

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

James W. Fitzpatrick
Sandra J. Fitzpatrick
The Fitzpatrick Family Trust

Case Number: 16-03454

vs.

Respondents

AXA Advisors, LLC
Cambridge Investment Research, Inc.

Hearing Site: Buffalo, New York

Nature of the Dispute: Customers vs. Members

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants James W. Fitzpatrick, Sandra J. Fitzpatrick, and The Fitzpatrick Family Trust: Jason Kane, Esq., Adam Wolf, Esq., and Joseph Peiffer, Esq., Peiffer Rosca Wolf Abdullah Carr & Kane, Pittsford, New York.

For Respondent AXA Advisors, LLC ("AXA"): Joseph S. Simms, Esq., Reminger Co., LPA, Cleveland, Ohio.

For Respondent Cambridge Investment Research, Inc. ("Cambridge"): Richard J. Babnick Jr., Esq., Sichenzia Ross Ference Kesner, LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: November 28, 2016.

Amended Statement of Claim filed on or about: November 20, 2017.

Sandra J. Fitzpatrick signed the Submission Agreement: November 28, 2016.

James W. Fitzpatrick signed the Submission Agreement: November 28, 2016.

The Fitzpatrick Family Trust signed the Submission Agreement: April 22, 2019.

Respondent AXA filed Statement of Answer on or about: February 9, 2017.

Answer to Amended Statement of Claim filed on or about: January 2, 2018.

AXA Advisors, LLC signed the Submission Agreement: February 9, 2017.

Respondent Cambridge filed Statement of Answer on or about: February 1, 2017.
Answer to Amended Statement of Claim filed on or about: January 3, 2018.
Cambridge Investment Research, Inc. signed the Submission Agreement: December 6, 2016.

CASE SUMMARY

Claimants asserted the following causes of action: negligence, violation of FINRA Rule 2111; violation of FINRA Rule 2110; negligent misrepresentation and omission of material facts; and breach of fiduciary duty. The causes of action relate to life insurance policies and variable annuities.

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

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

RELIEF REQUESTED

In the Statement of Claim and Amended Statement of Claim, Claimants requested all loss of principal; interest; commissions and fees paid by Claimants; loss of income, non-pecuniary losses; attorneys' fees; costs and other expenses; pre-judgment and post-judgment interest; all other sums Claimants are entitled to at law or equity; and punitive damages.

In the Statement of Answer and Answer to Amended Statement of Claim, Respondent AXA requested Claimants' claims be denied in their entirety and that the Panel award AXA costs; attorneys' fees; assess forum fees against Claimants; include within the award a recommendation for a court order that all reference to this matter in the regulatory records be expunged; and such other and further relief as the Panel deems appropriate.

In the Statement of Answer and Answer to Amended Statement of Claim, Respondent Cambridge requested that the Panel deny Claimants' claims with prejudice and issue such other further relief that the Panel deems just, equitable, and proper.

In their post-hearing brief, Claimants requested \$13,228,038.00 plus post-award interest.

OTHER ISSUES CONSIDERED AND DECIDED

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

On November 20, 2017, Claimants filed a Motion to Amend the Statement of Claim. Respondents did not oppose the Motion to Amend. By Order dated December 12, 2017, the Panel granted Claimants' Motion to Amend the Statement of Claim.

By correspondence dated January 23, 2018, Claimants notified FINRA Dispute Resolution that they have settled their claims against Respondent Cambridge and dismissed their claims against Respondent Cambridge with prejudice.

The parties present at the hearing 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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent AXA is liable for and shall pay to Claimants James W. Fitzpatrick, Sandra J. Fitzpatrick, and The Fitzpatrick Family Trust the sum of \$2,224,671.94 in compensatory damages.
2. Respondent AXA is liable for and shall pay to Claimants James W. Fitzpatrick, Sandra J. Fitzpatrick, and The Fitzpatrick Family Trust interest on the above-stated sum at the rate of 9% per annum from 30 days after the date of the award until the award is paid in full.
3. Respondent AXA is liable for and shall pay to Claimants James W. Fitzpatrick, Sandra J. Fitzpatrick, and The Fitzpatrick Family Trust the sum of \$67,293.64 in costs.
4. Respondent AXA is liable for and shall pay to Claimants James W. Fitzpatrick, Sandra J. Fitzpatrick, and the Fitzpatrick Family Trust the sum of \$889,868.78 in attorneys' fees. The Panel determined it is authorized to award attorneys' fees because both Claimants and Respondent AXA requested attorneys' fees in the pleadings.
5. Respondent AXA's request for specific performance/expungement is denied.
6. Any and all claims for relief not specifically addressed herein, including punitive damages, are denied.

FEES

Pursuant to the Code of Arbitration Procedure, 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
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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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents AXA and Cambridge are each assessed the following:

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

Discovery-Related Motion Fee

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

Three (3) decisions on discovery-related motions on the papers with one (1) arbitrator @ \$200.00/decision	=\$ 600.00
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Claimants submitted one discovery-related motion
Respondent Cambridge submitted two discovery-related motions

Total Discovery-Related Motion Fees	=\$ 600.00
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The Panel has assessed \$400.00 of the discovery-related motion fees jointly and severally to Claimants.

The Panel has assessed \$200.00 of the discovery-related motion fees to Respondent Cambridge.

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 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 the Panel @ \$1,125.00/session	=\$ 1,125.00
Pre-hearing conference: April 17, 2017	1 session

Seventeen (17) hearing sessions @ \$1,125.00/session = \$19,125.00

Hearing Dates:	February 20, 2018	2 sessions
	February 21, 2018	2 sessions
	February 22, 2018	2 sessions
	February 23, 2018	2 sessions
	September 13, 2018	2 sessions
	September 14, 2018	2 sessions
	September 15, 2018	2 sessions
	September 16, 2018	2 sessions
	November 1, 2018	1 session

Total Hearing Session Fees = \$20,250.00

The Panel has assessed the \$20,250.00 hearing session fee to Respondent AXA.

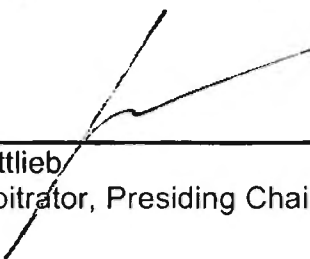
All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

Krista Gottlieb	-	Public Arbitrator, Presiding Chairperson
Jeffrey M. Bain	-	Public Arbitrator
Thomas E. Webb, Jr.	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures



Krista Gottlieb
Public Arbitrator, Presiding Chairperson

4-25-19

Signature Date

Jeffrey M. Bain
Public Arbitrator

Signature Date

Thomas E. Webb, Jr.
Public Arbitrator

Signature Date

April 25, 2019

Date of Service (For FINRA Office of Dispute Resolution office use only)

ARBITRATION PANEL

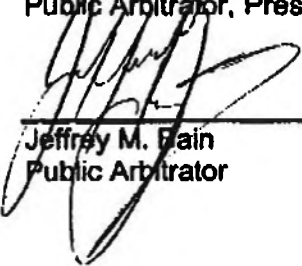
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Public Arbitrator, Presiding Chairperson

Signature Date



Jeffrey M. Bain
Public Arbitrator

April 25, 2019
Signature Date

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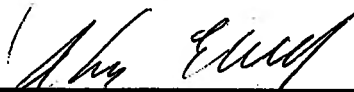
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Signature Date



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Signature Date

April 25, 2019

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