

Panel awards \$1.5 million to man wrongfully involved in SEC case

By: Heather Cobun Daily Record Legal Affairs Writer ◉ May 31, 2019

A Pikesville man obtained a \$1.5 million award against his broker Wednesday after an arbitration panel determined the broker was liable for wrongfully involving him in Securities and Exchange Commission litigation.

The SEC previously dismissed fraud charges against Jonathan Feldman in 2016 after determining there was insufficient evidence that his trading scheme was illegal. Feldman then sought damages from his brokerage firm, optionsXpress, for involving him in the SEC matter.

The \$1,558,000 award covers Feldman's attorneys' fees for defending himself against the charges. The award was issued Wednesday by the Financial Industry Regulatory Authority.

Attorney Gregory T. Lawrence said Friday the case might be the first example of an individual recovering for being wrongfully involved in SEC litigation.

"I think this is probably an eye-opening ruling for people who are drawn into regulatory investigations and prosecutions that, if it's determined that it was someone else's fault that you were drawn into it, there may be an avenue for you to get compensation from those who were responsible," said Lawrence, of Conti Fenn & Lawrence LLC in Baltimore.

Feldman's trading strategy involved taking advantage of a disparity between the price of a security and the price of options on that security if it was in high demand from short sellers, according to the SEC opinion. When optionsXpress had insufficient shares to satisfy obligations, which were due three days after a transaction — called a fail to deliver position — it allowed customers like Feldman to execute a "buy-write" in the same security, meaning they would buy the stock but then write agreements against the security's position.

The firm did not require Feldman to locate and deliver shares. Instead, optionsXpress allowed fails to persist for weeks or months.

The commission found that it was not Feldman's obligation to deliver shares and that he relied on optionsXpress to do so. The firm was aware of his trading strategies and allowed them to persist even though they may have contributed to fails to deliver.

The arbitration panel adopted the factual findings of the SEC, which determined optionsXpress "acted willfully and with deliberate and reckless disregard for the risk that its conduct violated" commission rules. The commission also determined that the firm falsely told Feldman the shares had been delivered and that the SEC had approved his trading.

Lawrence said Feldman spent years defending himself in the costly litigation and suffered reputational harm by being publicly charged.

"He's feeling great. He's ecstatic. He's very thankful," Lawrence said. "He's also excited to put the whole thing behind him now."

The brokerage firm optionsXpress is represented by Stephen J. Senderowitz, William E. Walsh and Jacqueline A. Giannini of Dentons US LLP in Chicago. Senderowitz did not immediately respond to a request for comment.



Baltimore lawyer Gregory T. Lawrence represented a Pikesville man who obtained a \$1.5 million award against his broker after an arbitration panel determined the broker was liable for wrongfully involving him in SEC litigation. (File photo)

The case is *In the matter of arbitration between: Jonathan Feldman and optionsXpress Inc.*, FINRA Office of Dispute Resolution case 17-01393.



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