

Arkansas

State Claims Commission

MAY 16 2017

Of the State of Arkansas

☒ Mr.
☐ Mrs.
☐ Ms.
☐ Miss

Ellis M Sloan, Claimant

vs.

State of Arkansas, Respondent

RECEIVED	
Do Not Write in These Spaces	
Claim No.	<u>17-0726-CC</u>
Date Filed	<u>May 18, 2017</u>
	(Month) (Day) (Year)
Amount of Claim \$	<u>1,549,152.00</u>
Fund	<u>APERS</u>
	<u>Other</u>

COMPLAINT

Ellis M Sloan, the above named Claimant, of 23 Harding Dr Searcy
 (Name) (Street or R.F.D. & No.) (City)
Arkansas 72143 501-420-2007 County of White represented by Nate Steel
 (State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)
 of 400 W. Capitol Ave; STE 2910 Little Rock AR 72201 501-251-1587 501-244-2614 may:
 (Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)
 State agency involved: Arkansas Public Employees Retirement System Amount sought: \$1,549,152.00

Month, day, year and place of incident or service:

Explanation: See attached Complaint

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to my state department or officer thereof?

See attached when? See attached to whom? See attached
 (Yes or No) (Month) (Day) (Year) (Department)
See attached and that the following action was taken thereon: See attached

and that \$ See attached was paid thereon: (2) Has any third person or corporation an interest in this claim? See attached; if so, state name and address

See attached
 (Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

and that the signature thereof is as follows: See attached

See attached and was executed on See attached in the following manner:

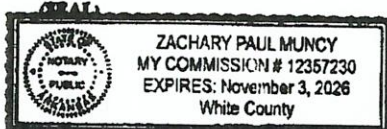
THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

Ellis M Sloan Ellis M Sloan
 (Print Claimant/Representative Name) (Signature of Claimant/Representative)

STATE OF ARKANSAS
 COUNTY OF WHITE:

SWORN TO and subscribed before me at Searcy AR
 (City) (State)

on this 20th day of April, 2017



Zachary Paul Muncy
 Notary Public

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

ELLIS SLOAN

CLAIMANT

V.

CASE NO. _____

**THE STATE OF ARKANSAS
(ARKANSAS PUBLIC EMPLOYEES
RETIREMENT SYSTEM)**

RESPONDENT

COMPLAINT

Ellis Sloan ("Mr. Sloan" or "Claimant"), by and through his attorneys, Steel, Wright, Gray & Hutchinson PLLC, for his Claim, states as follows:

PARTIES

1. Mr. Sloan is an individual and resident of the State of Arkansas.
2. Respondent, the State of Arkansas is a sovereign state, and the Arkansas State Employees Retirement System ("APERS") is a state agency as defined by Ark. Code Ann. § 19-10-204.
3. All facts giving rise to this claim occurred within the State of Arkansas.

JURISDICTION AND VENUE

4. The Arkansas State Claims Commission (the "Commission") has jurisdiction over this matter, and venue is proper pursuant to Ark. Code Ann. § 19-10-204 et seq.

FACTUAL ALLEGATIONS

5. Mr. Sloan is a licensed financial planner and adviser who has worked with various capital management firms in the state of Arkansas.
6. In 1986, Mr. Sloan was employed as the Director of Research for T.J. Raney Investments. In that capacity, Mr. Sloan was tasked with researching public companies headquartered in Arkansas.

7. In 2002, Mr. Sloan created a fund made up of investments in various public companies based in Arkansas. The fund became known as the "Arkansas Index." That same year, the Arkansas Municipal League became the first investor in the Arkansas Index.
8. In 2005, Mr. Sloan began working as an investment manager with Lathrop Investment Management Corporation ("Lathrop") based in Little Rock, Arkansas. In February of that year, APERS invited Mr. Sloan to present the Arkansas Index as an investment opportunity at its next meeting.
9. At the meeting held in May of 2006, Mr. Sloan presented the Arkansas Index to APERS as an investment opportunity. APERS agreed to place an investment in the Arkansas Index under Mr. Sloan's management.
10. Shortly following APERS' investment, in 2006, Mr. Sloan informed APERS Director Gail Stone that he would be leaving Lathrop.
11. Director Stone advised that APERS' standard practice was to remain with the individual investment manager so long as the firm he or she is affiliated with maintains proper accreditation for institutional investing.
12. Director Stone further assured Mr. Sloan that, upon determining that a proposed firm was qualified, she would recommend to the APERS board that the Arkansas Index remain under Mr. Sloan's management at the new firm.
13. In reliance on Director Stone's statements, Mr. Sloan left Lathrop to join Horrell Capital Management, Inc. ("Horrell") in Little Rock, Arkansas in or about July of 2006.
14. As promised, APERS maintained its investment with Mr. Sloan and the Arkansas Index at Horrell Capital Management.

