

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Caroline J. Winston and Peter W.D. Sailer, (Claimants) vs. First Liberty Investment Group, Inc., Ahmed Gadelkareem, Gresham Cooney, James O'Connor, Sheldon Traube, Warren Schumacher, and Stephen DeBusso, (Respondents)

Case Number: 01-02034

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Caroline J. Winston ("Winston"), appeared *pro se*.

Claimant, Peter W.D. Sailer ("Sailer"): Michael S. Cole, Esq., Cascone, Cole & Collyer, New York, NY. Sailer originally appeared through Claimant Winston as his Authorized Agent.

Respondent, First Liberty Investment Group, Inc. ("Liberty"), did not appear at the hearings in this matter. Previously represented by: Nicholas J. Guiliano, Esq., a sole practitioner, Philadelphia, PA.

Respondent, Ahmed Gadelkareem ("Gadelkareem"): David E. Robbins, Esq., Kaufmann, Feiner, Yamin, Gildin & Robbins, LLP, New York, NY. Previously represented by: Nicholas J. Guiliano, Esq., a sole practitioner, Philadelphia, PA.

Respondents, Gresham Cooney ("Cooney"), James O'Connor ("O'Connor"), and Sheldon Traube ("Traube"): Nicholas J. Guiliano, Esq., a sole practitioner, Philadelphia, PA.

Respondent, Warren Schumacher ("Schumacher"), appeared *pro se*. Previously represented by: Nicholas J. Guiliano, Esq., a sole practitioner, Philadelphia, PA.

Respondent, Stephen DeBusso ("DeBusso"), did not make an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: April 18, 2001.

Response to Motion to Dismiss filed by Winston and Sailer on or about: August 10, 2001.

Winston signed the Uniform Submission Agreement: April 16, 2001.

Sailer signed the Uniform Submission Agreement.

Joint Statement of Answer, Counterclaim, and Motion to Dismiss filed by Liberty, Gadelkareem, Cooney, O'Connor, Traube, and Schumaker on or about: July 30, 2001.
Liberty signed the Uniform Submission Agreement: July 19, 2001.
Gadelkareem signed the Uniform Submission Agreement: July 19, 2001.
Cooney signed the Uniform Submission Agreement: July 19, 2001.
O'Connor signed the Uniform Submission Agreement: July 19, 2001.
Traube did not sign a Uniform Submission Agreement.
Schumacher signed the Uniform Submission Agreement: July 19, 2001.

DeBusso did not file a Statement of Answer or sign a Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: churning; fraud; failure to supervise; unauthorized trades; and unsuitability. Claimants' claim involved the stock of Plug Power, as well as other, unspecified stocks and options.

Unless specifically admitted in their Answer, Liberty, Gadelkareem, Cooney, O'Connor, Traube, and Schumaker denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants have failed to state a claim for which relief can be granted; there is no private cause of action for violation of SRO rules; Claimants failed to rely, or were unjustified in relying, on any alleged omissions of material fact by Respondents; Claimants have failed to plead and cannot prove that Respondents acted with the required mental state, or intended to defraud or deceive Claimants; Claimant's losses are attributable to the acts of third parties, unforeseen events, and general market conditions outside of Respondents' control; Respondents never controlled Claimants' securities accounts; Claimants are estopped from alleging they are unsuitable or that the transactions in their accounts were not consistent with their stated investment objectives; Claimants' claim for churning is barred by the doctrine of waiver; Claimants have failed to plead that any alleged wrongful conduct was related to, or were the cause of, Claimants' losses; Claimants have failed to plead and cannot prove that but for Respondents' conduct that Claimants' losses could in fact have been prevented; Claimants made their own investment decisions, and the losses complained of are the result of their own conduct; Claimants have failed to state a claim for control person liability; and Claimants' action is barred by the doctrines of waiver, laches, unclean hands, accord and satisfaction, and ratification.

In their Counterclaim against Winston, Liberty, Gadelkareem, Cooney, O'Connor, Traube, and Schumacher asserted the following causes of action: indemnification and/or contribution.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$244,000.00 for Winston and \$130,000.00 for Sailer, plus punitive damages in the amount of \$750,000.00, forum fees, attorneys' fees, witness and production fees, and costs.

In their Answer, Liberty, Gadelkareem, Cooney, O'Connor, Traube, and Schumacher requested an Award:

- a. Dismissing Claimants' Statement of Claim in its entirety;
- b. Ordering Claimants to pay all hearing costs;
- c. Ordering expungement of this matter from the registration records of Gadelkareem, Cooney, O'Connor, Traube, and Schumacher;
- d. Awarding them their costs and reasonable attorneys' fees; and
- e. Granting such other relief that the Panel may deem just, fair, and equitable.

In their Counterclaim, Liberty, Gadelkareem, Cooney, O'Connor, Traube, and Schumacher requested indemnification and/or contribution from Winston for any amount awarded against them in favor of Sailer including, but not limited to, the total amount of any such Award, together with hearing costs, interest, and reasonable attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

NASD Dispute Resolution was unable to effect service upon Respondent DeBusso in this matter. Therefore, DeBusso was not considered a party to this proceeding.

