

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimants  
Mike Snow  
Nita Snow

Case Number: 17-03439

vs.

Respondents  
American Retirement Solutions of Louisiana, LLC  
Larry Glenn Boggs  
First Allied Advisory Services, Inc.  
First Allied Securities, Inc.

Hearing Site: Nashville, Tennessee

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Nature of the Dispute: Customers vs. Member, Associated Person, and Non-Members

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimants Mike Snow and Nita Snow (together "Claimants"): Niel Prosser, Esq. and Kyle Johnson, Esq., The Prosser Law Firm, PLC, Memphis, Tennessee.

For Respondents American Retirement Solutions of Louisiana, LLC ("ARS"), Larry Glenn Boggs ("Boggs"), First Allied Advisory Services, Inc. ("First Allied Advisory"), and First Allied Securities, Inc. ("First Allied Securities"): Mickey B. Wright, Esq. and Heather Demyan, Esq., Lloyd, Gray, Whitehead & Monroe, P.C., Birmingham, Alabama.

Hereinafter, ARS, Boggs, First Allied Advisory and First Allied Securities are collectively referred to as "Respondents."

**CASE INFORMATION**

Statement of Claim filed on or about: December 20, 2017.

Claimants signed the Submission Agreement: December 20, 2017.

Statement of Answer filed by Respondents on or about: February 20, 2018.

Boggs signed the Submission Agreement: January 13, 2018.

First Allied Advisory signed the Submission Agreement: February 21, 2018.

First Allied Securities signed the Submission Agreement: November 13, 2018.

ARS did not sign the Submission Agreement.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty; negligent supervision; negligent misrepresentation; negligence; violation of the Tennessee Consumer Protection Act; and derivative liability of First Allied and ARS. The causes of action relate to Boggs' financial plan for Claimants' retirement, which included an investment in the "Polaris Advantage II" issued by Sun America Life ("SA Annuity"), among other investments.

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:

1. The salaries Claimants would have earned but for their early retirement, totaling approximately \$730,000.00;
2. The diminution in Claimants' Social Security benefits due to Boggs' advice to claim benefits early, totaling approximately \$300,000.00;
3. The employer contributions and earnings on Mike Snow's 401(k) that he missed due to early retirement, totaling approximately \$190,000.00 plus the value of other benefits;
4. Rescission, to the extent Claimants still own the SA Annuity at the time of trial;
5. Alternatively, to the extent the SA Annuity, is sold before trial, all losses sustained due to Mike Snow's ownership of the SA Annuity, including the amount of any surrender fee (which may exceed \$70,000.00);
6. Interest at the highest rate allowed by law from the dates of each SA Annuity purchase;
7. Disgorgement of all commissions, trails, or any other compensation that Respondents made off Claimants (estimated to be in excess of \$50,000.00);
8. Full award of Claimants' reasonable attorneys' fees, expenses and costs;
9. Treble damages;
10. Punitive damages;
11. Reimbursement of all FINRA fees paid by the Claimants and assessment of all other FINRA fees exclusively to the Respondents; and
12. Such other, different or additional relief and damages which the Panel deems just and equitable.

In the Statement of Answer, Respondents requested:

1. Claimants' Statement of Claim be dismissed with prejudice;
2. All forum fees and Arbitrator fees be assessed against Claimants;
3. Award costs and expenses to Respondents; and
4. Further relief as it deems appropriate.

At the close of the hearing, Claimants requested:

1. Total compensatory damages exclusive of attorneys' fees and costs in the amount of \$1,663,848.00; and

2. To “gross up” the compensatory damages to compensate for additional income taxes Claimants may be liable for due to lump sum payment, which would be a ratio of the amount of compensatory damages awarded.

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

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

On May 4, 2018, ARS filed a Motion to Dismiss pursuant to Rule 12504 of the Code of Arbitration Procedure (“Code”). On June 19, 2018, Claimants filed an opposition. On June 25, 2018, ARS filed a reply. On July 19, 2018, Claimants filed a sur-reply. On July 24, 2018, the Panel heard oral arguments on ARS’s motion to dismiss. By order of the same date, the Panel denied the motion.

ARS is not a member or associated person of FINRA and did not voluntarily submit to arbitration. At the evidentiary hearing, Claimants advised that they had reached a settlement with ARS and dismissed ARS from this matter.

During the evidentiary hearing, after Claimants’ case in chief, First Allied Securities, First Allied Advisory and Boggs moved for dismissal. The Panel heard oral arguments on the motion and denied the motion orally at the evidentiary hearing.

The parties present at the hearing 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. All claims against First Allied Advisory are dismissed with prejudice.
2. First Allied Securities and Boggs are jointly and severally liable for and shall pay to Claimants the sum of \$578,247.00 in compensatory damages.
3. First Allied Securities and Boggs are jointly and severally liable for and shall pay to Claimants the sum of \$500,000.00 in punitive damages pursuant to T.C.A. § 29-39-104(a). “Punitive damages. (a)(1) Punitive damages may only be awarded if the claimant proves by clear and convincing evidence that the defendant . . . acted maliciously, intentionally, fraudulently or recklessly.”
4. First Allied Securities and Boggs are jointly and severally liable for and shall pay to Claimants the sum of \$60,506.00 in costs.
5. First Allied Securities and Boggs are jointly and severally liable for and shall pay to Claimants the sum of \$350,000.00 in attorneys’ fees pursuant to T.C.A. § 47-18-109(e)(1).

6. Any and all claims for relief not specifically addressed herein, including interest, treble damages, rescission, and disgorgement are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

FINRA Office of Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim Filing Fee	= \$ 2,000.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, First Allied Securities is assessed the following:

Member Surcharge	= \$ 3,025.00
Member Process Fee	= \$ 6,175.00

#### **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:

Two (2) pre-hearing sessions with a single arbitrator @ \$450.00/session	= \$900.00
Pre-hearing conferences: June 12, 2018	1 session
October 2, 2018	1 session

Two (2) pre-hearing sessions with the Panel @ \$1,400.00/session	= \$2,800.00
Pre-hearing conferences: April 17, 2018	1 session
July 24, 2018	1 session

Sixteen (16) hearing sessions @ \$1,400.00/session	= \$22,400.00
Hearing Dates: November 12, 2018	2 sessions
November 13, 2018	2 sessions
November 14, 2018	3 sessions
November 15, 2018	3 sessions
November 16, 2018	3 sessions
December 10, 2018	1 session
December 11, 2018	2 sessions

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Total Hearing Session Fees	= \$26,100.00
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The Panel has assessed \$1,105.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$23,595.00 of the hearing session fees jointly and severally to First Allied Securities and Boggs.

The Panel has assessed \$1,400.00 of the hearing session fees to ARS.

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

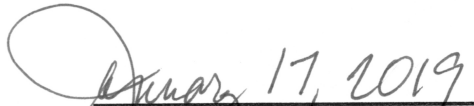
**ARBITRATION PANEL**

Denise Morris Hammond	-	Public Arbitrator, Presiding Chairperson
Irwin Venick	-	Public Arbitrator
James Raybeck	-	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**

  
\_\_\_\_\_  
Denise Morris Hammond  
Public Arbitrator, Presiding Chairperson

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

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Irwin Venick  
Public Arbitrator

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James Raybeck  
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January 18, 2019  
Date of Service (For FINRA Office of Dispute Resolution office use only)

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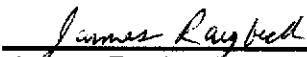
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