
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Raquel C. Nunez-Valdes

Case Number: 01-01170

Names of the Respondents
Richard B. Vance & Co.
Robert Francis Daly
Richard E. Vidican
Stephen W. Bracken
Mark J. Geregach
Robert F. Pederson
Dennis Lee Sluski
John Richard Cislighi
James Scroggins

Hearing Site: Tampa, Florida

Nature of the Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

For Raquel C. Nunez-Valdes, hereinafter referred to as "Claimant": Richard R. Logsdon, Esq., Clearwater, FL and Allan J. Fedor, Esq., Fedor and Fedor, Largo, FL.

Respondent Robert Francis Daly ("Daly") did not appear in this matter.

For Respondents Richard E. Vidican ("Vidican") and John Richard Cislighi ("Cislighi"): John E. Johnson, Esq., Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis, P.A., Tampa, FL.

Respondents Stephen W. Bracken ("Bracken") and Mark J. Geregach ("Geregach") appeared pro se.

For Respondent Robert F. Pederson ("Pederson"): Burton W. Wiand, Esq. and Katherine C. Lake, Esq., Fowler White Boggs Banker, Tampa, FL.

For Respondents Dennis Lee Sluski ("Sluski") and James Scroggins ("Scroggins"): Bruce W. Barnes, Esq., Clearwater, FL.

For Richard B. Vance & Co. ("Vance"): Burton W. Wiand, Esq. and Katherine C. Lake, Esq., Fowler White Boggs Banker, Tampa, FL.

CASE INFORMATION

Statement of Claim filed on or about: March 7, 2001.
Amended Statement of Claim filed on or about: March 14, 2002.
Claimant signed the Uniform Submission Agreement: March 13, 2002.
Statement of Answer filed by Vance on or about: May 9, 2001.
Vance signed the Uniform Submission Agreement: June 1, 2001.
Statement of Answer filed by Respondent Bracken on or about: May 28, 2002.
Respondent Bracken signed the Uniform Submission Agreement: May 28, 2002.
Statement of Answer filed by Respondent Geregach on or about: May 16, 2002.
Respondent Geregach signed the Uniform Submission Agreement: May 14, 2002.
Respondents Daly, Vidican, Pederson, Sluski, Cislighi, and Scroggins did not file executed Uniform Submission Agreements or Statements of Answer.
Respondent Pederson's Motion to Stay Arbitration filed on or about: May 14, 2002.
Claimant's Response to the Motion to Stay Arbitration filed on or about: May 30, 2002.
Respondent Pederson's Reply in Support of the Motion to Stay filed on or about: June 5, 2002.
Respondents Sluski and Scroggins' Joinder to the Motion to Stay filed on or about: June 13, 2002.

CASE SUMMARY

Claimant alleged that Respondents Daly, Vidican, Bracken, Geregach, Pederson, Sluski, Cislighi, and Scroggins (hereinafter collectively referred to as "Respondents") sold her unsuitable high-risk investments collectively totaling \$330,000.00 and asserted claims for negligent supervision and breach of fiduciary duty against Respondents Vidican, Bracken, Geregach, Pederson, Sluski, Cislighi, and Scroggins. These claims related to the purchase by the Claimant of certain products sold by Vance registered representative Respondent Daly. The products were never approved through Vance. The individual Respondents (other than Daly) had no involvement whatsoever in, or responsibility for, the transactions at issue.

As to Respondent Daly, Claimant alleged that misrepresentations and omissions were made concerning the safety of those investments. The investments consisted of the purchase of \$125,000.00 in units of ATM LLC, Midwest and \$205,000.00 in secured notes offered by Rolls Royce, Ltd., also known as Cash 4 Titles. Claimant alleged the ATM investment became worthless and Cash 4 Titles is being investigated as a massive ponzi/pyramid scheme. Claimant further alleged the following: that Respondent Daly represented the securities as safe and conservative investments suitable for the Claimant's conservative investment needs; that she was an unsuspecting, naive, unsophisticated investor who completely relied on Respondent Daly's purported professional financial advice and expertise; that she was completely unaware that her principal was at high risk; that Respondent Daly did not provide her with a prospectus for either the ATM investment or the Rolls Royce, Ltd. notes even though Florida law requires that a prospectus be given to the purchaser prior to the purchase; and, that the secured notes were not properly registered as securities in the state of Florida prior to their sale.