15. At all times pertaining hereto, including without limitation the entirety of Mr. Sloan's time at Horrell, Mr. Sloan was the exclusive manager of the Arkansas Index.
16. Indeed, since APERS first contracted with Horrell, Mr. Sloan has been identified as the Contractor and Portfolio Manager. Exhibit 1 at p. 3.
17. In its most recent contract, Mr. Sloan was identified as both the Vendor and the Portfolio Manager. Exhibit 2 at p. 3.
18. Mr. Sloan was, and remains, uniquely qualified to manage the Arkansas Index, to wit:
 - a. Mr. Sloan created the fund.
 - b. In researching and developing the Arkansas Index, Mr. Sloan personally met with executives at the highest levels of management at Arkansas publicly traded companies, and wrote extensive research reports on these investments, beginning in 1986 and maintaining such contacts until the facts giving rise to this claim.
 - c. Mr. Sloan has 34 years of investment experience.
 - d. Mr. Sloan holds the highest professional credential for a portfolio manager as a Chartered Financial Analyst ("CFA").
 - e. Mr. Sloan holds an inactive license as a Certified Public Accountant.
 - f. Mr. Sloan has been an assistant professor of Finance and Investments at Harding University for twelve years.
19. At all times pertinent hereto, no other manager at Horrell, including Scott Horrell, had any day-to-day management of the Arkansas Index fund.

20. In fact, the only user with access to the Arkansas Index was Mr. Sloan, as evidenced by the username of "mhrl.esloan."

21. In or about early 2015, Mr. Sloan became concerned that basic practices were not being followed by Horrell Capital Management, and specifically Scott Horrell.

22. Namely, Mr. Scott Horrell had no knowledge of where the assets were held, how to access the assets, how to set up required worksheets to rebalance the portfolio, or how to write required monthly or quarterly reports.

23. Further, Mr. Horrell refused to utilize outside counsel for compliance with complex federal securities regulation, and the firm showed signs of financial stress including but not limited to service interruptions of utilities.

24. These concerns placed Mr. Sloan in a difficult position. As a fiduciary, Mr. Sloan was impelled to move his clients, including APERS, to another firm.

25. In or about April 2015, Mr. Sloan approached APERS Director Gail Stone and discussed the possibility of leaving Horrell for another firm. Mr. Sloan asked for assurances that APERS' investment, the Arkansas Index, would remain under his management in the event he left Horrell.

26. APERS Director Stone promised and represented to Mr. Sloan that the process for that determination would be the same as it was in 2006 when Mr. Sloan left Lathrop, and would yield the same result. Specifically, Director Stone assured Mr. Sloan that the APERS Arkansas Index fund would remain under his management at a new firm, so long as the new firm was properly accredited.

27. Mr. Sloan proposed the firm of Kernodle and Katon Asset Management Corporation ("Kernodle & Katon") by name, and was assured by APERS Director Stone that the firm would qualify.

28. Director Stone had both actual and apparent authority to make promises on behalf of APERS.

29. Reasonably relying on Director Stone's promises and representations, on May 15, 2015, Mr. Sloan left Horrell for Kernodle & Katon.

30. After Mr. Sloan's departure, APERS failed to fulfill its promises and representations to Mr. Sloan, and, instead, contracted with Horrell and a firm known as The Circumference Group.

31. The facts giving rise to this claim were presented to APERS at its regular meeting of its Board of Directors held on August 19, 2015, and again at the APERS board meeting held on November 18, 2016. No action was taken and no payment of any kind has been made to Claimant.

32. No person or corporation has any absolute or contingent interest in this claim.

COUNT I – PROMISSORY ESTOPPEL

33. Plaintiff incorporates by reference all allegations in paragraphs 1–32 above as if repeated herein word for word.

34. Plaintiff specifically received assurances from APERS that he would remain the manager of its Arkansas Index fund if he left Horrell for another firm.

35. Plaintiff identified said firm by name as Kernodle & Katon.

36. Plaintiff was given a promise from APERS, by way of its Director that the fund would indeed follow Plaintiff to the firm Kernodle & Katon.

37. Further, Director Stone promised and assured Plaintiff that APERS would follow the same process that it did ten years prior, when Plaintiff left Lathrop for Horrell, and keep Plaintiff as the manager of its Arkansas Index Fund—that Plaintiff created.

38. Plaintiff reasonably relied to his detriment on these statements, promises, and assurances made by Director Stone.

39. Plaintiff's actions, namely leaving Horrell for Kernodle & Katon, were reasonable, and APERS reasonably foresaw them.

