

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Robert F. Ellerbe and Scotty L. Ellerbe v. Raiké Financial Group, Inc., and Steven Messina

Case No: 00-04774

Hearing Site: Raleigh, North Carolina

REPRESENTATION OF PARTIES

For Robert F. Ellerbe and
Scotty L. Ellerbe
("Claimant")

Nicholas D. Thomas, Esq.
Raleigh, North Carolina

For Raiké Financial Group, Inc.
("Raiké")

Ruthann G. Niosi, Esq.
Law Offices of Ruthann G. Niosi, Esq.
New York, New York

Steven James Messina
("Messina")

appeared pro se

CASE INFORMATION

Claimant signed the Uniform Submission Agreement on: September 20, 2000.

Statement of Claim filed on or about: October 27, 2000.

Statement of Answer filed by Respondent Messina on or about: December 5, 2000.

Respondent Messina signed the Uniform Submission Agreement on: December 23, 2000.

Statement of Answer and Cross Claim against Respondent Messina filed by Respondent Raiké on or about: February 7, 2001.

Respondent Raiké filed a Counterclaim Motion for Summary Judgment against Claimant on or about: February 7, 2001.

Respondent Raiké signed the Uniform Submission Agreement on: April 9, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: 1) violation of the anti-fraud provisions of the North Carolina Securities Act; 2) common law fraud; 3) breach of fiduciary duty; and 4) negligence and gross negligence.

Claimant alleged: Respondents falsified information on the Raiké Account opening documents and then used that false information to justify opening of a margin account. Once the margin account was open, Respondents solicited transactions in low quality stocks in amounts exceeding those permitted by Respondent Raiké's own internal compliance standard. Claimant's account was margined to a point where their equity was just above 50% when Respondent Raiké's own standards required 75% equity. Because of the too-high margin level and the low quality of the stocks in Claimant's portfolio, when the market moved lower in the Spring of 2000, Claimant's equity was wiped out and Claimant's portfolio was forcibly liquidated.

Respondent Raiké denied the allegations of wrongdoing in the Statement of Claim and alleged: Claimant opened an account with Respondent Raiké in December 1999 and began trading on margin in January. Claimant continued to do business with Respondent Raiké until April 2000 when Claimant incurred a margin debit in the amount of \$1,607.53. Despite efforts to collect same, Claimant failed to make payment. Thus, pursuant to paragraph 14 of the Margin Agreement signed by Claimant, Respondent Raiké seeks an Award in the amount of \$1,607.53 plus interest, costs and attorneys' fees in the amount of \$9,900.00 incurred in connection with efforts to collect same. Further, Respondent Raiké seeks indemnification of losses and expenses from the broker, Respondent Messina, pursuant to the terms of his independent contractor agreement.

Respondent Messina denied the allegations of wrongdoing in the Statement of Claim.

Respondent Raiké filed a Counterclaim against Claimant and asserted the following causes of action: 1) breach of contract; and 2) bad faith.

Respondent Raiké filed a Cross Claim against Respondent Messina and asserted a cause of action for indemnification.

RELIEF REQUESTED

Claimant requested: 1) compensatory damages in excess of \$5,000.01 and less than \$10,000.00; 2) disgorgement of commissions; 3) punitive damages; 4) interest at the statutory rate of 8.00%; 5) costs; 6) attorneys' fees; 7) dismissal of the Counterclaim; and 8) all other relief deemed appropriate by the undersigned arbitrator (the "Arbitrator"). At the evidentiary hearing, Claimant requested: 1) compensatory damages in the amount of \$17,000.00; 2) interest at the statutory rate of 8% per annum; 3) costs in the amount of \$700.00; 4) attorneys' fees in the amount of \$5,000.00; and 5) a finding of fraud against Respondents Messina and Raiké.

