

**Award**  
**FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimants

Mack A. Amerson,  
Martin Barrientos,  
John W. Dumas,  
Estate of Joan Hendrix,  
Renee Mock,  
Joan E. Moncrief,  
Richard L. Smith,  
Marvel W. Smith,  
Merrilynn Teixeira,  
Danny O. Townsend,  
Jackson W. Walker,  
Carolyn L. Walker and  
Martha Westmoreland

Case Number: 14-02355

vs.

Respondents

FSC Securities Corporation,  
Erica McGinnis,  
Ken Muraoka and  
Jerome Murphy

Hearing Site: Atlanta, Georgia

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Nature of the Dispute: Customers vs. Member and Associated Persons

This case was decided by a majority-public panel.

**REPRESENTATION OF PARTIES**

For Claimants Mack A. Amerson, Martin Barrientos, John W. Dumas, Estate of Joan Hendrix, Renee Mock, Joan E. Moncrief, Richard L. Smith, Marvel W. Smith, Merrilynn Teixeira, Danny O. Townsend, Jackson W. Walker, Carolyn L. Walker, and Martha Westmoreland, hereinafter collectively referred to as “Claimants”: John S. Chapman, Esq. and Jason T. Albin, Esq., Chapman, LLC, Cleveland, Ohio.

For Respondents FSC Securities Corporation (“FSC”), Erica McGinnis (“McGinnis”), Ken Muraoka (“Muraoka”), and Jerome Murphy (“Murphy”), hereinafter collectively referred to as “Respondents”: Craig H. Kuglar, Esq., Sam Griffin, Esq. and James M. Bass, Esq., The Law Office of Craig Kuglar, LLC, Atlanta, Georgia. Respondents McGinnis, Muraoka, and Murphy are hereinafter collectively referred to as “Individual Respondents.”

### **CASE INFORMATION**

Statement of Claim filed on or about: July 23, 2014.  
First Amended Statement of Claim filed on or about: October 15, 2014.  
Second Amended Statement of Claim filed on or about: December 12, 2014.  
Mack A. Amerson signed the Submission Agreement: January 8, 2014.  
Martin Barrientos signed the Submission Agreement: August 27, 2014.  
John W. Dumas signed the Submission Agreement: March 20, 2014.  
Estate of Joan Hendrix signed the Submission Agreement: November 17, 2014.  
Renee Mock signed the Submission Agreement: March 24, 2014.  
Joan E. Moncrief signed the Submission Agreement: March 3, 2014.  
Richard L. Smith signed the Submission Agreement: December 12, 2013.  
Marvel W. Smith signed the Submission Agreement: December 12, 2013.  
Merrilynn Teixeira signed the Submission Agreement: June 26, 2013.  
Danny O. Townsend signed the Submission Agreement: September 2, 2014.  
Jackson W. Walker signed the Submission Agreement: January 1, 2014.  
Carolyn L. Walker signed the Submission Agreement: January 1, 2014.  
Martha Westmoreland signed the Submission Agreement: March 23, 2014.

Statement of Answer to Statement of Claim and First Amended Statement of Claim and Notice of Intent to Allocate Fault to Non-Parties jointly filed by Respondents on or about: October 29, 2014.  
FSC Securities Corporation signed the Submission Agreement: October 16, 2014.  
Erica McGinnis signed the Submission Agreement: October 20, 2014.  
Ken Muraoka signed the Submission Agreement: October 16, 2014.  
Jerome Murphy signed the Submission Agreement: October 27, 2014.

Respondents filed an [Opposed] Expedited Motion for Leave to Conduct Evidentiary Deposition on or about May 7, 2015. Claimants filed a Brief in Opposition to Respondents' [Opposed] Expedited Motion for Leave to Conduct Evidentiary Deposition on or about May 18, 2015. Respondents filed a Reply in Further Support of Their [Opposed] Expedited Motion for Leave to Conduct Evidentiary Deposition on or about May 22, 2015. Claimants filed an Objection by Deponent to Respondents' [Opposed] Expedited Motion for Leave to Conduct Evidentiary Deposition on or about May 26, 2015.

The Individual Respondents jointly filed a Motion to Dismiss on or about May 7, 2015.

Respondents filed a Motion in Limine to Admit Evidence Relating to Allocation of Fault on or about May 22, 2015. Claimants filed an Opposition to Respondents' Motion in Limine to Admit Evidence Relating to Allocation of Fault on or about June 1, 2015. Respondents filed a Reply in Further Support of Respondents' Motion in Limine to Admit Evidence Relating to Allocation of Fault on or about June 5, 2015.

