

**Award
FINRA Dispute Resolution**

In the Matter of the Arbitration Between:

Claimants

Case Number: 09-02961

**Healthright Partners, LP
Grant R. Gifford**

Respondent

Hearing Site: Salt Lake City, Utah

Lincoln Financial Advisors Corporation

Nature of the Dispute: Customers vs. Member

REPRESENTATION OF PARTIES

Claimants, Healthright Partners, LP ("Healthright") and Grant R. Gifford ("Gifford"), hereinafter collectively referred to as "Claimants": Mark W. Pugsley, Esq., Ray Quinney & Nebeker PC, Salt Lake City, Utah

Respondent, Lincoln Financial Advisors Corporation, hereinafter referred to as "Lincoln" or Respondent": Heidi G. Goebel, Esq., Christensen & Jensen, P.C., Salt Lake City, Utah

CASE INFORMATION

Statement of Claim filed on or about: May 22, 2009

Claimant Healthright signed the Submission Agreement: May 18, 2009

Claimant Gifford signed the Submission Agreement: May 15, 2009

Response in Opposition to Claimants' Statement of Claim and Renewed Motion for Stay and Challenge of Jurisdiction filed by Respondent on or about: September 11, 2009

Respondent signed the Submission Agreement: February 24, 2010

CASE SUMMARY

In their Statement of Claim, Claimants alleged the following claims: 1) Failure to Supervise; 2) Negligence; 3) Breach of Fiduciary Duty; 4) Violations of the Utah Uniform Securities Act; 5) Violations of FINRA's Conduct Rules and Selling Away. Claimants alleged that the above-captioned dispute involved investments of common stock, limited partnerships, and private equities in Healthright, Inc.

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

RELIEF REQUESTED

In the Statement of Claim, Claimants requested the following relief:

1. Damages of not less than \$3,675,000.00;
2. Pre and post-judgment interest on all sums recovered at the legal rate;
3. Treble damages, costs, and attorney's fees pursuant to the Utah Code Ann. §61-1-22;
4. Punitive damages according to proof, but not less than \$10,000.00; and
5. Such other relief as the Panel deems just and appropriate.

In its Response in Opposition to Claimants' Statement of Claim, Respondent requested:

1. Dismissal of the action on the merits, with prejudice;
2. For its attorney's fees and costs incurred herein;
3. For Claimants to take nothing by means of this Statement of Claim; and
4. For such other and further relief as is just, equitable, and proper in these premises.

At the close of the hearing, Claimants requested damages under the Utah Securities Act pursuant to the following:

1. If the Panel finds Lincoln violated Utah Code Ann. § 61-1-22 but was not reckless, for damages in the amount of \$7,563,879.00. This amount includes the following:
 - a. Return of the investment in the amount of \$3,325,000.00;
 - b. Interest on the investment at a rate of 12% to September 13, 2010 in the amount of \$5,228,827.00;
 - c. Return of Claimant Gifford's loan in the amount of \$300,000.00;
 - d. Interest on Claimant Gifford's loan at a rate of 12% to September 13, 2010 in the amount of \$158,300.00; and
 - e. Attorney's fees (33% of total) in the amount of \$1,876,752.00.
2. If the Panel finds Lincoln violated Utah Code Ann. § 61-1-22 and was reckless, for damages in the amount of \$17,206,379.00. This amount includes the following:
 - a. Treble Damages (3 times consideration paid, or 3 x \$3,625,000.00) in the amount of \$10,875,000.00;
 - b. Interest at a rate of 12% to September 13, 2010 in the amount of \$2,089,144.00; and
 - c. Attorney's fees (33% of total) in the amount of \$4,269,251.00.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about September 1, 2010, thirteen days prior to the scheduled hearing date, Respondent Lincoln filed a request for the Arbitration Panel to provide an explained decision of its arbitration award. Claimants Healthright and Gifford filed an opposition to the request. The Panel treats Respondent's request as a motion and hereby grants such motion.

At the hearing, Respondent brought a motion for lack of jurisdiction during closing argument. Also at the hearing and at the conclusion of Claimants' case-in-chief, Respondent brought a motion to dismiss Claimants' Utah Securities Act claims due to statute of limitations. The Panel denied Respondent's motion for lack of jurisdiction and granted the motion to dismiss under the statute of limitations, finding Claimants' claims under the Utah Securities Act as time-barred.

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.

FINDINGS

FACTS

Scott Gordon (hereinafter referred to as "Gordon") was a registered agent of Respondent Lincoln from 1997 until his termination on September 18, 2006. During his time with Respondent Lincoln, Gordon served in various roles ranging from a registered representative, to Managing Principal of the Salt Lake City office of Respondent Lincoln, to Regional CEO which turned into a Managing Director of Respondent Lincoln. From October 2005 until September 2006, Gordon had no management or supervisory responsibilities within Respondent Lincoln. In 2005 Gordon became interested in a software development company, Healthright, Inc. In July 2005, Gordon became CEO of Healthright, Inc. and in October of 2005 he began using a footer on his Lincoln e-mail account referring to him as the Chairman and CEO of Healthright, Inc., with Healthright, Inc.'s address and phone number. In August 2005, Gordon submitted an Outside Business Activities Disclosure (hereinafter referred to as "OBA") to Respondent Lincoln for his activities related to Healthright, Inc. Respondent Lincoln did not approve or deny the OBA.

