

AMERICAN ARBITRATION ASSOCIATION
Consumer Arbitration Rules

In the Matter of the Arbitration between

Charles Weatherford

-vs-

Safeguard Metals, LLC and Jeffrey Santulan

Case Number: 01-21-0017-4986

AWARD OF ARBITRATOR

I, John E. Ohashi, the undersigned arbitrator, having been designated in accordance with the arbitration agreement entered into between the above-named parties and having been duly sworn, and having duly heard the proofs and allegations of the parties at a hearing in Los Angeles, California on August 23-25, 2022, with all parties represented by counsel, AWARD, as follows:

Background.

Claimant retired in 2019 after a 44-year career in civil engineering. At that time, Claimant had two 401(k) retirement accounts with a combined balance of \$1,093,071.87. Claimant had no other investment or brokerage account.

Claimant contacted Respondent Safeguard Metals, LLC ("Safeguard") to discuss Claimant's interest in investing in precious metals. Thereafter, Safeguard's representatives, Alex and Liam, called Claimant approximately four times a week and sent numerous emails to persuade Claimant to invest in precious metals coins with numismatic value.

Claimant, with Safeguard's direct participation, liquidated his 401(k) accounts and moved all of the proceeds to a self-directed IRA at Equity Trust, a third-party custodian, to purchase and hold precious metals. Alex picked the precious metals and coins that were held in Claimant's self-directed IRA account.

Safeguard effectively controlled the buying and selling of precious metals in Claimant's account with the end result that Claimant's purchases of precious metal totaling \$1,093,071.87 at December 31, 2019 was credibly valued at \$348,048.30 (loss of \$745,023.57) as of August 8, 2021.

Respondents Safeguard and Santulan are Alter Egos.

Respondent Jeffrey Santulan (“Santulan”) developed and implemented Safeguard’s business plan of buying and selling precious metals coins, including the pricing of coins, establishing spreads, reporting of “market value,” approving marketing materials, including Safeguard’s website, and creating “sales scripts” used by Safeguard representatives.

Safeguard is a California limited liability company that was wholly owned and exclusively managed and controlled by Santulan. Santulan used Safeguard to implement his precious metals business plan. As an example of their unity, Santulan used his personal credit card to pay the storage fees charged by Equity Trust to store Claimant’s precious metals. There was no invoice from Santulan to Safeguard or booking of any related party transaction to show an arms-length relationship between them. If Safeguard’s acts are treated as those of the LLC alone, then an inequitable result will follow. Safeguard and Santulan are alter-egos.

Respondents’ Liability.

Respondents’ wrongful acts and omissions giving rise to liability include:

(1) Using materially false and misleading statements through its website and oral representations by its sales representatives, that Claimant reasonably relied upon, to induce Claimant to invest with Safeguard.

The uncontroverted evidence is that Safeguard’s website falsely stated that Safeguard had 20 years of precious metals experience, and had \$11 Billion under management. The website also highlighted Safeguard’s investment advisory services:

“With the help of Safeguard Metals, you can have an advantage over conventional investors with a portfolio that covers a wide range of asset building opportunities...”

...help our clients diversify their retirement portfolios with non-traditional investment options.

...our asset protection specialists will thoroughly explain all aspects of investing your money into precious metals. From the initial investment to tracking gains, you’ll have the experienced professionals at Safeguard Metals by your side every step of the way.”

Claimant reasonably believed that Safeguard would provide investment advice relating to precious metals, and in that context, asked Safeguard’s Alex if he was a fiduciary. Alex had the opportunity to expressly correct Claimant’s understanding of Safeguard’s services, but instead chose to further reinforce Claimant’s misunderstanding by telling Claimant that while he was not a “registered fiduciary” he would still be a “fiduciary” to Claimant. Claimant had the subjective

and reasonable belief that Safeguard and Alex were looking out for Claimant's best interests in providing investment advice.

(2) Providing Biased and Self-Interested Investment Advice.