Claimant Sailer appeared briefly on the first day of hearings, at which time he obtained counsel and requested an adjournment. The Panel denied this request and the hearing proceeded. Sailer left the proceedings at that time and did not further participate in these proceedings. At the conclusion of the case, the Panel dismissed Sailer's claims, with prejudice.

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Liberty 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 Liberty present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Traube 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, having answered the claim, 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. Gadelkareem is solely liable for and shall pay to Winston the sum of \$31,790.65 as compensatory damages, plus simple interest at the rate of 4% accruing from June 5, 2000 until the date of this Award.
2. Sailer's claims are hereby dismissed in their entirety, with prejudice.
3. Claimants' claims against Liberty, Cooney, O'Connor, Traube, and Schumaker are hereby dismissed in their entirety.
4. Respondents' Counterclaim against Winston is hereby dismissed in its entirety.
5. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Cooney's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Cooney must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
6. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent O'Connor's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent O'Connor must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
7. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Traube's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Traube must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

8. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Schumacher's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Schumaker must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
9. Gadelkareem is solely liable for and shall pay to Claimants the sum of \$500.00, to reimburse Claimants for the filing fee previously paid to NASD Dispute Resolution.
10. All other requests for relief are hereby 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	= \$ 500.00
Counterclaim filing fee	= \$ 1,250.00

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. In this matter, First Liberty Investment Group, Inc. is a party.

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

Forum Fees and Assessments.

The Panel assesses 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:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: May 16, 2002	1 session
One (1) Pre-hearing session with Panel x \$1,200.00	= \$ 1,200.00
Pre-hearing conference: February 8, 2002	1 session

Twelve (12) Hearing sessions x \$1,200.00 = \$14,400.00

Hearing Dates:	August 21, 2002	2 sessions
	August 22, 2002	2 sessions
	August 23, 2002	2 sessions
	January 14, 2003	2 sessions
	January 15, 2003	2 sessions
	January 16, 2003	2 sessions

Total Forum Fees = \$16,050.00

The Panel has assessed all of the forum fees against Gadelkareem.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Winston, requested tapes, \$150.00.
2. Sailer, requested tapes, \$195.00.

Fee Summary

1. Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less payments</u>	= \$ 500.00
Balance Due NASD Dispute Resolution	= \$ 0.00

As stated in the "Award" section above, Gadelkareem is liable and shall reimburse Claimants for the \$500.00 filing fee.

2. Winston is solely liable for:

<u>Administrative Costs</u>	= \$ 150.00
<u>Total Fees</u>	= \$ 150.00
<u>Less payments</u>	= \$ 1,350.00
Refund Due Winston	= \$ 1,200.00

3. Sailer is solely liable for:

<u>Administrative Costs</u>	= \$ 195.00
<u>Total Fees</u>	= \$ 195.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 195.00

4. Liberty is solely liable for:

<u>Member Fees</u>	= \$ 7,600.00
<u>Total Fees</u>	= \$ 7,600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 7,600.00

5. Gadelkareem is solely liable for:

<u>Forum Fees</u>	= \$16,050.00
<u>Total Fees</u>	= \$16,050.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$16,050.00

4. Liberty, Gadelkareem, Cooney, O'Connor, Traube, and Schumacher are jointly and severally liable for:

<u>Counterclaim Filing Fee</u>	= \$ 1,250.00
<u>Total Fees</u>	= \$ 1,250.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,250.00

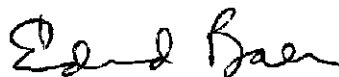
All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Edward Baer, Esq.	-	Public Arbitrator, Presiding Chair
Hugh N. Fryer, Esq.	-	Public Arbitrator
Edward Buscemi	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Edward Baer, Esq.
Public Arbitrator, Presiding Chair

Feb. 5, 2003

Signature Date

Hugh N. Fryer, Esq.
Public Arbitrator

Signature Date

Edward Buscemi
Non-Public Arbitrator

Signature Date

February 20, 2003

Date of Service (For NASD Dispute Resolution use only)

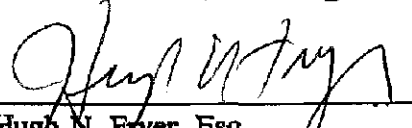
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Edward Baer, Esq.
Public Arbitrator, Presiding Chair



Hugh N. Fryer, Esq.
Public Arbitrator

Signature Date

2-2-03

Signature Date

Edward Buscemi
Non-Public Arbitrator

Signature Date

February 20, 2003
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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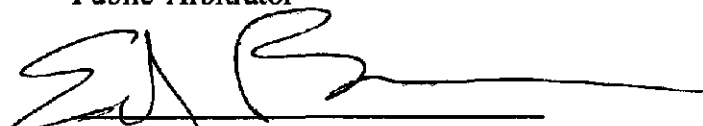
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Edward Baer, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Hugh N. Fryer, Esq.
Public Arbitrator

Signature Date



Edward Buscemi
Non-Public Arbitrator

Feb 4 2003

Signature Date

February 20, 2003
Date of Service (For NASD Dispute Resolution use only)