

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 01-00650

Gregory P. Terhune

Name of the Respondents

Hearing Site: Philadelphia, Pennsylvania

Continental Broker-Dealer Corporation,  
and Jonathan K. Lewis

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REPRESENTATION OF PARTIES

Claimant Gregory P. Terhune, hereinafter referred to as "Claimant", was represented by Christopher B. Jones, Esq., Law Offices of Christopher B. Jones, Scranton, Pennsylvania.

Respondent Continental Broker-Dealer Corporation ("Continental") was represented by Dominick Bianco, CCO, Continental Broker-Dealer Corporation, Carle Place, New York.

Respondent Jonathan K. Lewis ("Lewis") was not represented by counsel and did not attend the hearing.

CASE INFORMATION

Statement of Claim filed on February 1, 2001.

Claimant signed the Uniform Submission Agreement on January 31, 2001.

Statement of Answer filed by Respondent Continental on May 22, 2001.

Respondent Lewis did not file an Answer with NASD Dispute Resolution.

Respondent Lewis did not file a signed Uniform Submission Agreement with NASD Dispute Resolution.

A representative executed Respondent Continental's Uniform Submission Agreement on March 12, 2001.

CASE SUMMARY

Claimant asserted the following causes of action, among others: breach of fiduciary duty; failure to supervise; *Respondeat Superior*; violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"); violation of the Pennsylvania Securities Act; violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law; excessive trading, fraud; unsuitability; churning; and, misrepresentation. The causes of action relate to the purchase and sale of various unspecified securities.

Unless specifically admitted in its Answer, Respondent Continental denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief may be granted; Statute of Limitations; estoppel, waiver, ratification, and laches; Respondent acted in good faith and in compliance with all applicable rules and regulations; Claimant did not reasonably rely on any wrongful action or inaction by Respondent; Respondent did not have discretionary authority over the account; Claimant controlled the account; Respondent was not a fiduciary; Respondent adequately supervised Claimant's account; Respondent did not make any misrepresentations, untrue statements or omissions of material fact or unsuitable recommendations; failure to mitigate; allegations in Statement of Claim are conclusory; the facts in this case do not support a claim for punitive damages; award of pre-judgment interest and attorney's fees is barred as a matter of law; Respondents acted in good faith; and, Respondent did not violate RICO.

#### RELIEF REQUESTED

Claimant in his Statement of Claim requested:

Compensatory Damages	\$ 40,000.00
Punitive Damages	unspecified
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified

Respondent Continental in its Statement of Answer requested the claim be dismissed in all respects, and that disbursements and costs be assessed against Claimant.

#### OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned Panel determined that Respondent Lewis has 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 Lewis did not file with NASD Dispute Resolution, 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.

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. Respondents Continental and Lewis are jointly and severally liable to and shall pay to Claimant compensatory damages of \$20,809.47, plus simple interest at a rate of 6% per annum from July 31, 1999 until the date of payment;
2. Respondent Lewis shall pay Claimant compensatory damages in the amount of \$10,000.00, plus simple interest at a rate of 6% per annum from July 31, 1999 until the date the Award is paid in full;
3. Respondent Lewis shall pay Claimant punitive damages in the amount of \$100,000.00 for his fraudulent and outrageous behavior;
4. Respondents Continental and Lewis are jointly and severally liable to and shall pay to Claimant reimbursement of filing fees of \$175.00;
5. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and,
6. Any and all relief not specifically addressed herein is denied in its entirety.

#### 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	= \$ 175.00
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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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Continental is a party.

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$ 1,000.00</u>
Total Member Fees	= \$ 2,400.00

##### 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 a single arbitrator @ \$ 450.00 = \$ 450.00  
Pre-hearing conference: September 26, 2002 1 session

One (1) Pre-hearing sessions with Panel @ \$ 600.00 = \$ 600.00  
Pre-hearing conference: July 23, 2002 1 session

Two (2) Hearing sessions @ \$ 600.00 = \$ 1,200.00  
Hearing Date: October 15, 2002 2 sessions

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Total Forum Fees = \$ 2,250.00

1. The Panel has assessed \$ 2,250.00 of the forum fees jointly and severally to Respondents.

#### FEE SUMMARY

1. Claimant is assessed the following fees:

<u>Initial Filing Fee</u>	= \$ 175.00
<u>Total Fees</u>	= \$ 175.00
<u>Less payments</u>	= \$ 650.00
<u>Refund Owed Claimant from NASD Dispute Resolution</u>	= \$ 450.00

2. Respondent Continental is assessed the following fees:

<u>Member Fees</u>	= \$ 2,400.00
<u>Total Fees</u>	= \$ 2,400.00
<u>Less payments</u>	= \$ 2,400.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

3. Respondents are jointly and severally assessed the following fees:

<u>Forum Fees</u>	= \$ 2,250.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 2,250.00

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

#### ARBITRATION PANEL

Charles J. Bloom, Esq.	-	Public Arbitrator, Presiding Chairperson
Julian F. Santos	-	Public Arbitrator, Panelist
John P. Azzopardi, CFP	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

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Charles J. Bloom, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Julian F. Santos  
Public Arbitrator, Panelist

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Signature Date

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John P. Azzopardi, CFP  
Non-Public Arbitrator, Panelist

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Signature Date

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

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Public Arbitrator, Presiding Chairperson

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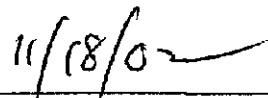
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November 26, 2002  
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Charles J. Bloom, Esq.  
Public Arbitrator, Presiding Chairperson



Signature Date

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Julian F. Santos  
Public Arbitrator, Panelist

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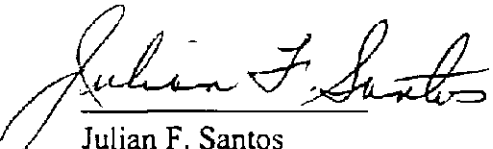
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