

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants

Curtis J. Nelson and Barbara A. Nelson

Case Number: 00-05306

Name of the Respondents

L.H. Ross & Company, Inc.;
Guido A. Torres; Franklyn Ross Michelin; and
Ricardo Miguel Torres, Jr.

Hearing Site: St. Louis, Missouri.

REPRESENTATION OF PARTIES

Claimants Curtis J. Nelson and Barbara A. Nelson, hereinafter referred to as "Claimants," were represented by Jon A. Bierman, Esq., of Gallop, Johnson & Neuman, L.C. located in St. Louis, Missouri.

Respondents L.H. Ross & Company, Inc. ("L.H. Ross"), Guido A. Torres ("G. Torres") and Franklyn Ross Michelin ("Michelin") were represented by Alan P. Fraade, Esq., of the firm of Mintz & Fraade, PC, located in New York, New York. G. Torres did not appear in person at the hearing.

Respondent Ricardo Miguel Torres, Jr. ("R. Torres") did not appear at hearing.

CASE INFORMATION

Statement of Claim filed: November 30, 2000.

Claimant Curtis J. Nelson signed the Uniform Submission Agreement: November 20, 2000.

Claimant Barbara A. Nelson signed the Uniform Submission Agreement: November 21, 2000.

Claimants Motion to Amend the Statement of Claim filed on: November 13, 2001.

Statement of Answer filed by Respondents L.H. Ross and G. Torres on or about: January 23, 2001.

Respondent L.H. Ross signed the Uniform Submission Agreement: January 23, 2001.

Respondents Guido A. Torres, Franklyn Ross Michelin and Ricardo Miguel Torres, Jr. did not file signed Uniform Submission Agreements.

Respondents Franklyn Ross Michelin and Ricardo Miguel Torres, Jr. did not file a Statement of Answer.

Response to Claimants' Motion to Amend the Statement of Claim filed by Respondents L.H. Ross and G. Torres on: December 14, 2001.

Reply to Response to Claimants' Motion to Amend the Statement of Claim filed by Claimants on or about: December 14, 2001.

Response to Reply to Response to Claimants' Motion to Amend the Statement of Claim filed by Respondents L.H. Ross and G. Torres on: December 20, 2001.

CASE SUMMARY

Claimants asserted the following causes of action: unauthorized trading and breach of a commission agreement.

Unless specifically admitted in its Answer, Respondents L.H. Ross and G. Torres denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim fails to state a claim upon which relief can be granted and fails to state any facts which support the claim;
2. The claims are barred because Claimants knew and were aware of the risks associated with the investments and voluntarily chose to assume those risks which were the direct and proximate cause of any losses;
3. L.H. Ross acted in good faith at all times relevant to the claim;
4. The claims are barred because the Claimants as investors with full access and ability to inquire:
 - a. failed to exercise due diligence or reasonable care;
 - b. knew or in the exercise of the required degree of care and due diligence should have known, of the existence of those matters alleged to constitute violations of law that form their claim;
 - c. acted in willful and reckless disregard of those facts and matters alleged to constitute violations or causes of action complained of;
 - d. ratified or acquiesced in some of the matters alleged to constitute violations or claims; and,
 - e. failed to mitigate damages;
5. L.H. Ross is not liable to the Claimants because it had no duty, contractual or otherwise, to disclose or inform Claimants of any facts other than those which were disclosed, nor did L.H. Ross breach any duty owed to Claimants, if such duty existed;
6. L.H. Ross had at all relevant times procedures with respect to compliance and sales procedure, to wit;
 - a. A Chief Compliance Officer who closely supervised all the brokers and employees of L.H. Ross to confirm their understanding with respect to proper risk disclosure and suitability requirements; and
 - b. A NASD-approved Continuing Education Manual issued to each and every broker at L.H. Ross and monthly meetings with respect

to same as the Continuing Education Manual;