Respondent Raiké requested: 1) dismissal of the Statement of Claim; 2) costs and expenses in the amount of \$1,607.53 on its Counterclaim; and 3) compensatory damages in the amount of \$5,300.00 on its Cross Claim. At the evidentiary hearing, Respondent Raiké requested: 1) dismissal of the Statement of Claim; 2) compensatory damages in the amount of \$1,607.53, plus interest, costs and attorneys' fees in the amount of \$9,900.00 on its Counterclaim; and 3) indemnification for losses and expenses on its Cross Claim.

Respondent Messina requested dismissal of the Statement of Claim and the Cross Claim.

OTHER ISSUES CONSIDERED AND DECIDED

The parties at the evidentiary hearing 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, and the post-hearing submissions (if any), the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted by Claimant are denied in their entirety.
2. Claimant's requests for attorneys' fees and punitive damages are denied.
3. Claimant is liable on the Counterclaim and shall pay to Respondent Raiké compensatory damages in the amount of \$1,607.53, pre-judgment interest denied. Post-judgment interest shall accrue in accordance with Rule 10330(h) of the NASD Code of Arbitration Procedure (the "Code").
4. Claimant is liable on the Counterclaim and shall pay to Respondent Raiké attorneys' fees in the amount of \$8,800.00. Attorneys' fees are awarded pursuant to the Margin Agreement signed by Claimant. Post-judgment interest shall accrue in accordance with Rule 10330(h) of the Code.
5. Claimant is liable on the Counterclaim and shall pay to Respondent Raiké costs in the amount of \$1,073.00. Post-judgment interest shall accrue in accordance with Rule 10330(h) of the Code.
6. Respondent Messina is liable on the Cross Claim and shall pay to Respondent Raiké compensatory damages in the amount of \$11,480.53. Post-judgment interest shall accrue in accordance with Rule 10330(h) of the Code.
7. All other requests for relief not specifically addressed herein are 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	= \$75.00
Counterclaim/Cross Claim filing fee	= \$500.00

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, the member firm is a party.

Member surcharge	= \$300.00
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Adjournment Fees

There were no adjournments requested during these proceedings.

Forum Fees and Assessments

The Arbitrator has the authority to assess forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$250.00	= \$250.00
Pre-hearing conference: May 14, 2001 1 session	

Two (2) Hearing sessions x \$250.00	= \$250.00	= \$500.00
Hearing Date: September 5, 2001 2 sessions		

Total Forum Fees	= \$750.00
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The Arbitrator has assessed the total forum fees of \$750.00 to Claimant.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

FEE SUMMARY

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 75.00
<u>Forum Fees</u>	= \$750.00
Total Fees	= \$825.00
<u>Less payments</u>	= \$325.00
Balance Due NASD Dispute Resolution, Inc.	= \$500.00

Respondent Raiké be and hereby is solely liable for:

Counterclaim/Cross Claim Filing Fee	= \$500.00
<u>Member Fees</u>	= \$300.00
Total Fees	= \$800.00
<u>Less payments</u>	= \$800.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

All balances are due and payable to NASD Dispute Resolution, Inc. immediately upon receipt of the Award by the parties pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Leonard Landsman

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Public Arbitrator

Arbitrator's Signature

_____/s/
Leonard Landsman
Public Arbitrator

Signature Date

October 2, 2001
Date of Service

FEE SUMMARY

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 75.00
Forum Fees	= \$750.00
Total Fees	= \$825.00
Less payments	= \$325.00
Balance Due NASD Dispute Resolution, Inc.	= \$500.00

Respondent Raiké be and hereby is solely liable for:

Counterclaim/Cross Claim Filing Fee	= \$500.00
Member Fees	= \$300.00
Total Fees	= \$800.00
Less payments	= \$800.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

All balances are due and payable to NASD Dispute Resolution, Inc. immediately upon receipt of the Award by the parties pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Leonard Landsman

Public Arbitrator

Arbitrator's Signature

Leonard Landsman
Public Arbitrator

10/1/01
Signature Date

Date of Service