

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

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In the Matter of the Arbitration Between:

Claimants

Alicia Aucoin  
Hubert Aucoin  
Herbert M. Doucet  
Margie Doucet  
Taylor Powers

Case Number: 15-00834

vs.

Respondents

Michael Daniel Shaw  
VSR Financial Services, Inc.

Hearing Site: New Orleans, Louisiana

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

This case was decided by a majority-public panel.

**REPRESENTATION OF PARTIES**

For Claimants Alicia Aucoin, Hubert Aucoin, Herbert M. Doucet, Margie Doucet and Taylor Powers, hereinafter collectively referred to as "Claimants": Lance C. McCardle, Esq., Fishman Haygood Phelps Walmsley Willis & Swanson, L.L.P., New Orleans, Louisiana.

For Respondents Michael Daniel Shaw ("Shaw") and VSR Financial Services, Inc. ("VSR"), hereinafter collectively referred to as "Respondents": Benjamin J. Biard, Esq., Winget, Spadafora & Schwartzberg, LLP, Miami, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: April 8, 2015.

Claimants signed Submission Agreements: April 8, 2015.

Statement of Answer filed by Respondents on or about: June 9, 2015.

Shaw signed the Submission Agreement: November 10, 2015.

VSR signed the Submission Agreement: November 11, 2015.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty; fraud, misrepresentation and non-disclosure; negligence and gross negligence; breach of contract; violation of Louisiana Blue Sky Law; and unjust enrichment. The causes of action relate to Claimants' investments in various non-traded real estate investment trusts, promissory note programs, limited partnerships and private oil drilling programs.

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 Statement of Claim, Claimants requested:

1. Unspecified compensatory damages;
2. Attorneys' fees, costs and other expenses;
3. Exemplary or punitive damages and other penalties as allowed by law;
4. Interest, both pre-award and post-award; and
5. All other sums that Claimants are entitled to at law or equity.

In their Statement of Answer, Respondents requested:

1. Dismissal of the Statement of Claim in its entirety;
2. Costs and expenses of this arbitration, including forum fees and reasonable attorneys' fees; and
3. Any additional relief that is just and proper.

At the close of the hearing, Claimants requested:

1. Compensatory damages in the amount of \$308,221.00;
2. Legal fees at forty percent contingency;
3. Louisiana statutory interest;
4. Expert witness fees of approximately \$12,000.00; and
5. Fifty percent of unspecified court reporter fees.

At the close of the hearing, VSR requested \$85,000.00 in legal fees, \$55,000.00 in expert witness fees, and assessment of the forum fees against Claimants.

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

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

On September 10, 2015, Respondents submitted a Motion to Partially Dismiss the Statement of Claim Pursuant to FINRA's Six-Year Eligibility Rule. On September 24, 2015, Claimants submitted an opposition in response to Respondents' motion. On September 29, 2015, Respondents submitted a reply in support of their motion.

The Panel conducted a recorded telephonic conference on October 14, 2015 so the parties could present oral argument and evidence on Respondents' Motion to Partially

Dismiss the Statement of Claim Pursuant to FINRA's Six-Year Eligibility Rule. On the same day, the Panel issued an Order and determined to deny the motion.

On December 28, 2015, Claimants' counsel notified the Office of Dispute Resolution that Alicia Aucoin and Hubert Aucoin settled with Respondents and dismissed their claims against Respondents with prejudice.

At the beginning of the January 12, 2016 evidentiary hearing, Claimants' counsel notified the Panel that Taylor Powers settled with Respondents. Claimants' counsel further notified the Panel that Shaw is dismissed from the above-captioned matter. Hereinafter, the remaining Claimants, Herbert M. Doucet and Margie Doucet, will be referred to as "Remaining Claimants."

After the conclusion of the Remaining Claimants' case-in-chief, VSR made an oral Motion to Dismiss. The Remaining Claimants opposed the motion. The Panel determined to deny the motion as a matter of fact and law.

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. VSR is liable for and shall pay to Remaining Claimants \$307,000.00 in compensatory damages.
2. The Remaining Claimants may retain their respective investments at issue in this matter including the following investments: MPF Senior Note Program I; Atlas America Series # 25 - 2004 B; AmREIT Monthly Income & Growth II; Cole Credit Property Trust; and ArciTerra Note Fund II.
3. All requests by VSR for legal fees and other expenses are denied.
4. Any and all relief not specifically addressed herein, including punitive and exemplary damages, legal fees, expert witness fees and pre-award interest, 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, VSR Financial Services, Inc. is assessed the following:

Member Surcharge	= \$ 1,900.00
Member Process Fee	= \$ 3,750.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

November 19-20, 2015, adjournment by Respondent	= \$ 1,125.00
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Total Adjournment Fees	= \$ 1,125.00

The Panel has assessed \$1,125.00 of the adjournment fees jointly and severally to Alicia Aucoin and Hubert Aucoin.

**Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

November 19-20, 2015, adjournment by Respondent	= \$ 300.00
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Total Three-Day Cancellation Fees	= \$ 300.00

The Panel has assessed \$300.00 of the three-day cancellation fees jointly and severally to Alicia Aucoin and Hubert Aucoin.

**Discovery-Related Motion Fees**

Fees apply for each decision rendered on a discovery-related motion.

Three (3) Decisions on discovery-related motions on the papers with (1) <u>one</u> arbitrator @ \$200.00	= \$ 600.00
Respondents submitted <u>three</u> discovery-related motions	
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Total Discovery-Related Motion Fees	= \$ 600.00

The Panel has assessed \$600.00 of the discovery-related motion fees to VSR.

**Contested Motion for Issuance of a Subpoena Fees**

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) Decision on a contested motion for the issuance of a subpoena (1) <u>one</u> arbitrator @ \$250.00	= \$ 250.00
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Total Contested Motion for Issuance of Subpoenas Fees	= \$ 250.00

The Panel has assessed \$250.00 of the contested motion for issuance of subpoenas fees to VSR.

**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: October 26, 2015	1 session	
Two (2) Pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	2,250.00
Pre-hearing conferences: August 19, 2015	1 session	
October 14, 2015	1 session	
Twelve (12) Hearing sessions @ \$1,125.00/session	= \$	13,500.00
Hearing Dates: November 18, 2015	1 session	
January 12, 2016	2 sessions	
January 13, 2016	2 sessions	
January 14, 2016	2 sessions	
January 15, 2016	1 session	
January 19, 2016	2 sessions	
January 20, 2016	2 sessions	
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Total Hearing Session Fees		= \$16,200.00

1. The Panel has assessed \$562.50 of the hearing session fees jointly and severally to Claimants.
2. The Panel has assessed \$2,970.00 of the hearing session fees jointly and severally to the Remaining Claimants.
3. The Panel has assessed \$12,667.50 of the hearing session fees to VSR.

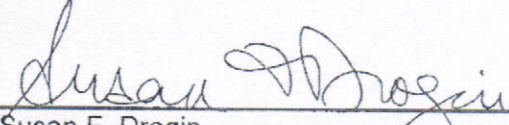
All balances are payable to FINRA Dispute Resolution and are due upon receipt.

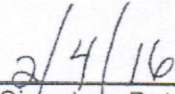
**ARBITRATION PANEL**

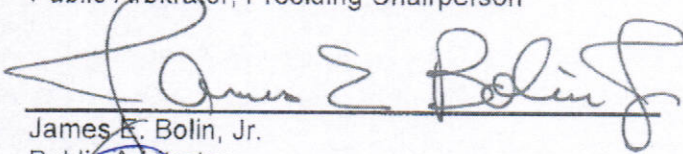
Susan F. Drogin	-	Public Arbitrator, Presiding Chairperson
James E. Bolin, Jr.	-	Public Arbitrator
Dale A. Kaliszkeski	-	Non-Public Arbitrator

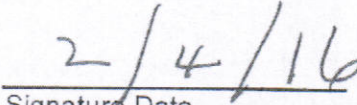
I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

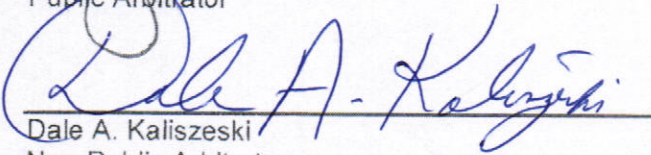
**Concurring Arbitrators' Signatures**

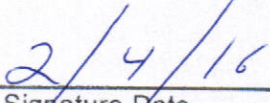
  
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Susan F. Drogin  
Public Arbitrator, Presiding Chairperson

  
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Signature Date

  
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James E. Bolin, Jr.  
Public Arbitrator

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

  
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Dale A. Kaliszkeski  
Non-Public Arbitrator

  
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Signature Date

February 4, 2016  
Date of Service (For FINRA Dispute Resolution office use only)