In order to raise funds for the development of Inc., Gordon, together with Shawn Smart ("Smart"), Jim McGregor ("McGregor"), and Lance Shiffman ("Shiffman") caused Discovery Alliance, LLC (hereinafter referred to as "Discovery") and Claimant Healthright to be organized. Their plan was for Discovery to be the general partner of Claimant Healthright and for Claimant Healthright to raise funds through a "Private Placement" and for Claimant Healthright to invest in Healthright, Inc.

Discovery met with various investors. Gordon was an active participant in most of these meetings. Gordon's participation included misstatements and/or omissions of material facts about Healthright, Inc., its management, business and financial requirements. By March of 2006, approximately 25 individuals and/or entities had placed \$3,325,000.00 with Claimant Healthright for investment in Healthright, Inc. In addition, in May, 2006 Gordon solicited funds from Gifford for Healthright, Inc. On May 12, 2006, Gifford loaned \$300,000.00 to Healthright, Inc.

On May 19, 2006, Smart became a member of the Board of Directors of Healthright, Inc. On May 23, 2006, Gifford became a member of the Board of Directors of Healthright, Inc. On May 23, 2006, Gordon ceased to be the CEO of Healthright, Inc. In June, 2006, Gifford attended his first Board of Directors meeting of Healthright, Inc. since being appointed to the Board and discovered that misstatements and omissions had been made by Gordon and in addition that there had been certain irregularities in the management and operations of Healthright, Inc. On July 18, 2006, Dr. John Morgan, the developer of the Healthright, Inc. software programs died.

On August 8, 2006, Smart sent a written complaint to Respondent Lincoln. In September, 2006, Claimant Gifford also sent a written complaint to Respondent Lincoln. Respondent Lincoln fired Gordon on September 14, 2006 and he was barred by FINRA on May 1, 2008. Healthright, Inc. failed and Claimants filed their Claim on May 14, 2009.

DECISION

The Panel determined that Gordon was involved in "selling away," and made material misstatements and/or omissions about Healthright, Inc. in connection with the sale of Healthright, Inc. securities. The Panel also determined that Respondent Lincoln was negligent in not preventing Gordon's activities with Healthright, Inc. for more than a year despite ample opportunity to have done so. The Panel finds that Respondent Lincoln's negligence caused the loss of Claimants' investments in Healthright, Inc. Respondent Lincoln shall pay Claimant Gifford \$300,000.00 plus interest of \$66,162.00 computed to the date of this Explained Decision and interest thereafter at the legal rate for judgments in Utah from and after the date of this Explained Decision. Respondent Lincoln shall pay Claimant Healthright \$3,325,000.00 plus interest of \$733,302.00 computed to the date of this Explained Decision and interest thereafter at the legal rate for judgments in Utah from and after the date of this Explained Decision.

Claimants brought the following claims:

Failure to Supervise

Negligence

Breach of Fiduciary Duty

Violations of Utah Securities Act

Violations of FINRA conduct rules

Common Law Respondent Superior

Respondents raised the following defenses:

Jurisdiction

Equitable doctrines of waiver, unclean hands, etc.

Allocation of Fault

No proximate cause

Ratification

Assumption of Risk

Statute of Limitations

The Panel denies all of Respondent's defenses with the exception of the Utah Securities Law statute of limitations. In August and September 2006, Smart and Claimant Gifford sent "complaint" letters to Respondent Lincoln. The Panel finds that as of that time Claimants clearly knew or should have known that there were problems with their investments in Healthright, Inc. Since the Claim in this arbitration was not filed until after two years from such dates, their claims under the Utah Securities Act are time barred.

The Panel believes that Claimants' claims for failure to supervise, breach of fiduciary duty, violations of FINRA conduct rules and common law respondent superior are all included and form a part of the negligence of Respondent Lincoln.

The Panel holds that Respondent's claims based upon lack of jurisdiction are not valid. On January 22, 2010, Judge Dale A. Kimball of the United States District Court issued a Memorandum Decision and Order holding that "Lincoln must submit to arbitration" and granting Claimants' Motion to Compel Arbitration. In addition, on February 24, 2010, Lincoln signed a Submission Agreement which states: . . . [Lincoln] hereby submit the present matter in controversy . . . to arbitration in accordance with the FINRA Bylaws, Rules, and Code of Arbitration Procedure." The Panel finds that it has proper jurisdiction to hear and decide this case.

