

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Lolita Fabre, as special administrator and
beneficiary of the Estate of Margaret P. Galecki

Case No. 00-05738

Name of Respondents

BNY Clearing Services LLC;
James A. Reis;
M & M Bancorp/Investment Dept.; and,
First Union Securities, Inc.

Hearing Site: Milwaukee, Wisconsin

REPRESENTATION OF PARTIES

Claimant Lolita Fabre, as special administrator and beneficiary of the Estate of Margaret P. Galecki, appeared pro se.

Respondents BNY Clearing Services LLC ("BNY") and First Union Securities, Inc. ("First") were represented by Peter R. Sonderby, Esq. of the Law Offices of Peter R. Sonderby, Esq., located in Chicago, Illinois.

Respondent M & M Bancorp/Investment Dept. was a non-member of the NASD and did not voluntarily submit to arbitration.

Respondent James E. Reis was deceased at the time of filing.

CASE INFORMATION

Statement of Claim and Exhibits filed on or about: December 28, 2000.
Claimant Fabre signed the Uniform Submission Agreement: December 22, 2000.

Statement of Answer and Motion to Dismiss filed by Respondent First on or about: March 15, 2001.

Respondent First signed the Uniform Submission Agreement: January 30, 2001.

Claimant Fabre's Response to the Motion to Dismiss filed on or about: April 5, 2001

Statement of Answer and Request for Dismissal filed by Respondent BNY on or about: March 21, 2001.

Respondent BNY did not file a signed Uniform Submission Agreement.

Claimant Fabre's Response to BNY's Motion to Dismiss filed on or about: April 5, 2001.

Claimant Fabre's Supplement to the Response to the Motion to Dismiss filed on or about: October 16, 2001.

Respondents First and BNY's reply to the Supplement to the Motion to Dismiss filed on or about: October 25, 2001.

CASE SUMMARY

Claimant Fabre asserted that the following causes of action occurred from August 1981 to December 1995:

1. Respondents breached their fiduciary duty to Galecki;
2. Respondents were negligent in the handling of the Galecki accounts;
3. Respondents failed to exercise proper supervision of their employees;
4. Respondents failed to follow the written account instructions; and,
5. Respondents misappropriated the funds in the accounts by giving authority to one of Galecki's sons without her knowledge or consent, which resulted in the embezzlement of investments.

Unless specifically admitted in its Answer, Respondent First denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The claims are barred by the applicable statute of limitations;
2. The damages and losses to the Estate claimed by Fabre were not proximately caused by First or its predecessors, but instead by others, including Galecki's family members, over whom First has no control;
3. Galecki expressly authorized each of the transactions of which Fabre now complains when the transactions were made and/or ratified, and Fabre is now estopped by Galecki's own acts and conduct from complaining of those transactions;
4. Fabre has unclean hands in that she was a participant and involved in the transactions of which she now complains, and is therefore barred from seeking the relief requested; and,
5. Fabre is barred by the doctrine of laches by virtue of her unreasonable delay in asserting the claims that she attempts to set forth in the statement of claim.

Unless specifically admitted in its Answer, Respondent BNY denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The statement of Claim fails to state a claim against BNY or its predecessors for which any relief can be granted, in law or equity, and should be dismissed; and,
2. The Statement of Claim is ineligible for arbitration to the extent that actions are alleged to have occurred more than six years prior to the submission of the claim for arbitration on or after December 22, 2001.

RELIEF REQUESTED

Claimant Fabre requested compensatory damages of \$10,000,000.00; punitive damages; interest; attorneys' fees and other costs. In addition, Fabre requested non-monetary relief such as the production of documents and the return of ownership of all of Galecki's investments and certificates.

Respondent First requested that the panel deny Fabre's claim in its entirety; that First be awarded its attorneys' fees and costs in connection with the defense of this claim; and that the costs of this proceedings be assessed against Fabre.

Respondent BNY requested that all claims against it be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent BKY did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

By letter dated January 29, 2001, M & M Bancorp/Investment Dept. informed NASD Dispute Resolution that, as a non-member of the NASD without a contract to arbitrate with the Claimant, it was not voluntarily submitting to arbitration.

By letter dated March 13, 2001, Respondent First Union provided a copy of the death certificate indicating that Mr. Reis had died on December 9, 1998.