7. The actions of L.H. Ross are not the proximate cause of Claimants' alleged damages;
8. The Claimants failed to mitigate the damages alleged to have been incurred, and any amount they lost must be reduced by the amount these damages could have been mitigated;
9. The claims are barred and any damages reduced by Claimants' own contributory negligence in connection with the disputed investments;
10. Claimants authorized, accepted and/or ratified each of the transactions of which they now claim;
11. Claimants' accounts were invested in accordance with their investment objectives;
12. Any losses sustained by Claimants are attributable to market conditions and to their own investment decisions, not to any action or inaction on L.H. Ross's part, nor did L.H. Ross guarantee that securities would appreciate in value;
13. The claim is also barred by any applicable affirmative defense which are available if law of equity;
14. L.H. Ross's handling of Claimants' account was consistent with the standards and practices of the securities industry;
15. The Claimants' intentionally misleading and blatantly false Statement of Claim shows a pattern of deceit which puts into doubt the merit of each and every one of the assertions in the Statement of Claim;
16. At no time did L.H. Ross engage in any conduct to warrant the award of punitive damages, but instead exercised the greatest care with respect to Claimants' investments and traded on his account only upon Claimant's knowledge and permission and in accordance with all applicable laws; and
17. Claimants' commencement of this proceeding and the allegations they made are baseless and L.H. Ross is entitled to be reimbursed for its expenses and legal fees incurred in defending this baseless claim.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$ 69,166.01
Punitive Damages	\$400,000.00
Interest	Unspecified amount.
Attorneys' Fees	To be determined.
Other Costs	Unspecified amount.
Other Monetary/Non-Monetary Relief if any:	As the panel deemed proper.

Respondents L.H. Ross and G. Torres requested:

1. Dismissal of the claim in its entirety and a declaration that Respondents were not liable to the Claimants in any respect, in law or equity, upon the evidence presented;

2. An award of attorneys' fees and costs with respect to defending against Claimants' baseless claims; and
3. Grant such other and further relief as deemed appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

On January 25, 2002, the panel granted Claimants' Motion to Amend to add Respondents R. Torres and Michelin.

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators determined that Respondent Guido A. Torres and Ricardo Torres were 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").

Respondents Guido A. Torres, Franklyn Ross Michelin and Ricardo Miguel Torres, Jr. did not file a properly executed submission to arbitration with NASD Dispute Resolution, but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

Post-Hearing submissions were forwarded to the panel on August 1, 2002.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents L.H. Ross & Company, Inc. and Guido A. Torres are jointly and severally liable for and shall pay to Claimants Curtis J. Nelson and Barbara A. Nelson the sum of \$69,166.01 as compensatory damages, plus interest in the amount of \$6,016.23, for a total of \$75,182.24;
2. In addition, Respondents L.H. Ross & Company, Inc. and Guido A. Torres are jointly and severally liable for and shall pay to Claimants Curtis J. Nelson and Barbara A. Nelson the sum of \$100,000.00 as punitive damages. In deciding to award punitive damages, the panel considered the arguments presented by the parties, the briefs filed on their behalf and the Respondents' egregious behavior, and determined that authority existed for an award of punitive damages to the Claimants;
3. Furthermore, Respondents L.H. Ross & Company, Inc. and Guido A. Torres are jointly and severally liable for and shall pay to Claimants Curtis J. Nelson and Barbara A. Nelson the sum of \$34,773.73 as attorneys' fees. In deciding to award attorneys' fees, the panel considered the arguments and pleading presented by

counsel, as well as Mo. Ann. Stat. §409.41(j) and Colo. Rev. Stat. §11-51-604(3), and determined that authority existed for an award of attorneys' fees to the Claimants;

4. The claims against Respondents Franklyn Ross Michelin and Ricardo Miguel Torres, Jr. are dismissed and denied in their entirety;
5. The parties shall bear their own costs of arbitration, including any additional attorneys' fees, except for those sums specifically awarded herein; and,
6. Any and all relief not specifically addressed herein 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 person at the time of the events giving rise to the dispute. Accordingly, L.H. Ross & Company, Inc. is a party and the following member fees are assessed:

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 2,500.00
Total Member Fees	= \$ 4,600.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

September 13-14, 2001 adjournment by G. Torres	= \$ 1,125.00
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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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: May 24, 2001 1 session	
Two (2) Hearing sessions @ \$1,125.00	= \$ 2,250.00
Hearing Date: May 22, 2002 2 sessions	
Total Forum Fees	= \$ 3,375.00

The Panel has assessed \$3,375.00 of the forum fees jointly and severally to Respondents L.H. Ross & Company, Inc. and Guido A. Torres.

