

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Billy K. Lenser and Deborah Lenser, individually, and Billy K. Lenser as Trustee of the Kurt W. Lenser & Mildred E. Lenser Trust, Dena A. Lenser and Natalie A. Lenser, Claimants v. Mark F. Augusta, Respondent

Case Number: 00-05765

Hearing Site: San Francisco, California

REPRESENTATION OF PARTIES

For Claimants:

Howard M. Hoffman, Esq.
Sacramento, California

For Respondent:

Steven M. Green, Esq.
San Diego, California

CASE INFORMATION

Amended Statement of Claim filed on or about: January 23, 2001

Claimants' Billy K. Lenser and Deborah Lenser's Uniform Submission Agreement filed on or about: January 24, 2001

Uniform Submission Agreement signed by Billy K. Lenser as Trustee of the Kurt W. Lenser & Mildred E. Lenser Trust: December 14, 2000

Dena A. Lenser's Uniform Submission Agreement signed: December 20, 2000

Natalie A. Lenser's Uniform Submission Agreement signed: December 18, 2000

Statement of Answer filed by Respondent, Mark F. Augusta, on or about: March 22, 2001

Respondent Mark F. Augusta's Uniform Submission Agreement signed: February 6, 2001

CASE SUMMARY

Claimants alleged intentional breach of fiduciary and negligent breach of fiduciary duty with respect to investments in various bonds.

Respondent denied Claimants' allegations of wrongdoing and denied any liability to Claimants. Respondent also asserted various defenses.

RELIEF REQUESTED

Claimants requested:

1. Compensatory damages sufficient to make Claimants whole, including out of pocket loss, and pre-judgment interest or lost opportunity cost;
2. Disgorgement of Respondents' unjust enrichment generated as a result of wrongful conduct;
3. Exemplary and punitive damages;
4. Enhancement of the exemplary and punitive damages pursuant to California Civil Code Section 3345;
5. Reasonable attorney's fees;
6. Costs; and
7. Such other and further relief as the Panel may deem just and proper.

Respondent requested dismissal of Claimants' claims and requested an award of attorneys' fees and forum fees.

OTHER ISSUES CONSIDERED AND DECIDED

On or about February 20, 2002, the Panel was advised of the bankruptcy filing by Miller & Schroeder Financial, Inc. ("Miller & Schroeder") and that the above-referenced matter is stayed with respect to Miller & Schroeder.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

DEFINITIONS

As used herein, the following terms apply:

1. The Lenser Trust means Claimant Billy K. Lenser, Trustee of the Kurt W. Lenser & Mildred E. Lenser Trust.
2. Billy K. Lenser means Claimant Billy K. Lenser, an individual.
3. Deborah Lenser means Claimant Deborah Lenser an individual.
4. Dena A. Lenser means Claimant Dena A. Lenser an individual.

5. Natalie A. Lenser means Claimant Natalie A. Lenser an individual.
6. Respondent means Respondent Mark F. Augusta, an individual.
7. Bonds means the bonds that are the subject of the claims, and which were issued by or on behalf of Heritage Health Care of America ("Heritage") and/or its affiliates, for facilities owned or affiliated with Heritage located in Danforth, Texas; Chicago, Illinois; and Desert Hot Springs, California.

AWARD

1. As to the purchase by the Lenser Trust of the Danforth Bonds at a cost of \$100,395.83 on 7 July 1988, and of the Desert Hot Springs Bonds at a cost of \$31,350.73 on 15 April 1999, Respondent shall pay to the Lenser Trust the sum of \$131,746.56, together with pre-judgement interest in the amount of \$21,500.00, together with recovery of attorney's fees and costs in the amount of \$30,720.00.

2. Within thirty (30) days of receipt in full by the Lenser Trust of all sums due from Respondent as provided in Paragraph One above, together with any post-judgment interest that may hereafter accrue, the Lenser Trust shall convey to Respondent, free of liens and encumbrances, all right, title, and interest held by the Lenser Trust in the Danforth and Desert Hot Springs bonds described above. This portion of the Award is deemed revoked effective 31 July 2002 if, by that date, Respondent has not paid, in full, the payments required to be paid to the Trust.