40. Plaintiff's actions constitute clear and convincing evidence of the promise made by APERS.

41. As a direct and proximate result of APERS refusal to follow through with its statements and promises, Plaintiff has incurred damages.

COUNT II – CONSTRUCTIVE FRAUD

42. Plaintiff incorporates by reference all allegations in paragraphs 1–41 above as if restated herein word for word.

43. Director Stone made false representations of material facts.

44. Director Stone knew or should have known that her statements were false or that she lacked a sufficient basis of information to make the representations.

45. The assurances requested by Plaintiff, and the representation made by APERS, were intended to induce Plaintiff into acting in reliance on them.

46. Plaintiff was justified in relying on Director Stone's representations.

47. As a result, Plaintiff was damaged.

WHEREFORE, Ellis Sloan prays that this Commission award him damages in the amount of \$1,549,152.00.

STEEL, WRIGHT, GRAY
& HUTCHINSON PLLC
400 West Capitol Ave., Ste 2910
Little Rock, AR 72201
(501) 251-1587



Nate Steel, Ark Bar No. 2007186
Alex T. Gray, Ark. Bar No. 2008127

Attorneys for Ellis Sloan

VERIFICATION

I, Ellis Sloan, hereby verify the allegations contained herein are true and accurate to the best of my knowledge.



Ellis Sloan



COPY

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

ELLIS SLOAN

CLAIMANT

V.

CLAIM NO. 17-0726-CC

ARKANSAS PUBLIC EMPLOYEES'
RETIREMENT SYSTEM

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the "Claims Commission") is the motion filed by respondent Arkansas Public Employees' Retirement System ("APERS") to dismiss the claim of claimant Ellis Sloan (the "Claimant") based upon the Claims Commission's lack of jurisdiction over this claim. At the hearing held on October 12, 2017, Claimant was represented by Nate Steel. Frank J. Wills, III appeared on behalf of APERS. Based upon APERS' motion, Claimant's response, and APERS' reply brief, as well as arguments of counsel, and the law of Arkansas, the Claims Commission hereby unanimously finds as follows:

1. On May 18, 2017, Claimant filed the instant claim against Respondent, seeking \$1,549,152.00 in damages. Claimant listed two counts in his claim against Respondent: promissory estoppel and constructive fraud. Claimant's claim is based upon representations allegedly made by APERS' executive director that Claimant could continue to manage an APERS investment if he left his investment firm.
2. APERS moved to dismiss for lack of jurisdiction pursuant to Ark. Code Ann. § 19-10-204(b)(1)(A)(i)(d), which states that, "[t]he commission shall have no jurisdiction of, or authority with respect to, claims arising under . . . [t]he Arkansas Public Employees' Retirement System Act, Acts 1957, No. 177." APERS also argued that pursuant to Ark. Code Ann. § 24-4-105(a)(4), only APERS' Board of Trustees has the authority to direct its investments, not the executive director.

3. Claimant responded to the motion to dismiss, arguing that his claims are common law claims, not claims that arise under the APERS' Act.

4. APERS filed a reply brief, in which it argued that these claims could only arise under the APERS' Act because they relate to the authority to direct investments, which is detailed in Ark. Code Ann. § 24-4-105(b)(4). Because that statute is the sole source of APERS' investment authority, APERS argued that the claims must have arisen under the APERS' Act, which is outside the Claims Commission's jurisdiction.

5. At hearing, the parties argued these points persuasively.

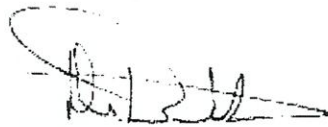
6. However, while Claimant asserts that his claims are common law claims, they relate to the authority to direct investments. As such, Ark. Code Ann. § 24-4-105(b)(4) seems to be directly on point. Tellingly, the credits for this statute, which provide details as to the evolution of a statute, include "Acts of 1957, Act 177." As such, this claim does appear to arise under "the Arkansas Public Employees' Retirement System Act, Acts of 1957, No. 177," which excludes it from the Claims Commission's jurisdiction.

7. By creating the Claims Commission, the legislature created an exception to the doctrine of sovereign immunity in order to provide a way for claimants to seek redress against the State of Arkansas. However, the legislature did not permit all types of claims against the State to be heard by the Claims Commission. In Ark. Code Ann. § 19-10-204(b)(1)(A)(i), the legislature specifically excepted any claim arising under the "Arkansas Public Employees' Retirement System Act, Acts 1957, No. 177."

8. In the absence of a clear legislative directive, the Claims Commission is unwilling to overstep its jurisdictional bounds.