It is determined that given the subject matter and context of the discussions between Claimant and Safeguard, that Safeguard was giving investment advice to Claimant. Safeguard's investment advice was biased and self-interested. Safeguard never disclosed any material risk factors to Claimant of investing in precious metals, and more specifically, in numismatic coins.

In one instance, Safeguard advised Claimant in or around September 2020 to take advantage of the then "gold/silver ratio" to buy additional silver. Claimant's expert testified that the "gold/silver ratio" is a well-known metric used by precious metals investors in deciding whether to buy or sell silver. Safeguard's investment advice led to Claimant's swap of Silver Guinea coins with .999 silver for Silver Canadian Polar Bear coins, which were .9999 silver to enjoy greater appreciation when silver prices increased. Claimant's expert presented persuasive evidence that swapping .999 to .9999 silver coins for purposes of getting increased appreciation if and when silver prices increased was negligible and that the swap was effectively "churning" that only benefited Safeguard.

(3) Misrepresenting and concealing mark-ups and providing materially false and inflated valuations of Claimant's account.

Claimant spent \$1,093,071.87 purchasing precious metals during October and December 2019. The Equity Trust statement for 1/1/2020 – 3/31/2020 reflects that Claimant's account immediately following Claimant's initial purchases was worth only \$440,702.54. The evidence showed that the difference between Claimant's purchase price of \$1,093,071.87 and the account value of \$440,702.54 was attributable to Safeguard's excessive mark-ups on the precious metals it purchased for Claimant.

In another instance, Safeguard sent an email dated August 18, 2021 to Claimant with an account statement prepared by Safeguard stating an account value of \$1,234,274.30 for Claimant's numismatic coins. Based on the valuation, Claimant decided to liquidate and take profits. However, Safeguard's valuation was unsubstantiated and speculative. Safeguard ultimately told Claimant that the value of his account was only \$425,000, which reflected the spot price of silver.

Precious Metals Shipping and Account Agreement.

Claimant executed two virtually identical Precious Metals Shipping and Account Agreements (collectively "Account Agreement") that contained waivers and disclaimers to the effect that Safeguard does not provide investment advice and that Claimant assumed full responsibility for investment decisions. Alex told Claimant that he did not have to read the

Account Agreement as it only contained standard language. Claimant did not read the Account Agreement or review it with any advisor before executing it. Safeguard relies on Claimant's execution of the Account Agreement and the waivers and disclaimers in it as a defense.

Claimant detrimentally relied on Safeguard's misrepresentations in entering into the Account Agreement. Further, Safeguard's wrongful conduct after Claimant executed the Account Agreement was not remotely foreseeable by Claimant and therefore, notwithstanding Claimant's execution of the Account Agreement, its waivers and disclaimers that purportedly support Safeguard's defense are ineffective.

Damages.

Claimant's request for emotional distress damages, punitive damages, and attorneys' fees are denied.

Respondents, joint and severally, shall pay Claimant:

1. The sum of \$745,023.57, plus an amount equivalent to interest at the rate of ten percent (10%) simple interest on the amount of \$1,093,071.87 (\$109,307.10/yr; 365 days/yr; \$299.47 daily rate) commencing as of January 1, 2020 through to and including the date of this Award (collectively "Damages"); plus

2. The sum of the following costs ("Costs"):

Claimant's expert witness fee	\$ 8,250.00
Claimant's legal costs	\$ <u>6,872.23</u>
Total Costs	\$15,122.23

3. The sum of the Damages and Costs, determined as of the date of this Award, shall bear post Award interest at the rate of ten percent (10%) simple interest until paid. All payments toward the Award shall be applied first to accrued interest and then to the principal amount of the Award.

Costs and Fees

Except for the Costs set forth above, the parties shall bear their own fees and costs in connection with this Arbitration, including but not limited to attorneys' fees, filing fees, costs of investigation, discovery, and retention of experts.

The administrative fees of the American Arbitration Association totaling \$3,525.00, the compensation of the arbitrator totaling \$10,000.00 and the travel expenses of the arbitrator totaling \$43.35 shall be borne as incurred by the parties.

This Award is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

Dated: September 30, 2022



John E. Ohashi, Arbitrator