FSC filed a Motion to Dismiss Ineligible Claims on or about July 7, 2015.

FSC filed a Motion to Dismiss at the Conclusion of Claimants' Case-in-Chief on or about July 10, 2015.

### **CASE SUMMARY**

Claimants asserted the following causes of action: failure to supervise pursuant to FINRA Conduct Rule 3010; respondeat superior/agency by estoppel; and violations of the Georgia Securities Act of 1973 and/or the Georgia Uniform Securities Act ("Blue Sky Law"). The causes of action related to Claimants' allegations that Respondents failed to supervise non-parties to this action, who sold them unspecified fraudulent securities as part of a Ponzi scheme.

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

### **RELIEF REQUESTED**

In the Second Amended Statement of Claim, Claimants requested:

Net Out-of-Pocket Losses	\$1,861,156.65
Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

At the close of the hearing, Claimants requested:

Net Out-of-Pocket Losses	\$1,282,559.35
Lost Opportunity Costs	\$ 14,428.14
Punitive Damages	\$1,000,000.00
Attorneys' Fees	\$ 733,945.62
Other Costs	\$ 32,629.88

In their Answer, Respondents jointly requested that Claimants' claims be denied.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

The Statement of Claim was filed by Mack A. Amerson, John W. Dumas, Renee Mock, Joan E. Moncrief, Richard L. Smith, Marvel W. Smith, Danny O. Townsend, Jackson W. Walker, Carolyn W. Walker and Martha Westmoreland. The First Amended Statement of Claim was filed by the aforementioned Claimants, plus Martin Barrientos and Merrilynn Teixeira. The Second Amended Statement of Claim was filed by the aforementioned Claimants, plus the Estate of Joan P. Hendrix.

In its Order entered on or about June 5, 2015, the Panel granted Respondents' [Opposed] Expedited Motion for Leave to Conduct Evidentiary Deposition.

Respondents Erica McGinnis, Ken Muraoka and Jerome Murphy were voluntarily dismissed by Claimants on or about June 15, 2015. Pursuant to correspondence dated June 24, 2015, the Individual Respondents confirmed that their Motion to Dismiss

became moot upon their dismissal. As such, the Panel did not consider the Individual Respondents' Motion to Dismiss.

In its Order entered on or about June 25, 2015, the Panel granted Respondents' Motion in Limine to Admit Evidence Relating to Allocation of Fault.

Claimants Joan E. Moncrief, John W. Dumas, and Renee Mock settled out of the case prior to the hearing and dismissed their claims with prejudice.

On the record at the hearing, Claimant Martin Barrientos voluntarily dismissed his claims without prejudice.

On the record at the hearing, the remaining Claimants moved for reconsideration of the Panel's decision on Respondents' Motion in Limine to Admit Evidence Relating to Allocation of Fault. The Panel denied Claimants' Motion for Reconsideration on the record.

The Panel held in abeyance FSC's Motion to Dismiss Ineligible Claims filed on July 7, 2015, the first day of the hearing. The Motion became moot as to Martin Barrientos after he voluntarily dismissed his claims.

On or about July 10, 2015, the remaining Claimants withdrew the following causes of action from their Second Amended Statement of Claim: respondeat superior/agency by estoppel and violations of the Georgia Securities Act of 1973 and/or the Georgia Uniform Securities Act.

After the conclusion of Claimants' case-in-chief, on the record, the Panel unanimously granted FSC's Motion to Dismiss at the Conclusion of Claimants' Case-in-Chief with regard to Marvel W. Smith. The Panel found that Marvel W. Smith was not a customer of FSC and dismissed her claims without prejudice regarding any right Marvel W. Smith has to file her claims in court.

The parties filed post-hearing submissions on or about July 30, 2015.

The Panel deemed the Court Reporter's transcript to be the official record of the hearing in this matter. FSC agreed to pay for the stenographic services.