In 1995, Claimant's former spouse passed away and left her the proceeds of a life insurance policy. After paying several obligations, she had \$505,000.00 available for investment.

Claimant wanted a safe and conservative investment strategy in that she wanted to be able to provide for a college education for her two children. She recognized that she could never accumulate this sum of money in her lifetime from her limited earnings.

Claimant met Respondent Daly through her former employer and began doing business with him in April 1996 by investing \$125,000.00 in a universal life policy with Illinois Mutual Life Insurance Company, Vance's parent company. At the same time, she also invested \$160,000.00 in three Putnam mutual funds and \$125,000.00 into a Mutual Benefits Corp. viatical program. The monthly account statements from the three Putnam Mutual Funds show that Respondent Daly's broker/dealer was Vance.

In June 1997, Claimant's viatical program ended and at Respondent Daly's recommendation she used \$125,000.00 to buy 12 ½ units of ATM LLC. The ATM investment is probably worthless. In November 1997, the Putnam mutual funds were liquidated and the \$160,000.00 redemption was used to purchase a promissory note in the Cash 4 Titles program recommended by Mr. Daly. Claimant later rolled over that Cash 4 Titles note in August 1999, and purchased a second Cash 4 Titles note for \$45,000.00 in May 1999. The Cash 4 Titles Company is in liquidation and the notes are now worthless. Claimant relied on Respondent Daly's inherent and apparent authority to sell securities products through Vance. Her Putnam mutual fund statements showed "Richard B. Vance & Co." as her "Investment Firm."

Claimant alleged that Respondents' conduct constituted fraudulent transactions in violation of the Florida Securities and Investor Protection statute, F.S. § 517.301, and a violation of F.S. § 517.07 because of the failure to provide a prospectus. Further, Claimant alleged that Respondents' conduct constituted common law fraud or negligent misrepresentation, negligence and/or gross negligence and a breach of Respondents' fiduciary duty to Claimant.

Unless specifically admitted in their Answer, Respondents Bracken and Geregach denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages for the securities purchased of approximately \$425,000.00, plus statutory legal interest, costs, rescission, expenses, disbursements and reasonable attorney's fees to be awarded by a court of competent jurisdiction, as well as the \$1,425 filing fee and hearing session deposit paid to the NASD. Claimant also requested punitive damages and such other relief as the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents Bracken and Geregach requested dismissal of the Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

Richard B. Vance & Company was named as a Respondent in the Statement of Claim in this matter. On or about February 4, 2002, NASD Dispute Resolution was informed that Richard B.

Vance & Company filed for protection under Chapter 7 of the United States Bankruptcy Code. Accordingly, the arbitration was stayed with respect to Vance and the Panel made no determinations with respect to Vance.

On November 5, 2003, Claimant dismissed, with prejudice, all of her claims against all Respondents with the exception of Respondent Daly.

On or about December 11, 2003, the Claimant and Respondents Vidican, Bracken, Geregach, Pederson, Sluski, Cislighi, and Scroggins notified the Panel that Claimant dismissed, with prejudice, all of her claims against Respondents Vidican, Bracken, Geregach, Pederson, Sluski, Cislighi, and Scroggins and requested that the Panel expunge all references to the above-captioned arbitration from Respondents Vidican, Bracken, Geregach, Pederson, Sluski, Cislighi, and Scroggins' registration records (the "parties' stipulation") maintained by the NASD Central Registration Depository ("CRD").