3. As to the purchase by Billy K. Lenser of Danforth Bonds at a cost of \$100,395.83 on 7 July 1998, Respondent shall pay to Billy K. Lenser the sum of \$50,198.00, together with pre-judgement interest in the amount of \$7,900.00, together with recovery of attorney's fees and costs in the amount of \$11,700.00.

4. As to the purchase by Deborah Lenser of Danforth Bonds at a cost of \$100,395.83 on 7 July 1998, Respondent shall pay to Deborah Lenser the sum of \$50,198.00, together with pre-judgement interest in the amount of \$7,900.00, together with recovery of attorney's fees and costs in the amount of \$11,700.00.

5. As to the purchase by Natalie A. Lenser of Chicago Bonds at a cost of \$25,109.72 on 23 July 1998, Respondent shall pay to Natalie A. Lenser the sum of \$12,555.00, together with pre-judgement interest in the amount of \$1,975.00, together with recovery of attorney's fees and costs in the amount of \$2,940.00.

6. As to the purchase by Dena A. Lenser of Chicago Bonds at a cost of \$25,109.72 on 23 July 1998, Respondent shall pay to Dena A. Lenser the sum of \$12,555.00, together with pre-judgement interest in the amount of \$1,975.00, together with recovery of attorney's fees and costs in the amount of \$2,940.00.

7. Respondent shall pay to Claimants the sum of \$250.00 as reimbursement for Claimants' filing fee.

8. All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$250.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

(2) Pre-hearing conference sessions with the Panel @ \$1,000/session	= \$2,000.00
Pre-hearing conferences: October 22, 2001 1 session	
February 8, 2002 1 session	

(7) Hearing sessions @ \$1,000.00/session	= \$7,000.00
Hearings: February 26, 2002 2 sessions	
February 27, 2002 2 sessions	
February 28, 2002 2 sessions	
March 1, 2002 1 session	

Total Forum Fees	= \$9,000.00
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The Panel assessed the \$9,000.00 in forum fees to Respondent, Augusta.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

Respondent Augusta requested copies of arbitrator awards	= \$ 140.00
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Claimants requested copies of audio transcripts	= \$ 165.00
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Fee Summary

1. Claimants are charged with the following fees and costs:

Initial Filing Fee	= \$ 250.00
<u>Administrative Costs</u>	= \$ 165.00
Total Fees	= \$ 415.00
<u>Less Payments</u>	= \$(1,415.00)
Refund Due Claimants	= \$ 1,000.00

2. Respondent, Augusta, is charged with the following fees and costs:

Forum Fees	= \$ 9,000.00
<u>Administrative Costs</u>	= \$ 140.00
Total Fees	= \$ 9,140.00
<u>Less Payments</u>	= \$(1,265.00)
Balance Due NASD-DR	= \$ 7,875.00

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

ARBITRATION PANEL

Paul F. Faberman	-	Public Arbitrator, Presiding Chair
Paul J. Derenthal, Esq.	-	Public Arbitrator
Carlos Richard Mangum	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Paul F. Faberman
Chair, Public Arbitrator

Signature Date

Paul J. Derenthal, Esq.
Public Arbitrator

Signature Date

Carlos Richard Mangum
Non-Public Arbitrator


Signature Date

Date of Service

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Chair, Public Arbitrator



Signature Date

Paul J. Derenthal, Esq.
Public Arbitrator

Signature Date

Carlos Richard Mangum
Non-Public Arbitrator

Signature Date

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Carlos Richard Mangum	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Paul F. Faberman
Chair, Public Arbitrator



Paul J. Derenthal, Esq.
Public Arbitrator

Signature Date

3/22/02

Signature Date

Carlos Richard Mangum
Non-Public Arbitrator

Signature Date

Date of Service

ARBITRATION PANEL

Paul F. Faberman -
Paul J. Derenthal, Esq. -
Carlos Richard Mangum -

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator


Concurring Arbitrators' Signatures

Paul F. Faberman
Chair, Public Arbitrator

Signature Date

Paul J. Derenthal, Esq.
Public Arbitrator

Signature Date



Carlos Richard Mangum
Non-Public Arbitrator

2/24/02

Signature Date

Date of Service