9. As such, APERS' motion to dismiss is hereby GRANTED, and the Claimant's claim is DISMISSED.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Dexter Booth



ARKANSAS STATE CLAIMS COMMISSION
Sylvester Smith



ARKANSAS STATE CLAIMS COMMISSION
Mica Strother, Co-Chair

DATE: October 20, 2017

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

ELLIS SLOAN

CLAIMANT

V.

CLAIM NO. 17-0726-CC

**ARKANSAS PUBLIC EMPLOYEES
RETIREMENT SYSTEM**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the "Claims Commission") is the motion filed by claimant Ellis Sloan (the "Claimant") for reconsideration of the Claims Commission's October 20, 2017, order dismissing Claimant's claim against the Arkansas Public Employees Retirement System (the "Respondent"). Based upon a review of Claimant's motion, Respondent's response, and the law of Arkansas, the Claims Commission hereby finds as follows:

1. Claimant's motion for reconsideration focuses on whether Claimant has alternative remedies other than the Claims Commission, such as through a lawsuit in circuit court or an administrative appeal. Claimant argues that a claim pursued through the Claims Commission is the only option available to him and that the Claims Commission's dismissal of this claim was premature.

2. In its response, Respondent argues that postponing a jurisdictional finding until after a hearing on the merits would be pointless if the Claims Commission does not have jurisdiction over Claimant's claim. Respondent also argues that Claimant has failed to meet the burden set forth in Claims Commission Rule 7.1 because its motion for reconsideration challenges the Claims Commission's conclusion of law regarding jurisdiction but fails to identify any new or additional evidence.

3. Respondent has correctly stated the standard for a motion for reconsideration. Claims Commission Rule 7.1 states that motions for reconsideration “will only be entertained if they set forth new or additional evidence”

4. Claimant’s motion does not set forth new or additional evidence.

5. Moreover, while the Claims Commission is sympathetic to Claimant’s frustration over finding a venue for its claim, the issue before the Claims Commission was solely whether the Claims Commission has jurisdiction over Claimant’s claim against Respondent. For reasons stated in the October 20, 2017, order, the Claims Commission found that it did not. Even if Claimant is correct in his assessment of the other potential forums, the fact that none of those options are open to Claimant does not automatically vest the Claims Commission with jurisdiction over his claim.

6. As such, Claimant’s motion for reconsideration is DENIED, and the October 20, 2017, Claims Commission order remains in effect.

IT IS SO ORDERED.

Henry C. Kinslow

ARKANSAS STATE CLAIMS COMMISSION

Dexter Booth
Henry Kinslow, Co-Chair
Bill Lancaster
Sylvester Smith
Mica Strother, Co-Chair

DATE: December 8, 2017

Notice(s) which may apply to your claim

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(b). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(b)(3). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(b). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

DEC 23 2017

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

RECEIVED

ELLIS SLOAN

CLAIMANT

V.

CASE NO. 17-0726-CC

**THE STATE OF ARKANSAS
(ARKANSAS PUBLIC EMPLOYEES
RETIREMENT SYSTEM)**

RESPONDENT

NOTICE OF APPEAL

Ellis Sloan ("Mr. Sloan" or "Claimant"), by and through his attorneys, Steel, Wright, Gray & Hutchinson PLLC, for his Response to Motion to Dismiss ("Motion"), states as follows:

1. On October 12, 2017, Claimant appeared through counsel at a hearing on Respondent's Motion to Dismiss.
2. On October 20, 2017, the Arkansas State Claims Commission (the "Commission") entered an Order dismissing Claimant's claims.
3. Claimant was served notice of the Order on November 6, 2017.
4. Claimant filed a Motion for Reconsideration on November 14, 2017.
5. Claimant's Motion for Reconsideration was denied on December 8, 2017.
6. Pursuant to Ark. Code Ann. § 19-10-211, Claimant hereby appeals the decision made by the Commission to the Arkansas General Assembly.

WHEREFORE, Claimant hereby appeals this matter pursuant to Ark. Code Ann. § 19-10-211 and any other applicable provisions, and requests a hearing before the Arkansas General Assembly, and for all other just and proper relief to which he is entitled.

Respectfully submitted,

STEEL, WRIGHT, GRAY
& HUTCHINSON PLLC
400 West Capitol Ave., Ste 2910
Little Rock, AR 72201
(501) 251-1587



Nate Steel, Ark Bar No. 2007186

CERTIFICATE OF SERVICE

I, Nate Steel, hereby affirm that a complete and correct copy of the foregoing has been sent via U.S. Mail on this 14th day of December 19, 2017, to the following:

Frank J. Wills, III
Deputy Director
Arkansas Public Employees Retirement System
124 West Capitol Ave., Ste 400
Little Rock, AR 72201



Nate Steel