Respondent Daly did not appear at the evidentiary hearing. The Panel finds that Respondent Daly was duly served with the Claimant's original Statement of Claim and notice of the hearing scheduled for February 9, 2004, by NASD. Respondent Daly failed to file a Statement of Answer or Uniform Submission Agreement. The record is clear that Respondent Daly was personally served with a copy of the Claimant's Statement of Claim and other related documents on October 2, 2001 at his residence in New Port Richey, Florida. Notices after October 2, 2001, were served on Respondent Daly by NASD. The Panel finds that it has proper jurisdiction over Respondent Daly.

Respondents Daly, Vidican, Pederson, Sluski, Cislighi, and Scroggins did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and are bound by the determination of the Panel on all issues submitted.

The parties present at the 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 parties' stipulation, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent Daly is found liable under both F.S. §§ 517.301 and 517.07, for fraud and for fraud in a fiduciary capacity, failure to provide a prospectus and under the other alleged common law claims and shall pay to Claimant, Raquel C. Nunez-Valdes, actual and compensatory economic damages in the amount of \$415,748.93 plus post award interest at the legal rate from the date of this Award to the date of payment of the Award.

Claimant's request for punitive damages is denied.

The securities transactions at issue are hereby rescinded and Claimant, upon receipt of full payment of all parts of this award, shall transfer all her right, title, and interest in ATM, LLC Midwest and Rolls Royce, Inc. aka Cash 4 Titles to Respondent Daly.

Respondent Daly is liable and shall pay to Claimant the sum of \$300.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

In accordance with F.S. §§ 517.211, 682.11 and the cases interpreting these statutes, the amount of reasonable attorney's fees to be awarded to Claimant's counsel shall be determined by a court of competent jurisdiction in a post award action to confirm this Award and award Claimant her reasonable attorney's fees. *Moser v. Barron Chase Securities, Inc.*, 783 So.2d 231 (Fla. 2001).

Given the Claimant's dismissal of the claims against Respondents Vidican, Bracken, Geregach, Pederson, Sluski, Cislighi, and Scroggins, and the fact that these individuals had no involvement in, or responsibility for the transactions at issue, the Panel recommends the expungement of all references to the above-captioned arbitration from Respondents Vidican, Bracken, Geregach, Pederson, Sluski, Cislighi, and Scroggins' registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Vidican, Bracken, Geregach, Pederson, Sluski, Cislighi, and Scroggins must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Respondents Vidican, Bracken, Geregach, Pederson, Sluski, Cislighi, and Scroggins shall each bear their own costs, expenses, and attorneys' fees.

Any and all claims for relief not specifically addressed herein are 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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Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

February 7 and 8, 2002, adjournment by Claimant. The Panel waived the adjournment fee.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were assessed during these proceedings.

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 the Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: September 10, 2001 1 session	
Two (2) Hearing sessions @ \$1,125.00	= \$ 2,250.00
Hearing Dates: February 6, 2002 1 session	
February 9, 2004 1 session	
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Total Forum Fees	= \$ 3,375.00

The Panel has assessed the total forum fees of \$3,375.00 to Respondent Daly.

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.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Daly is solely liable for:

Forum Fees	= \$ 3,375.00
Total 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

William F. Glaser, Jr.	-	Public Arbitrator, Presiding Chairperson
Bernard Y. Cockrell, II	-	Public Arbitrator
Robert Schwartz	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
William F. Glaser, Jr.
Public Arbitrator, Presiding Chairperson

Signature Date

/s/
Bernard Y. Cockrell, II
Public Arbitrator

Signature Date

/s/
Robert Schwartz
Non-Public Arbitrator

Signature Date

March 3, 2004
Date of Service (For NASD Dispute Resolution office use only)

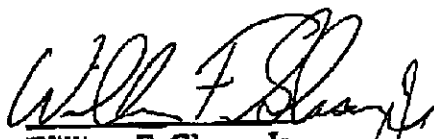
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Public Arbitrator, Presiding Chairperson

3/2/04
Signature Date

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Public Arbitrator

Signature Date

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Non-Public Arbitrator

Signature Date

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