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 to and shall pay Claimant Healthright compensatory damages in the amount of \$3,325,000.00.
2. Respondent is liable to and shall pay Claimant Healthright pre-judgment interest in the amount of \$733,302.00 as follows:
 - a. Interest for 2006 from May 13 to December 31 at a rate of 6.37% in the amount of \$136,495.00;
 - b. Interest for 2007 at a rate of 6.98% in the amount of \$241,612.00;
 - c. Interest for 2008 at a rate of 5.15% in the amount of \$190,710.00;
 - d. Interest for 2009 at a rate of 2.37% in the amount of \$92,283.00; and
 - e. Interest for 2010 to September 22 at a rate of 2.41% in the amount of \$72,202.00.
3. Respondent is liable to and shall pay Claimant Healthright post-judgment interest on the total amount of \$4,058,302.00 at the Utah statutory rate from and after September 23, 2010 to the date the award is paid in full.
4. Respondent is liable to and shall pay Claimant Gifford compensatory damages in the amount of \$300,000.00.
5. Respondent is liable to and shall pay Claimant Gifford pre-judgment interest in the amount of \$66,162.00 as follows:
 - a. Interest for 2006 from May 13 to December 31 at a rate of 6.37% in the amount of \$12,315.00;
 - b. Interest for 2007 at a rate of 6.98% in the amount of \$21,800.00;
 - c. Interest for 2008 at a rate of 5.15% in the amount of \$17,207.00;
 - d. Interest for 2009 at a rate of 2.37% in the amount of \$8,326.00; and
 - e. Interest for 2010 to September 22 at a rate of 2.41% in the amount of \$6,514.00.
6. Respondent is liable to and shall pay Claimant Gifford post-judgment interest on the total amount of \$366,162.00 at the Utah statutory rate from and after September 23, 2010 to the date the award is paid in full.
7. Respondent is liable for and shall pay all forum fees.
8. Respondent is liable for and shall reimburse Claimants for the \$600.00 non-refundable portion of the filing fee paid by Claimants to FINRA Dispute Resolution.
9. Each party shall bear his or its own costs and attorney's fees.
10. Any and all relief not specifically addressed herein is denied.

11. The arbitrators have provided an explanation of their decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution assessed a 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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Lincoln Financial Advisors Corporation is assessed the following:

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

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:

One (1) Pre-hearing session with Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: November 11, 2009	1 session

Ten (10) Hearing sessions @ \$1,200.00/session	= \$12,000.00
Hearing Dates:	
September 13, 2010	2 sessions
September 14, 2010	2 sessions
September 15, 2010	2 sessions
September 16, 2010	2 sessions
September 17, 2010	2 sessions

Total Hearing Session Fees	= \$13,200.00
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1. The Panel has assessed \$13,200.00 of the hearing session fees to Respondent.

ARBITRATION PANEL

Richard J. Lawrence	-	Public Arbitrator, Presiding Chairperson
Joseph J. Palmer	-	Public Arbitrator
Clifford N. Coury	-	Non-Public Arbitrator

Consent to Arbitration Signatures



Richard J. Lawrence
Public Arbitrator, Presiding Chairperson

Sep. 27, 2010
Signature Date

Joseph J. Palmer
Public Arbitrator

Signature Date

Clifford N. Coury
Non-Public Arbitrator

Signature Date

09/27/2010
Date of Service (For FINRA Dispute Resolution use only)

ARBITRATION PANEL

Richard J. Lawrence	-	Public Arbitrator, Presiding Chairperson
Joseph J. Palmer	-	Public Arbitrator
Clifford N. Coury	-	Non-Public Arbitrator

Consenting Arbitrators' Signatures

Richard J. Lawrence
Public Arbitrator, Presiding Chairperson

Signature Date



Joseph J. Palmer
Public Arbitrator

9/25/10

Signature Date

Clifford N. Coury
Non-Public Arbitrator

Signature Date

09/27/2010

Date of Service (For FINRA Dispute Resolution use only)

ARBITRATION PANEL

Richard J. Lawrence	-	Public Arbitrator, Presiding Chairperson
Joseph J. Palmer	-	Public Arbitrator
Clifford N. Coury	-	Non-Public Arbitrator

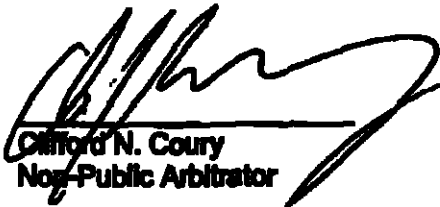
Consenting Arbitrators' Signatures

Richard J. Lawrence
Public Arbitrator, Presiding Chairperson

Signature Date

Joseph J. Palmer
Public Arbitrator

Signature Date



Clifford N. Coury
Non-Public Arbitrator

9/27/2010

Signature Date

09/27/2010

Date of Service (For FINRA Dispute Resolution use only)