

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Soraya Namay

and

Case Number: 01-02226

Hearing Site: Southfield, Michigan

Names of Respondents

McDonald Investments, Inc.  
Rita Mansour, and  
James Porea

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**REPRESENTATION OF PARTIES**

Soraya Namay ("Claimant") was represented by Michael Huberman, and Seth Huberman, Esq., Michael Huberman & Associates, La Quinta, California.

McDonald Investments, Inc. ("McDonald"), Rita Mansour ("Mansour"), and James Porea ("Porea") were represented by Joseph Simms, Esq., and Michael N. Ungar, Esq., Ulmer & Berne LLP, Cleveland, Ohio.

**CASE INFORMATION**

The Statement of Claim was filed on or about May 1, 2001. The Amended Statement of Claim was filed on or about May 17, 2002. The Submission Agreement of Claimant Soraya Namay was signed on or about April 30, 2001.

Joint Statement of Answer was filed by Respondents on or about July 26, 2001. Joint Answer of Respondents to Amended Statement of Claim was filed by Respondents McDonald, Mansour and Porea on or about June 17, 2002. The Submission Agreement of Respondent McDonald was signed on or about July 27, 2001, by Henry Kerr. The Submission Agreement of Respondent Rita Mansour was signed on or about July 30, 2001. The Submission Agreement of Respondent James Porea was signed on or about July 30, 2001.

Claimant filed a Request to Amend Statement of Claim on or about March 27, 2002. Respondents' Brief in Opposition to Claimant's Request to Amend Statement of Claim was filed on or about April 8, 2002.

Respondents filed a Motion to Dismiss and/or for Partial Summary Judgment on or about March 18, 2002. Claimant's Response to Motion was filed on or about April 3, 2002. Respondents' Reply to Claimant's Response to Respondents' Motion was filed on or about April 8, 2002.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, negligence, failure to supervise and control, unauthorized trades, violation of federal and state securities laws, violation of NASD Rules of Fair Practice and NYSE Rules, violation of "Magistrate's " Order and the Injunctions. The causes of action relate to alleged unauthorized purchases on margin of various stocks in violation of a Court's Order and injunctions.

Unless specifically admitted in their Answer, all Respondents denied the allegations made in the Statement of Claim and asserted the affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted, at all times herein, Respondents reasonably followed and adhered to all compliance and supervisory procedures, as well as to all applicable rules of the NASD, Respondents, in discharging their duties, if any, to Claimant acted in good faith and exercised at least that degree of care, diligence, and skill which ordinarily prudent persons would exercise in similar circumstances and like positions, and at all times herein, Respondent McDonald properly supervised Mansour and Porea.

### **RELIEF REQUESTED**

In the Amended Statement of Claim, Claimant requested an award in the amount of \$3,000,000 in general and compensatory damages, plus \$4,100,000 in lost opportunity costs, in addition to costs of proceedings, interest at the legal rate on all sums recovered, attorneys' fees and costs, and such other and further relief as the Panel deems just and appropriate.

Respondents requested that the claims asserted against them be dismissed in their entirety, that judgment be rendered against Claimant with all costs and forum fees to be assessed against the Claimant, that Respondents be awarded their attorneys' fees and that all references to this matter be expunged from Mansour's and Porea's CRD records.

### **OTHER ISSUES CONSIDERED & DECIDED**

The Panel granted Claimant's Motion to File an Amended Statement of Claim in its Order entered on or about May 9, 2002.

The Panel denied Respondents' Motion to Dismiss and/or for Partial Summary Judgment in its order entered on or about May 9, 2002.

Claimant dismissed Respondent James Porea with prejudice and stipulated to the expungement of all references to this proceeding from Respondent Porea's CRD records on or about November 18, 2002.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

### AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent McDonald Investments, Inc. is liable for and shall pay to Claimant, Soraya Namay, the sum of \$75,283.22 in compensatory damages;
- 2.) Respondent McDonald Investments, Inc. is liable for and shall pay to Claimant, Soraya Namay, interest at the rates per annum indicated in subparagraph 2a. below, from and including May 1, 2001, through and including the date this award is paid in full pursuant to Michigan Statute;
  - a.)

<u>Period</u>	<u>Interest Rate</u>
01/01/01 – 06/30/01	6.965%
07/01/01 – 12/31/01	5.782%
01/01/02 – 06/30/02	5.14%
07/01/02 – 12/31/02	5.36%
01/01/03 –	4.189%
- 3.) Each and all of Claimant's claims against Rita Mansour individually, are denied and dismissed with prejudice;
- 4.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 5.) Pursuant to the Panel's Order, entered on or about December 27, 2002, Respondent Porea is dismissed with prejudice. The Panel did not adjudicate any issues involving James J. Porea;
- 6.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent James J. Porea's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Porea must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive, and
- 7.) That any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

### **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 = \$ 600.00

#### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is McDonald Investments, Inc.

Member surcharge = \$ 3,000.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$ 5,000.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

July 9-12, 2002, adjournment by Respondents = \$ 1,200.00

#### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

Two (2) Pre-hearing sessions with Panel x \$1,200.00 = \$ 2,400.00

Pre-hearing conferences:	November 5, 2001	1 session
	May 9, 2001	1 session

Nineteen (19) Hearing sessions x \$1,200.00 = \$ 22,800.00

Hearing Dates:	October 28, 2002	2 sessions
	October 29, 2002	2 sessions
	October 30, 2002	2 sessions
	October 31, 2002	3 sessions
	November 1, 2002	3 sessions
	December 30, 2002	3 sessions
	December 31, 2002	2 sessions
	January 7, 2003	2 sessions

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Total Forum Fees = \$ 25,200.00

The Arbitration Panel has assessed \$12,600.00 of the forum fees to Namay.  
The Arbitration Panel has assessed \$12,600.00 of the forum fees to McDonald.

**Fee Summary**

Claimant, Soraya Namay, is liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 12,600.00
Total Fees	= \$ 13,200.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 11,500.00

Respondent, McDonald Investments, Inc., is liable for:

Member Fees	= \$ 8,600.00
Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$ 12,600.00
Total Fees	= \$ 22,400.00
Less payments	= \$ 10,900.00
Balance Due NASD Dispute Resolution	= \$ 11,500.00

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

**ARBITRATION PANEL**

Stewart C. W. Weiner, Esq. - Public Arbitrator, Presiding Chair  
Roland L. Olzark, J.D. - Public Arbitrator  
John R. Main - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Stewart C.W. Weiner, Esq.  
Stewart C. W. Weiner, Esq.  
Public Arbitrator, Presiding Chair

02/05/03  
Signature Date

/s/ Roland L. Olzark, J.D.  
Roland L. Olzark, J.D.  
Public Arbitrator

02/05/03  
Signature Date

/s/ John R. Main  
John R. Main  
Non-Public Arbitrator

02/10/03  
Signature Date

02/11/03  
Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 01-02228  
Award Page 5 of 5

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Stewart C. W. Weiner, Esq.  
Public Arbitrator, Presiding Chair

2/5/03  
Signature Date

Roland L. Olzark, J.D.  
Public Arbitrator

Signature Date

John R. Main  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

FROM :

02/04/03 TUE 18:17 FAX

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NASD Dispute Resolution  
Arbitration No. 01-02226  
Award Page 3 of 5

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Public Arbitrator, Presiding Chair

  
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Public Arbitrator

Signature Date

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NASD Dispute Resolution  
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