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.

Claimants Curtis J. Nelson and Barbara A. Nelson requested copies of tapes	= \$60.00
Respondent L.H. Ross & Company, Inc. requested copies of tapes	= \$60.00

SEE SUMMARY

Claimants Curtis J. Nelson and Barbara A. Nelson are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Administrative Costs</u>	= \$ 60.00
Total Fees	= \$ 360.00
<u>Less payments</u>	= \$ 1,425.00
Balance Refunded by NASD Dispute Resolution	= \$ 1,065.00

Respondent L.H. Ross & Company, Inc. is solely liable for:

Member Fees	= \$ 4,600.00
<u>Administrative Costs</u>	= \$ 60.00
Total Fees	= \$ 4,660.00
<u>Less payments</u>	= \$ 4,660.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Guido A. Torres is solely liable for:

Adjournment Fee	= \$ 1,125.00
<u>Less Payments</u>	= \$ 1,125.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents L.H. Ross & Company, Inc. and Guido A. Torres are jointly and severally liable for:

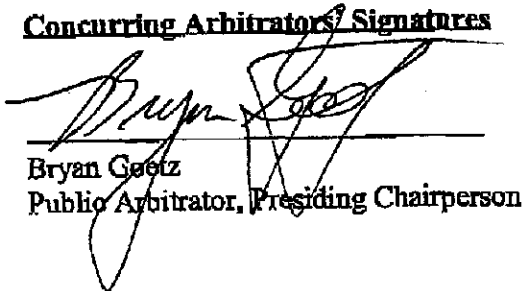
Forum Fees	= \$ 3,375.00
<u>Less Payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,375.00

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

ARBITRATION PANEL

Bryan Goetz - Public Arbitrator, Presiding Chairperson
Freeman H. Beets - Public Arbitrator
David R. Steckler, Esq. - Non-Public Arbitrator

Concurring Arbitrators' Signatures


Bryan Goetz
Public Arbitrator, Presiding Chairperson

9/13/02
Signature Date

Freeman H. Beets
Public Arbitrator

Signature Date

David R. Steckler, Esq.
Non-Public Arbitrator

Signature Date

9/19/02 
Date of Service (For NASD Dispute Resolution office use only)

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ARBITRATION PANEL

Bryan Goetz - Public Arbitrator, Presiding Chairperson
Freeman H. Beets - Public Arbitrator
David R. Steckler, Esq. - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Bryan Goetz
Public Arbitrator, Presiding Chairperson

Signature Date

Freeman H. Beets
Freeman H. Beets
Public Arbitrator

Sept. 19, 2002
Signature Date

David R. Steckler, Esq.
Non-Public Arbitrator

Signature Date

9/19/02 [Signature]
Date of Service (For NASD Dispute Resolution office use only)

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ARBITRATION PANEL

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Freeman H. Beets - Public Arbitrator
David R. Steckler, Esq. - Non-Public Arbitrator

NASD Dispute Resolution, Inc.
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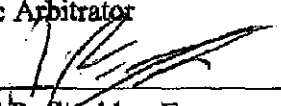
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Bryan Goetz
Public Arbitrator, Presiding Chairperson

Signature Date

Freeman H. Beets
Public Arbitrator

Signature Date



David R. Steckler, Esq.
Non-Public Arbitrator

9/11/02

Signature Date

9/19/02 Mgn

Date of Service (For NASD Dispute Resolution office use only)