

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Guido Condosta, (Claimant) vs. Lebenthal & Co., Inc., (Respondent) vs. Claire Comas (Third-Party Respondent)

Case Number: 00-00936

Hearing Site: Boston, Massachusetts

REPRESENTATION OF PARTIES

Claimant, Guido Condosta, hereinafter referred to as "Claimant", appeared *pro se*.

Respondent, Lebenthal & Co., Inc., hereinafter referred to as "Respondent": Dominick F. Evangelista, Esq., Bressler, Amery & Ross, P.C., Morristown, NJ.

Third-Party Respondent, Claire Comas ("Comas"): Benedict L. Sliney, Esq., Leventhal and Sliney, LLP, Mineola, NY., did not appear at the hearings in this matter.

CASE INFORMATION

Statement of Claim filed on or about: March 2, 2000.

Amended Statement of Claim filed on or about: June 28, 2000.

Claimant signed the Uniform Submission Agreement: February 27, 2000.

Statement of Answer filed by Respondent on or about: May 12, 2000.

Statement of Answer to Amended Statement of Claim filed by Respondent on or about: December 6, 2000.

Third-Party Claim filed by Respondent on or about: November 15, 2000.

Respondent signed the Uniform Submission Agreement: April 3, 2000.

Statement of Answer to Third-Party Claim filed by Comas on or about: January 17, 2001.

Comas signed the Uniform Submission Agreement: January 17, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: breach of duty as fiduciary consultants and advisors; opening of a joint account without the required signatures and with incomplete, inaccurate, and misleading information on the new account form; violation of the principle of due diligence in NYSE Rule 2405; and violation of NASD rule 240.20b-10, Confirmation of Transactions. Claimant's claim did not involve a specific financial product.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the

Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted; the opening of the account in question was appropriate and consistent with Claimant's desires and written instructions; Claimant is not entitled to damages resulting from a settlement with Comas; the Statement of Claim is barred by the doctrines of laches, waiver, ratification, and estoppel; Respondent acted in good faith and without malice or reckless indifference to Claimant; Claimant has failed to mitigate any alleged damages and therefore his claim for damages is barred or reduced pro tanto; Claimant is not entitled to attorneys' fees; Respondent did not breach any duty to Claimant imposed by operation of law or contract; Claimant's injuries or damages are due to the acts or omissions of third parties over whom Respondent had no control or right to control; and the Statement of Claim is barred by the doctrines of collateral estoppel and res judicata.

In its Third-Party Claim, Respondent asserted the following causes of action: contribution and indemnification.

Unless specifically admitted in her Answer, Comas denied the allegations made in the Third-Party Claim and asserted the following causes of action: Respondent is not entitled to make any claim against Comas for contribution; Respondent has not alleged any wrongdoing by Comas in the establishment of the account in question and they cannot; it cannot be argued that Comas was unjustly enriched by the use of any funds from the joint account which she would have used as the joint tenant of the account; the joint account agreement prepared by Respondent and executed by Comas explicitly provides that any joint account holder may access the account without notice to any other joint tenant and acknowledges that Respondent is bound by the instructions of any one of the joint tenants; and Respondent must be estopped from setting facts in evidence, if there are any, that the actions of Comas with respect to transactions in the account in question were in any way related to or the cause of their breach of duty, if any, to Claimant.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$100,177.17.

Respondent requested that Claimant's Statement of Claim and Amended Statement of Claim be dismissed with prejudice, in their entirety, and that the Panel award Respondent costs and other further relief as it deems just and proper.

In its Third-Party Claim, Respondent requested an Award against Comas for contribution and/or indemnification, together with any other relief the Panel deems just and proper.

Comas requested that the Third-Party Claim be dismissed and that the Panel award Comas the costs and attorneys' fees incurred in this matter.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of Respondent, the undersigned arbitrators (the "Panel") determined that Comas has been properly served with the Third-Party Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Comas present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

During the hearings in this matter, Respondent made a Motion to Dismiss. After due consideration, the Panel denied said 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 evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent be and hereby is liable for and shall pay to Claimant the sum of \$7,500.00 as compensatory damages, inclusive of all accrued interest to the date of this Award.
2. Comas be and hereby is liable for and shall pay to Respondent the sum of \$7,500.00 as compensatory damages, inclusive of all accrued interest to the date of this Award.
3. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300.00
Third-Party Claim filing fee	= \$1,000.00

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. In this matter, Lebenthal & Co., Inc. is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: May 7, 2001	1 session
One (1) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: January 15, 2001	1 session
Four (4) Hearing sessions x \$1,125.00	= \$4,500.00
Hearing Dates: July 16, 2001	2 sessions
July 17, 2001	2 sessions
Total Forum Fees	= \$6,075.00

The Panel has assessed all of the forum fees against Respondent.

Fee Summary

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$ 1,425.00
Refund Due Claimant	= \$ 1,125.00

2. Respondent be and hereby is solely liable for:

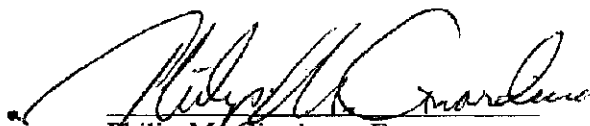
Third-Party Claim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 4,600.00
<u>Forum Fees</u>	= \$ 6,075.00
Total Fees	= \$11,675.00
<u>Less payments</u>	= \$ 6,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 5,575.00

All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Philip M. Giordano, Esq.	-	Public Arbitrator, Presiding Chair
Mary C. Kelleher	-	Public Arbitrator
Fred Shinagel	-	Industry Arbitrator

Concurring Arbitrators' Signatures


Philip M. Giordano, Esq.
Public Arbitrator, Presiding Chair

8/20/01
Signature Date

Mary C. Kelleher
Public Arbitrator

Signature Date

Fred Shinagel
Industry Arbitrator

Signature Date

August 23, 2001
Date of Service (For NASD office use only)

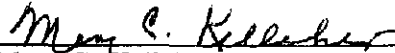
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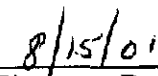
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Public Arbitrator



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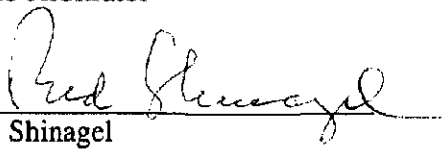
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Philip M. Giordano, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Mary C. Kelleher
Public Arbitrator

Signature Date



Fred Shinagel
Industry Arbitrator

8-16-01

Signature Date

August 23, 2001
Date of Service (For NASD office use only)