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, the evidence presented at the hearing and the post-hearing submissions, and taking into consideration the Georgia Apportionment of Fault Statute, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel, by majority, denies FSC's Motion to Dismiss Ineligible Claims with regard to Merrilynn Teixeira. Arbitrator Granata dissents from the Panel's decision denying FSC's Motion to Dismiss Ineligible Claims with regard to Merrilynn Teixeira;
2. The Panel, by majority, denies all other aspects of FSC's Motion to Dismiss at the Conclusion of Claimants' Case in-Chief. Arbitrator Granata dissents from the Panel's decision denying all other aspects of FSC's Motion to Dismiss at the Conclusion of Claimants' Case in-Chief;
3. Respondent FSC Securities Corporation is liable for and shall pay to Claimant Mack A. Amerson the sum of \$175,800.00 in compensatory damages;
4. Respondent FSC Securities Corporation is liable for and shall pay to Claimant The Estate of Joan Hendrix the sum of \$286,039.40 in compensatory damages;
5. Respondent FSC Securities Corporation is liable for and shall pay to Claimant Richard L. Smith the sum of \$63,472.59 in compensatory damages;
6. Respondent FSC Securities Corporation is liable for and shall pay to Claimant Merrilynn Teixeira the sum of \$424,296.00 in compensatory damages;
7. Respondent FSC Securities Corporation is liable for and shall pay to Claimant Danny O. Townsend the sum of \$83,028.36 in compensatory damages;
8. Respondent FSC Securities Corporation is liable for and shall pay to Claimant Jackson W. Walker the sum of \$54,500.00 in compensatory damages;
9. Respondent FSC Securities Corporation is liable for and shall pay to Claimant Carolyn L. Walker the sum of \$49,420.00 in compensatory damages;
10. Respondent FSC Securities Corporation is liable for and shall pay to Claimant Martha Westmoreland the sum of \$146,003.00 in compensatory damages; and
11. Any and all relief not specifically addressed herein, including punitive damages and attorneys' fees, is denied.

### **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
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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 persons at the time of the events

giving rise to the dispute. Accordingly, as a party, FSC Securities Corporation is assessed the following:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 5,000.00

#### **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 (1) one arbitrator @ \$200.00 = \$ 200.00

Respondents submitted one (1) discovery-related motion

One (1) Decision on a discovery-related motion on the papers  
with (3) three arbitrators @ \$600.00 = \$ 600.00

Respondents submitted (1) one discovery-related motion

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Total Discovery-Related Motion Fees = \$ 800.00

The Panel has assessed \$800.00 of the discovery-related motion fees to FSC Securities Corporation.

#### **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 a single arbitrator @ \$450.00/session = \$ 450.00  
Pre-hearing conference: June 8, 2015 1 session

Two (2) Pre-hearing sessions with the Panel @ \$1,200/session = \$ 2,400.00  
Pre-hearing conferences: March 23, 2015 1 session  
June 25, 2015 1 session

Fourteen (14) Hearing sessions @ \$1,200/session = \$16,800.00  
Hearing Dates: July 7, 2015 2 sessions  
July 8, 2015 2 sessions  
July 9, 2015 2 sessions  
July 10, 2015 2 sessions  
July 13, 2015 2 sessions  
July 14, 2015 2 sessions  
July 15, 2015 2 sessions

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Total Hearing Session Fees = \$19,650.00

The Panel has assessed \$19,650.00 of the hearing session fees to FSC Securities Corporation.

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

**ARBITRATION PANEL**

Linda M. Granata	-	Public Arbitrator, Presiding Chairperson
Samuel Appel	-	Public Arbitrator
Perry Lee Taylor, Jr.	-	Non-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/ Samuel Appel

Samuel Appel  
Public Arbitrator

08/11/15

Signature Date

/s/ Perry Lee Taylor, Jr.

Perry Lee Taylor, Jr.  
Non-Public Arbitrator

08/11/15

Signature Date

**Dissenting Arbitrator's Signature**

I dissent on the apportionment and damages ruling.

/s/ Linda M. Granata

Linda M. Granata  
Public Arbitrator, Presiding Chairperson

08/11/15

Signature Date

08/11/15


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

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Samuel Appel	-	Public Arbitrator
Perry Lee Taylor, Jr.	-	Non-Public Arbitrator

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Samuel Appel  
Public Arbitrator

  
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Signature Date

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Perry Lee Taylor, Jr.  
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Public Arbitrator, Presiding Chairperson

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**ARBITRATION PANEL**

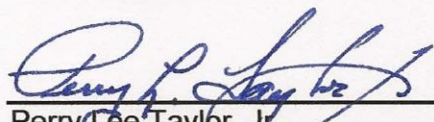
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Public Arbitrator

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Perry Lee Taylor, Jr.  
Non-Public Arbitrator

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Signature Date

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\_\_\_\_\_  
Linda M. Granata  
Public Arbitrator, Presiding Chairperson

August 11, 2015

\_\_\_\_\_  
Signature Date

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