Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants 23 Hoffman LLC 3155-3157 Villa, Inc. Muharrem Nezaj	Case Number: 23-02260
vs.	
Respondents Concorde Investment Services, LLC Scott Offerman	Hearing Site: New York, New York

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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: Customers vs. Member and Associated Person

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants 23 Hoffman LLC, 3155-3157 Villa, Inc., and Muharrem Nezaj (collectively "Claimants") : Michael C. Bixby, Esq., Bixby Law PLLC, Pensacola, Florida.

For Respondents Concorde Investment Services, LLC, and Scott Offerman (collectively "Repsondents"): Holly Cole, Esq., and Scott Holcomb Esq., Holcomb + Ward, LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on or about: August 17, 2023.
23 Hoffman LLC signed the Submission Agreement: August 17, 2023.
3155-3157 Villa, Inc. signed the Submission Agreement: August 17, 2023.
Muharrem Nezaj signed the Submission Agreement: August 17, 2023.

Statement of Answer filed by Respondents on or about: October 25, 2023.
Concorde Investment Services, LLC signed the Submission Agreement: October 25, 2023.
Scott Offerman signed the Submission Agreement: October 25, 2023.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty; violation of FINRA/NYSE/SEC Rules and Regulations; breach of contract; negligence; negligent supervision; violation of New York Consumer Protection Statute; and unjust enrichment. The causes of action relate to SL Enclave West DST.

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

RELIEF REQUESTED

In the Statement of Claim, Claimants requested: damages of no less than $1,000,000 as well as damages for the loss of income that would have been received had Claimants' money been managed properly, as well as all other losses, foreseeable or not, that Claimants suffered, including non-pecuniary losses including emotional distress damages; disgorgement and return of all fees, management charges, and commissions; interest on Claimants' losses at the legal rate; Claimants' costs, legal fees and expenses; rescission and/or statutory damages; treble damages; punitive damages; and such other and additional damages and relief as deemed just and equitable.

In the Statement of Answer, Respondents requested that the Panel deny all claims.

OTHER ISSUES CONSIDERED AND DECIDED

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

On June 11, 2024, Respondents filed a Motion to Dismiss pursuant to Rule 12206 of the Code of Arbitration Procedure ("Code"). On July 11, 2024, Claimants filed a response opposing the Motion to Dismiss. On July 29, 2024, Respondents filed a reply in further support of the Motion to Dismiss. On August 22, 2024, the Panel heard oral arguments on the Motion to Dismiss. On September 3, 2024, the Panel granted the Motion to Dismiss on the grounds that:

> Respondents in their Motion to Dismiss ("Respondents' Motion") asserted that the alleged events or occurrences and/or representations regarding the suitability of the investment giving rise to Claimants' claims occurred before or during July 2015, when the investment was made. Thus, given that the claim was filed in 2023, the claim would be barred under the FINRA eligibility rule.
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> Claimants, in response, and during Oral Argument, asserted that in addition to the pre-July 2015 occurrences, the "event or occurrence" giving rise to their asserted claims may be their discovery of Respondents' alleged ("fraud or wrongdoing"), when Claimants consulted an attorney in 2023 and/or Respondents' continuing conduct of concealing their wrongdoing. In particular, Claimants noted Respondents' representation when distributions stopped that "everything would be okay" as evidence of such concealment. Respondents in its Reply and during Oral Argument, asserted that with respect to unsuitability claims, subsequent advice would not restart the eligibility clock and that the

Discovery Rule (the eligibility clock is tolled until the fraud was discovered) would not apply at all.

The Panel notes that FINRA in its guidance (submitted as Exhibit A) states that:

> You might find that there is a continuing occurrence or event giving rise to the dispute. For example, although a customer purchased stock 10 years ago, you might find that there are allegations of ongoing fraud starting with the purchase, but continuing to date within six years of the date the claim was filed. You may or may not decide to hear this case based on the arguments of the parties.

Furthermore, the Panel notes that it can choose to apply to toll the eligibility provision (see Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79 (2002)) and/or apply the Discovery Rule under certain circumstances (see Mid-Ohio Securities Corp. v. Estate of Burns, 790 F.Supp.2d 1263 (2011).

It is, however, the Panel's ruling that the event or occurrence giving rise to the claims asserted regarding representations made by Respondent to Claimants occurred before the July 2015 purchase date of the investment, the 1031 exchange. The Panel agrees with Respondents' assertion that its assurances that "everything would be okay" without more is not sufficient evidence of an ongoing fraud/concealment. As noted by Respondents during Oral Argument (see page 4):

> The Second Circuit has made clear that general announcements that a company is optimistic about earnings and expects a product to perform well cannot constitute actionable statements under the securities laws because they would not mislead a reasonable investor (citations omitted). Likewise, statements expressing optimism about current and future economic growth are too nonspecific to be actionable.

Furthermore, it would not be appropriate to apply the Discovery Rule in the instant matter. The Discovery Rule is generally applied in circumstances where the suitability of a particular investment (risks associated with) could not be ascertained before or at the time of purchase due to Respondents' actions (e.g., concealment) (see, for example, Mid-Ohio Securities Corp. v. Estate of Burns, 790 F.Supp.2d 1263 (2011)). In contrast, in the instant matter, it is uncontested that Claimants received a Private Placement Memo and Supplements from the issuer before making its purchase, which included the disclosure of various risk factors. No allegations were made regarding the veracity of these materials. Therefore, Claimants could have made a determination before its purchase regarding the suitability or unsuitability of its investment.

In view of the foregoing, the Panel determines that the Respondents' Motion to Dismiss is granted without prejudice to any right Claimants have to file in court. Claimants are not prohibited from pursuing the claims in a court pursuant to Rule 12206(b) of the Code.

AWARD

After considering the pleadings, and other submissions, the Panel has decided in full and final

resolution of the issues submitted for determination as follows:

1. Claimants' claims are dismissed without prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees
FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	=$ 2,025.00

**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 event giving rise to the dispute. Accordingly, as a party, Respondent Concorde Investment Services, LLC is assessed the following:

Member Surcharge	=$ 3,200.00
Member Process Fee	=$ 6,375.00

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 Arbitrators, including a pre-hearing conference with the Arbitrators, which 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:	July 15, 2024	1 session		
Two (2) pre-hearing sessions with the Panel @ $1,435.00/session			=$	2,870.00
Pre-Hearing Conferences:	December 22, 2023	1 session		
	August 22, 2024	1 session		
Total Hearing Session Fees			=$	3,320.00

The Panel has assessed $1,660.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed $1,660.00 of the hearing session fees jointly and severally to Respondents.

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

ARBITRATION PANEL

Cheryl H. Agris	-	Public Arbitrator, Presiding Chairperson
Clarence Smith, Jr.	-	Public Arbitrator
Elaine Shay	-	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

Cheryl H. Agris — **09/12/2024**

Cheryl H. Agris
Public Arbitrator, Presiding Chairperson — Signature Date

Clarence Smith, Jr. — **09/08/2024**

Clarence Smith, Jr.
Public Arbitrator — Signature Date

Elaine Shay — **09/06/2024**

Elaine Shay
Public Arbitrator — Signature Date

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September 12, 2024
Date of Service (For FINRA Dispute Resolution Services use only)