Answer, Respondent Woodard requested the claim be dismissed in its entirety.

At the hearing, Claimant requested relief for common law claims as follows: economic compensatory damages in the range of \$2,452,133.00 to \$3,850,777.00; exemplary compensatory damages in the range of \$542,819.95 to \$3,850,777.00; punitive damages in the range of \$7,356,399.00 to \$11,552,331.00; attorneys' fees in the range of \$1,103,459.85 to \$1,732,849.65; with total damages under common law claims ranging from \$11,454,811.80 to \$20,986,734.65. Additionally, Claimant requested relief for statutory claims as follows: statutory damages of \$3,550,012.00 or \$3,379,120.00; exemplary compensatory damages in the range of \$542,819.95 to \$3,850,777.00; punitive damages in the range of \$7,356,399.00 to \$11,552,331.00; attorneys' fees in the range of \$1,103,459.85 to \$1,732,849.65; with total damages under statutory claims ranging from \$12,381,798.80 to \$20,685,969.65.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent Flynn did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and is bound by the determination of the Panel on all issues submitted.

Respondent Flynn did not file a Statement of Answer. The Panel determined that Respondent Flynn was served with the Claim Notification letter dated March 1, 2019, by certified mail, as evidenced by the signed signature card received on March 11, 2019.

The Claim Notification letter notified Respondent Flynn that FINRA rules require parties to use the online DR Portal on a mandatory basis (except pro se investors) and that failure to register for the DR Portal will prevent the submission of pleadings, selection of arbitrators, and receipt of notification relating to case information and deadlines. Respondent Flynn failed to register for the DR Portal.

The Panel determined that Respondent Flynn is, therefore, bound by the Panel's ruling and determination.

On March 25, 2020, Claimant filed a notice of voluntary dismissal with prejudice against Respondents IFS and Woodard. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim against Respondents IFS and Woodard.

On April 24, 2020, Respondent IFS filed for bankruptcy under the United States Bankruptcy Code. In accordance with these filings, all claims against Respondent IFS are indefinitely stayed. Therefore, the Panel made no determination with respect to the claims against Respondent IFS.

Respondent Flynn did not appear at the evidentiary hearing. Upon review of the file, the Panel determined that Respondent Flynn received due notice of the hearing and that arbitration of the matter would proceed without Respondent Flynn present, in accordance with the Code.

During the evidentiary hearings, and memorialized in a post-hearing Order on February 18, 2022, the Panel directed Claimant and Respondent Voya to file post-hearing briefs. On March 11, 2022, Claimant and Respondent Voya filed their respective post-hearing briefs.

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. Claimant's claims against Respondent Voya are denied in their entirety.

2. Respondent Flynn is liable for and shall pay to Claimant the sum of \$322,990.00 in compensatory damages.
3. Respondent Flynn is liable for and shall pay to Claimant interest on the above-stated sum at the Michigan statutory rate per annum from April 1, 2016, through and including the date the balance is paid in full.
4. Respondent Flynn is liable for and shall pay to Claimant the sum of \$375.00 as reimbursement for the non-refundable portion of the claim filing fee previously paid by Claimant to FINRA Dispute Resolution Services.
5. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, exemplary damages, treble damages, and attorneys' fees, 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	= \$	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, Respondent Voya is assessed the following:

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

Postponement Fees

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

November 1-5, 2021, postponement requested by Respondent Voya	= \$	1,125.00
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Total Postponement Fees	= \$	1,125.00
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The Panel has assessed the total postponement fees to Respondent Voya.

Last-Minute Cancellation Fees

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

November 1-5, 2021, cancellation requested by Respondent Voya	= \$	1,800.00
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Total Last-Minute Cancellation Fees = \$ 1,800.00

The Panel has assessed the total last-minute cancellation fees to Respondent Voya.

Discovery-Related Motion Fees

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

Three (3) decisions on discovery-related motions on the papers = \$ 600.00
with one (1) Arbitrator @ \$200.00/decision

Claimant submitted two (2) discovery-related motions

Respondent Voya submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees = \$ 600.00

The Panel has assessed the total discovery-related motion fees to Respondent Flynn.

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:

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 2,250.00
Pre-Hearing Conferences: June 25, 2019 1 session
November 8, 2019 1 session

Ten (10) hearing sessions with the Panel @ \$1,125.00/session = \$ 11,250.00
Hearings: February 7, 2022 2 sessions
February 8, 2022 2 sessions
February 9, 2022 2 sessions
February 10, 2022 2 sessions
February 11, 2022 2 sessions

Total Hearing Session Fees = \$ 13,500.00

The Panel has assessed the total hearing session fees to Respondent Flynn.

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

ARBITRATION PANEL

Carl Henry Perdue	-	Public Arbitrator, Presiding Chairperson
Peter Shapiro	-	Public Arbitrator
Joanne Colbert Stanley	-	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

Carl Henry Perdue

Carl Henry Perdue
Public Arbitrator, Presiding Chairperson

04/02/2022

Signature Date

Peter Shapiro

Peter Shapiro
Public Arbitrator

04/01/2022

Signature Date

Joanne Colbert Stanley

Joanne Colbert Stanley
Public Arbitrator

04/01/2022

Signature Date

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April 04, 2022

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