

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Laurence Einuis, (Claimant) v. The Thornwater Company, Inc., Clark D. Ruiz, Adam DeMario, and Gregory S. Kellar, (Respondents)

Case Number: 00-04172

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant Laurence Einuis, hereinafter referred to as "Claimant": John P. Cione, Esq., Solana Beach, CA.

Respondents The Thornwater Company Inc. ("Thornwater") and Clark D. Ruiz ("Ruiz"), hereinafter collectively referred to as "Respondents": Eric Rosenberg, Esq., Altman & Company, P.C., New York, NY.

Respondent Adam DeMario ("DeMario") appeared *pro se*.

Respondent Gregory S. Kellar ("Kellar") did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: September 21, 2000.

Opposition to Respondents' Motion to Dismiss filed by Claimant on or about: January 16, 2001.

Claimant signed the Uniform Submission Agreement: August 29, 2000.

Statement of Answer, Motion to Dismiss, and Motion for More Definite Statement of Claim filed by Respondents on or about: December 6, 2000.

Respondent Thornwater signed the Uniform Submission Agreement: December 6, 2000.

Respondent Ruiz signed the Uniform Submission Agreement: December 6, 2000.

Statement of Answer filed by Respondent DeMario on or about: March 28, 2001.

Respondent DeMario signed the Uniform Submission Agreement: February 5, 2001.

Respondent Kellar did not submit a Statement of Answer or sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: unauthorized trading, misrepresentations, unsuitable investments, failure to supervise, and breach of fiduciary duty. Claimant's claim involved stock of FPA Medical Management and Harvey Electronics.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

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

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages in the amount of \$250,000.00;
2. Punitive damages in the amount of \$150,000.00;
3. Interest at a rate of 10% from April 1998 to the present;
4. Reasonable attorney fees.

Respondents requested dismissal of the Statement of Claim and an award for their attorneys' fees and costs against Claimant.

Respondent DeMario requested the dismissal of the Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of the Claimant, the Panel determined that Respondents Kellar and DeMario have been properly served with the Statement of Claim and received due notice of the hearing and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent Kellar did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

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. Claimant's claims are hereby denied in their entirety.
2. Any and all relief not specifically addressed herein including punitive damages is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 300.00
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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 persons at the time of the events giving rise to the dispute. Accordingly, The Thornwater Company, Inc. is a party.

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

March 5-6, 2003, adjournment by Thornwater and Ruiz	= WAIVED
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Forum Fees and Assessments

The Panel has assessed forum fees for each 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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: March 10, 2003	1 session

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$1,125.00
Pre-hearing conference: August 2, 2002 1 session

Six (6) Hearing sessions @ \$1,125.00 = \$6,750.00
Hearing Dates: April 30, 2003 2 sessions
May 1, 2003 2 sessions
July 2, 2003 2 sessions

Total Forum Fees = \$8,325.00

1. The Panel has assessed \$1,665.00 of the forum fees against Claimant.
2. The Panel has assessed \$1,665.00 of the forum fees against Respondent Thornwater.
3. The Panel has assessed \$1,665.00 of the forum fees against Respondent Ruiz.
4. The Panel has assessed \$1,665.00 of the forum fees against Respondent DeMario.
5. The Panel has assessed \$1,665.00 of the forum fees against Respondent Kellar.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimant, copying costs = \$18.75

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,665.00
<u>Administrative Costs</u>	= \$ 18.75
Total Fees	= \$1,983.75
<u>Less payments</u>	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$ 558.75
2. Respondent Thornwater is solely liable for:

Member Fees	= \$4,600.00
<u>Forum Fees</u>	= \$1,665.00
Total Fees	= \$6,265.00
<u>Less payments</u>	= \$4,600.00
Balance Due NASD Dispute Resolution	= \$1,665.00
3. Respondent Ruiz is solely liable for:

Forum Fees	= \$1,665.00
Balance Due NASD Dispute Resolution	= \$1,665.00

4. Respondent DeMario is solely liable for:
- | | |
|-------------------------------------|--------------|
| <u>Forum Fees</u> | = \$1,665.00 |
| Balance Due NASD Dispute Resolution | = \$1,665.00 |
5. Respondent Kellar is solely liable for:
- | | |
|-------------------------------------|--------------|
| <u>Forum Fees</u> | = \$1,665.00 |
| Balance Due NASD Dispute Resolution | = \$1,665.00 |

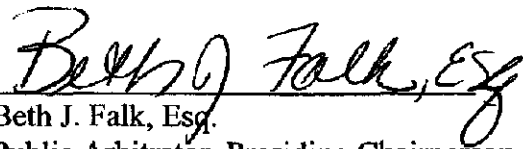
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

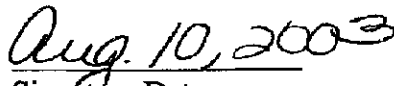
ARBITRATION PANEL

Beth J. Falk, Esq.	-	Public Arbitrator, Presiding Chair
Eugene Tenenbaum	-	Public Arbitrator
Mark S. Brody	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.


Beth J. Falk, Esq.
Public Arbitrator, Presiding Chairperson


Signature Date

Eugene Tenenbaum
Public Arbitrator

Signature Date

Mark S. Brody
Non-Public Arbitrator

Signature Date

August 12, 2003
Date of Service (For NASD Dispute Resolution use only)

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Signature Date



Eugene Tenenbaum
Public Arbitrator

8/1/03

Signature Date

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Non-Public Arbitrator

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NASD REGULATION

NASD Dispute Resolution
Arbitration No. 00-04172
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