

**AMERICAN ARBITRATION ASSOCIATION**

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**In the Matter of the Arbitration between:**

**Case No: 01-20-0015-9198**

**THERESA L. HUGHES, as TRUSTEE OF THE BLAKE MALLEN 2013 TRUST,**

**CLAIMANT,**

**and**

**FLORENCE CAPITAL ADVISORS, LLC and GREGORY HERSCH**

**RESPONDENT,**

**(GREGORY HERSCH REQUEST FOR EXPUNGEMENT)**

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**AWARD OF ARBITRATOR**

I, Ira Cure, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the parties agreement to arbitrate their dispute dated November 25, 2020, and having been sworn and having determined that the underlying dispute between the Claimant Theresa Hughes as Trustee of the Blake Mallen 2013 Trust appearing by its counsel Robert J. Girard II, Esq. of the law firm Girard and Bengali, APC and Respondents Florence Capital Advisors, LLC and Gregory Hersch (together "Respondents"), appearing by Theodore Snyder, Esq. of the firm of Murphy and McGonigle has been resolved. Respondent Hersch having requested an expungement hearing pursuant to the rules of FINRA Dispute Resolution Services, and Claimant not taking any position on the issue of expungement, Awards as follows:

**CASE INFORMATION**

This case was initially filed in Los Angeles Superior Court on or about August 28, 2020, and on or about October 9, 2020, the case was removed to the United States District for the Central District of California bearing index number 20-CV-09289-PA ("Federal Action"). On November 25, 2020, the parties entered into a joint stipulation and agreed to arbitrate their dispute and dismiss the Federal Action without prejudice.

A Statement of Claim was filed with the American Arbitration Association ("AAA") on December 3, 2020, bearing index number: 01-20-0015-9198.

Respondents filed an Answer and Counterclaim on January 29, 2021.

Claimant filed an Answer to the Counterclaim on February 26, 2021.

The undersigned was appointed as the sole-arbitrator on April 23, 2021.

### **CASE SUMMARY**

In the Demand for Arbitration, Claimants asserted the following causes of action: Breach of Fiduciary Duty, Constructive Fraud, Fraud-Intentional Misrepresentation, Fraud Concealment, Negligent Misrepresentation, and Negligence.

In the Statement of Answer and Counterclaim, the Respondents requested that all claims in the Demand for Arbitration be dismissed and that all costs and forum fees be assessed against Claimants.

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

### **RELIEF REQUESTED**

The Claimant sought damages of not less than \$1.4 million dollars.

In the Statement of Answer and Counterclaim, the Respondents requested that all claims in the Demand for Arbitration be dismissed and that all costs and forum fees be assessed against Claimants.

Respondent Hersch filed a request for expungement of all references to this matter from Central Registration Depository ("CRD") registration records.

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

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On February 22, 2022, the parties entered into a "Confidential Settlement Agreement and Release." Therefore, the Arbitrator made no determination with respect to any of the requests for relief contained in the Statement of Claim. On March 24, 2022, counsel for the Claimant informed the AAA that the settlement "has now been finalized and, accordingly, this matter can now be dismissed, in its entirety, with prejudice."

On March 29, 2022, counsel for Respondent Hersch renewed its request for an expungement hearing. An expungement hearing was scheduled for April 15, 2022, with notice given to both the Respondent and the Claimant. On April 4, 2022, Counsel for the Claimant informed the Arbitrator that:



Claimant does not intend to appear at the expungement hearing. In addition, Claimant makes no representations as to whether expungement is warranted in this matter, and Claimant's choice not to attend to the hearing should not be construed as such.

The Arbitrator conducted a recorded hearing by Zoom Videoconference on April 15, 2022, so the parties could present oral argument in evidence on Respondent Gregory Hersch's request for expungement. The Claimant did not participate in the expungement hearing and did not oppose the request for expungement.

The Arbitrator reviewed the Respondent Gregory Hersch's BrokerCheck® Report ("BCR"), and that the instant proceeding was the only customer dispute mentioned in the BCR, and that the dispute was settled.

The Arbitrator also reviewed the settlement documentation, considered the amount of payment made pursuant to the settlement agreement, and considered other terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement. The Arbitrator concluded that claims, allegation, and information against Respondent Gregory Hersch are false.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Gregory Hersch's BCR, the pleadings, Respondent Gregory Hersch's testimony and the exhibits.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the expungement hearing, and any post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Arbitrator recommends the expungement of all references to the above captioned arbitration filed with the American Arbitration Association index number 01-20-0015-9198 from registration records maintained by the CRD for Respondent Gregory Hersch (CRD Number 3254629) with the understanding that, pursuant to Notice to Members 04-16, Respondent Gregory Hersch must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
2. Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award concerning expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

3. Pursuant to Rule 12805 of the Code of Arbitration Procedure ("Code"), the Arbitrator has made the following Rule 2080 affirmative findings of fact that the:

claims, allegations, and information against Respondent Gregory Hersch are false.

4. The Arbitrator has made the following Rule 2080 findings based on the following reasons:

The Arbitrator finds that the Claimant, a sophisticated investor, made the decision to purchase limited partnership interests in a private investment fund FF Fund I ("Fund"). The Fund has gone bankrupt due to the mismanagement of Fund manager Andrew Franzone ("Franzone"). Franzone's conduct is under investigation by the Securities and Exchange Commission ("SEC") for violations of the federal securities laws. The evidence shows that Franzone engaged in a number of fraudulent acts and misrepresented the value of the Fund.

The Evidence establishes that Respondent Gregory Hersch was completely unaware of Franzone's wrongdoing. The evidence also shows that Respondent Gregory Hersch, who knew Franzone since childhood, was himself a victim of Franzone. The evidence shows that at the time Respondent Gregory Hersch recommended an investment in the Fund to the Claimant, the Fund had a history of reporting steady positive returns for a number of years. The Claimant received positive returns for over a year after making its initial investment. The Respondent Gregory Hersch began to learn of Franzone's misdeeds including mismarking of assets in April 2019, and he began to assist counsel, and his clients to pursue legal remedies against Franzone.

The record establishes that the Claimant was barred from pursuing actions against Respondents because, the agreement between the Claimant and the Respondents barred the Claimant from suing for losses incurred as a result of actions taken by an independent manager like Franzone. The evidence also establishes the recommendations made by Respondent Gregory Hersch were made in good faith, and that the recommendation was reasonable at the time. Claimant had its own advisors who investigated the Fund and concluded it was a sound investment. In addition, the record establishes that Respondent Gregory Hersch did not breach its fiduciary duty to the Claimant and that any such claim was expressly barred by the agreement between the Claimant and Respondents. Similarly, there is no evidence that Respondent Gregory Hersch was negligent, and that such a claim is barred by the parties' agreement.

### **FEES**

The administrative fees of the American Arbitration Association (AAA) totaling \$2,400.00 shall be borne as incurred, and the compensation of the Arbitrator totaling \$2,500.00 shall be borne as incurred.



The above sums are to be paid on or before 30 days from the date of this Award.

This Award is in full settlement of all claims submitted to this Arbitration. All claims not resolved pursuant to the parties settlement agreement or expressly granted herein are hereby denied.

Date: May 2, 2022

  
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Ira Cure, Arbitrator

State of New York )

County of Kings )

On this 2nd day of May, 2022 before me personally came and appeared Ira Cure, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged that he executed the same.

  
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Notary Public

ELIZABETH ORFAN  
Notary Public, State of New York  
No. 02OR4976601  
Qualified in Kings County  
Commission Expires April 23, 2023