

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of Claimant

Case Number: 09-02584

Kay Family Revocable Trust UAD 02/07/90 FBO Lenore Bleadon Under Trust A

Name of Respondent

Hearing Site: San Francisco, California

Stone & Youngberg LLC

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Nature of the Dispute: Customer vs. Member

**REPRESENTATION OF PARTIES**

Claimant, Kay Family Revocable Trust UAD 02/07/90 FBO Lenore Bleadon Under Trust A, hereinafter referred to as "Claimant": Cary S. Lapidus, Esq., Law Offices of Cary S. Lapidus, San Francisco, California.

Respondent, Stone & Youngberg LLC, hereinafter referred to as "Respondent": Ben Suter, Esq., and Cara L. Finan, Esq., Keesal, Young and Logan, San Francisco, California.

**CASE INFORMATION**

Statement of Claim filed on: May 5, 2009.

Claimant signed the Submission Agreement: May 4, 2009.

Statement of Answer filed by Respondent on or about: July 31, 2009.

Respondent signed the Submission Agreement: August 12, 2009.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: 1) breach of fiduciary duty; 2) professional negligence; 3) negligent misrepresentation; 4) breach of contract; and 5) common law fraud and deceit. Claimant further asserted that Respondent's conduct constitutes numerous violations of the FINRA Rules of Fair Practice including (a) Rule 2210 which prohibits the misstatement or omission of material facts in communications with the public; (b) Rule 2110 which requires a FINRA member to observe high standards of commercial honor and just and equitable principles of trade; and (c) Rule 3010 regarding the failure to supervise. The causes of action relate to Claimant's investment in the FutureSelect Prime Advisor II, L.P. Fund.

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, Claimant requested:

1. An award in its favor in an amount of \$750,000.00, or according to proof;
2. As an alternative, rescission of the investment in the FutureSelect Fund along with prejudgment interest to make it whole;
3. Prejudgment interest/lost opportunity damages;
4. Costs of the arbitration;
5. Punitive damages; and
6. Such other relief as the Arbitration Panel deems appropriate.

Respondent requested that Claimant's claims be dismissed with prejudice, for Respondent to be awarded its costs and such other relief as the Arbitration Panel deems appropriate.

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

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

On November 17, 2010, after the conclusion of Claimant's case in chief, Respondent brought an oral Motion to Dismiss. The Panel heard oral arguments on the motion and denied Respondent's Motion to Dismiss.

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 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 \$750,000.00 in compensatory damages.
2. Any and all relief not specifically addressed herein, including punitive damages, 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 = \$ 1,575.00

*\*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 Stone & Youngberg LLC is assessed the following:

Member surcharge = \$ 2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 4,000.00

#### **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: October 21, 2009 1 session

Ten (10) Hearing sessions @ \$1,200.00/session = \$12,000.00  
Hearing Dates: November 15, 2010 2 sessions  
November 16, 2010 2 sessions  
November 17, 2010 2 sessions  
November 18, 2010 2 sessions  
November 19, 2010 2 sessions

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Total Hearing Session Fees = \$13,200.00

1. The Panel has assessed \$6,600.00 of the hearing session fees to Claimant.
2. The Panel has assessed \$6,600.00 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Michael Lancaster Garcia	-	Public Arbitrator, Presiding Chairperson
Barbara M. Ancher	-	Public Arbitrator
Robert M. Greber	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
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Michael Lancaster Garcia  
Public Arbitrator, Presiding Chairperson

  
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Signature Date

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Barbara M. Ancher  
Public Arbitrator

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Signature Date

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Robert M. Greber  
Non-Public Arbitrator

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Signature Date

  
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Date of Service (For FINRA Dispute Resolution use only)

**ARBITRATION PANEL**

Michael Lancaster Garcia	-	Public Arbitrator, Presiding Chairperson
Barbara M. Anscher	-	Public Arbitrator
Robert M. Greber	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Michael Lancaster Garcia  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
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Barbara M. Anscher

12-11-10  
Signature Date

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Robert M. Greber  
Non-Public Arbitrator

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Signature Date

12/14/2010  
Date of Service (For FINRA Dispute Resolution use only)

**ARBITRATION PANEL**

Michael Lancaster Garcia	-	Public Arbitrator, Presiding Chairperson
Barbara M. Anscher	-	Public Arbitrator
Robert M. Greber	-	Non-Public Arbitrator

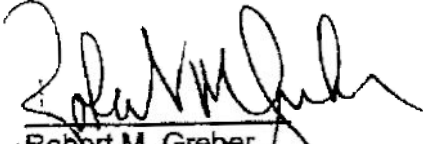
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Public Arbitrator, Presiding Chairperson

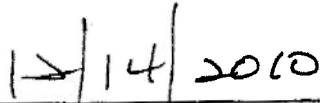
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