Respondents First and BKY each filed a Motion to Dismiss as part of their answer. Respondent First asserted several grounds, including:

1. Fabre did not have authority to pursue the claim in this forum;
2. Fabre had failed to indicate that NASD Dispute Resolution had jurisdiction over this dispute;
3. Even if arbitrable, the claim should be dismissed by the arbitrators pursuant to Rule 10305 of the Code of Arbitration Procedure and Fabre should be referred to her judicial remedies ;
4. The case should be dismissed pursuant to Rule 10314 of the Code because the claim fails to specify any relevant facts which support the claim against First; and,
5. This claim should be dismissed because of Fabre's failure to show that it is

eligible for submission to arbitration under Rule 10304 of the Code of Arbitration Procedure.

Respondent BNY also asserted that the claim was ineligible for arbitration pursuant to Rule 10314 of the Code.

Claimant Fabre responded to the Motions, asserting that she had authority to pursue the claims and that NASD Dispute Resolution had jurisdiction over this dispute. In addition, Fabre asserted that her claims were not discovered until late 1995 and therefore, the claims could not be dismissed pursuant to the six-year time limitation set forth in Rule 10304 of the Code.

AWARD

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

1. The panel finds that Claimant has failed to allege an occurrence or event giving rise to the act or dispute, claim or controversy within six (6) years of the filing of this action. Accordingly, the claim is barred by application of Rule 10304 of the NASD Code of Arbitration Procedure;
2. The Motion to Dismiss filed by Respondents BNY Clearing Services LLC and First Union Securities, Inc. is granted and the claim is dismissed without prejudice to the Claimant filing in another forum;
3. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those specifically enumerated herein; and,
4. 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, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee

= \$ 600.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firms are a party to this arbitration.

Member surcharge	= \$3,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= Did not accrue.

Adjournment Fees

Adjournments requested during these proceedings: None.

Forum Fees and Assessments

The panel has the authority to assess 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:

Two (2) Pre-hearing sessions with Panel x \$1,200.00	= \$ 2,400.00
Pre-hearing conferences: August 13, 2001 1 session	
November 6, 2001 1 session	
<hr/> Total Forum Fees	<hr/> = \$ 2,400.00

The panel has assessed \$1,200.00 of the forum fees to Claimant Lolita Fabre, as special administrator and beneficiary of the Estate of Margaret P. Galecki and \$1,200.00 of the forum fees, jointly and severally, to Respondents BNY Clearing Services LLC and First Union Securities, Inc.

EEE SUMMARY

Claimant Lolita Fabre, as special administrator and beneficiary of the Estate of Margaret P. Galecki, is solely liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 1,200.00
Total Fees	= \$ 1,800.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 00

Respondent BNY Clearing Services LLC is solely liable for:

Member Fees	= \$ 3,600.00
Less payments	= \$ 600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,000.00

Respondent First Union Securities, Inc. is solely liable for:

Member Fees	= \$ 3,600.00
Less payments	= \$ 3,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$.00

Respondents BNY Clearing Services LLC and First Union Securities, Inc. are jointly and severally liable for:

Forum Fees	= \$ 1,200.00
Less payments	= \$ 00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,200.00

All balances are due to NASD Dispute Resolution, Inc.

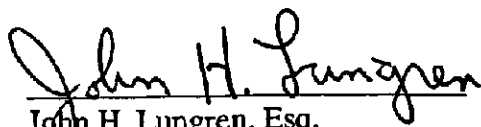
ARBITRATION PANEL

John H. Lungren, Esq. - Public Arbitrator, Presiding Chair

Barry E. Simon, Esq. - Public Arbitrator

Donald V. Anderson - Non-Public Arbitrator

Concurring Arbitrators' Signatures


John H. Lungren, Esq.
Public Arbitrator, Presiding Chair

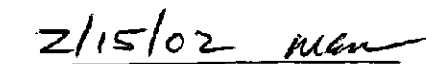

Signature Date

Barry E. Simon, Esq.
Public Arbitrator

Signature Date

Donald V. Anderson
Non-Public Arbitrator

Signature Date


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

Respondents BNY Clearing Services LLC and First Union Securities, Inc. are jointly and severally liable for:

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Less payments	= \$ 00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,200.00

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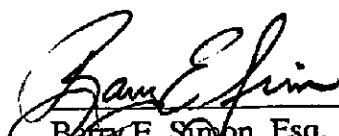
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Signature Date



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Public Arbitrator



Signature Date

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Non-Public Arbitrator

Signature Date



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Less payments	= \$ 00
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John H. Lungren, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Barry E. Simon, Esq.
Public Arbitrator


Signature Date



Donald V. Anderson
Non-Public Arbitrator

1/16/02

Signature Date

2/15/02 

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