

AWARD
FINRA Dispute Resolution

In the Matter of the Arbitration Between:

Name of Claimant

Theodore R. Davis Trust DTD 3/8/2007

vs.

Case Number: 13-00640
Hearing Site: Kansas City, Missouri

Name of Respondent

Sunset Financial Services, Inc.

NATURE OF THE DISPUTE

Customer vs. Member

The case was decided by a majority-public panel

REPRESENTATION OF PARTIES

Theodore R. Davis Trust DTD 3/8/2007 ("Claimant") was represented by Thomas F. Burke, Esq., Law Office of Thomas F. Burke, Chicago, Illinois.

Sunset Financial Services, Inc. ("Respondent") was represented by Stephen J. Fields, Esq., Brinker & Doyen, LLP, Clanton, Missouri.

CASE INFORMATION

The Statement of Claim was filed on or about February 26, 2013. The Submission Agreement of Theodore R. Davis Trust DTD 3/8/2007, was signed on or about February 20, 2013.

The Statement of Answer was filed by Sunset Financial Services, Inc., on or about May 9, 2013. The Submission Agreement of Sunset Financial Services, Inc., was signed on or about May 6, 2013.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; common law fraud; negligence; failure to supervise; violation of the Missouri Securities Act of 2003; and violation of the Missouri Merchandising Practices Act. The causes of action related to the recommendation and purchase of two Real Estate Investment Trusts ("REITS"): the

Behringer Harvard Real Estate Investment Trust ("Behringer Trust") and the KBS Real Estate Investment Trust ("KBS Trust"), and the remainder of Claimant's Trust money was invested in annuities. Claimant alleged that Respondent, through its agent, Joseph Scoonover, misrepresented to Ted Davis that investing in the Behringer Trust and the KBS Trust were suitable investments. Claimant asserted, however, that the investment objectives were for Ted Davis' long-term care and disability.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$137,071.61
Exemplary/Punitive Damages	Unspecified
Attorneys' Fees	Unspecified

At the hearing, Claimant requested rescission, \$219,500.00 in actual/compensatory damages, and \$83,917.00 in attorneys' fees and costs under Missouri securities law.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

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

At the hearing and after Claimant's case-in-chief, Respondent made a Motion to Dismiss. The Panel denied the Motion.

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 the evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent, Sunset Financial Services, Inc., is liable for and shall pay to Claimant, Theodore R. Davis Trust DTD 3/8/2007, the sum of

\$132,000.00 in compensatory damages;

- 2.) Respondent, Sunset Financial Services, Inc., is liable for and shall pay to Claimant, Theodore R. Davis Trust DTD 3/8/2007, pre-Award interest on the above-stated sum in the amount of \$38,000.00;
- 3.) Respondent, Sunset Financial Services, Inc., is liable for and shall pay to Claimant, Theodore R. Davis Trust DTD 3/8/2007, post-Award interest at the rate of 4% per annum from the date of service of this Award through and including the date this Award is paid in full;
- 4.) Respondent, Sunset Financial Services, Inc., is liable for and shall pay to Claimant, Theodore R. Davis Trust DTD 3/8/2007, the sum of \$7,500.00 in costs;
- 5.) Respondent, Sunset Financial Services, Inc., is liable for and shall pay to Claimant, Theodore R. Davis Trust DTD 3/8/2007, the sum of \$56,666.00 in attorneys' fees pursuant to Missouri securities law;
- 6.) Respondent, Sunset Financial Services, Inc., is liable for and shall pay to Claimant, Theodore R. Davis Trust DTD 3/8/2007, the sum of \$300.00 as reimbursement for the non-refundable portion of the filing fee;
- 7.) Claimant, Theodore R. Davis Trust DTD 3/8/2007, is ordered to return the securities at issue to Respondent, Sunset Financial Services, Inc.;
- 8.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 9.) Any relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial Claim filing fee = \$ 1,425.00

**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 events giving rise to the dispute. Accordingly, as a party, Sunset Financial Services, Inc. is assessed the following:

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

Discovery-Related Motion Fees

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

One (1) Decision on discovery-related motion on the papers with one (1) arbitrator @ \$200.00	= \$ 200.00
Respondent submitted one (1) discovery-related motion	
<u>Total Discovery-Related Motion Fees</u>	<u>= \$ 200.00</u>

The Panel has assessed \$200.00 of the discovery-related motion fees to Sunset Financial Services, Inc.

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each hearing session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$1,125.00	= \$ 2,250.00
Pre-hearing conferences: July 31, 2013	1 session
October 10, 2013	1 session
Four (4) Hearing sessions x \$1,125.00	= \$ 4,500.00
Hearing Dates: October 28, 2013	2 sessions
October 29, 2013	2 sessions
<u>Total Hearing Session Fees</u>	<u>= \$ 6,750.00</u>

The Panel has assessed \$6,750.00 of the hearing session fees to Sunset Financial Services, Inc.

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

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ARBITRATION PANEL

David F. Barrett - Public Arbitrator, Presiding Chair
John R. Loss - Public Arbitrator
Michael A. Rzewnicki - 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:

/s/ David F. Barrett
David F. Barrett
Public Arbitrator, Presiding Chair

11/5/13
Signature Date

/s/ John R. Loss
John R. Loss
Public Arbitrator

11/5/13
Signature Date

/s/ Michael A. Rzewnicki
Michael A. Rzewnicki
Non-Public Arbitrator

11/5/13
Signature Date

11/6/13
Date of Service (For FINRA office use only)