

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

John J. Maiolini, (Claimant) vs. M.S. Farrell & Co., Inc., Thomas A. Gallo, and Joseph W. Hagan, (Respondents)

Case Number: 01-02243

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, John J. Maiolini, hereinafter referred to as "Claimant": Brian M. Greenman, Esq., a sole practitioner, New York, NY.

Respondents, M.S. Farrell & Co., Inc. ("Farrell") and Thomas A. Gallo ("Gallo"): Isaac M. Zucker, Esq., a sole practitioner, Syosset, NY.

Respondent, Joseph W. Hagan ("Hagan"): Martin A. Russo, Esq. and Jason M. Ewasko, Esq., Kurzman Eisenberg Corbin Lever & Goodman, LLP, White Plains, NY (Mr. Ewasko was with the MPR Law Practice, P.C., Peekskill, NY, when he originally appeared in this matter).

CASE INFORMATION

Statement of Claim filed on or about: April 30, 2001.
Amended Statement of Claim filed on or about: January 18, 2002.
Claimant signed the Uniform Submission Agreement: April 28, 2001.

Statement of Answer filed by Farrell on or about: July 18, 2001.
Farrell did not sign a Uniform Submission Agreement.

Statement of Answer filed by Gallo on or about: March 22, 2002.
Gallo signed the Uniform Submission Agreement: March 18, 2002.

Statement of Answer filed by Hagan on or about: July 18, 2001.
Statement of Answer to Amended Statement of Claim filed by Hagan on or about: February 4, 2002.
Hagan signed the Uniform Submission Agreement: July 11, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; common law fraud; breach of fiduciary duty; breach of the duty of good faith and fair dealing; negligence; violations of the NASD Conduct Rules and the Rules of the NYSE; failure to supervise; respondeat superior; and churning. Claimant's claim involved a variety of stocks and mutual funds.

Unless specifically admitted in its Answer, Farrell denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim, and each cause of action contained therein, fails to state a cause of action against Farrell upon which relief can be granted; Claimant assumed the risk of investing in the securities market; Hagan had reasonable grounds for believing that the recommendations made were suitable based on facts disclosed to him by Claimant as to his personal and financial situation and his investment objectives; the Statement of Claim, and each cause of action contained therein, are barred by the doctrines of estoppel and unclean hands; the Statement of Claim, and each cause of action contained therein, is barred by the equitable doctrine of ratification, in that Claimant knew and understood the risks involved with the investments he made, and nevertheless gave fully informed authorization for each trade; Claimant, by his explicit authorization of the purchase of various securities, has waived any and all claims that he may have against Farrell; Farrell, in discharging its duties, if any, to Claimant, acted in good faith and exercised at least that degree of care, diligence, and skill which an ordinarily prudent person would exercise in similar circumstances and like position; any losses suffered by Claimant were the results of market conditions and/or fluctuations normally associated with investments in the securities market; all claims alleged by Claimant are barred by the applicable statute of limitations; and Claimant's claims are barred by the proper application of the doctrines of waiver, estoppel, and/or laches.

Unless specifically admitted in his Answer, Gallo denied the allegations made in the Statement of Claimant and adopted the defenses asserted in Farrell's Statement of Answer.

Unless specifically admitted in his Answer, Hagan denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant has failed to state a claim upon which relief may be granted; the damages allegedly sustained by Claimant have no causal relationship with any act, or failure to act, attributable to Hagan; any damage or loss sustained by Claimant was caused or contributed to by Claimant's own actions, fault, or lack of due diligence; Claimant acted in reckless disregard of facts of which he was, or should have been, aware of and failed to exercise the required due care and diligence; Claimant, at all relevant times, had or should have had, full knowledge of all material facts concerning his securities account maintained with Hagan; Claimant authorized and directed the execution of all transactions in his account maintained with Hagan; Claimant authorized and/or ratified all

transactions in his securities account maintained with Hagan with full knowledge of all material facts with respect thereto; Claimant's claims are barred by the applicable principles of waiver and ratification; Claimant, with full knowledge of all material facts concerning his securities account maintained with Hagan, waived all of the claims set forth in the Statement of Claim and the alleged damages resulting therefrom by failing to take timely and appropriate action prior to incurring such damages; Hagan, in discharging his 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; Hagan did not breach any express or implied contract with Claimant; to the extent Claimant has obtained or will obtain cash and/or income tax savings as a result of his investments, Claimant is barred from recovery on all claims; Claimant's claims are barred by the applicable statutes of limitations; and there is no private cause of action for violations of NASD rules.

RELIEF REQUESTED

Claimant requested:

- a. Compensatory damages in the amount of \$182,759.00, representing Claimant's actual losses plus disgorgement of commissions and margin expenses;
- b. Interest on \$182,759.00 commencing November 1, 1998;
- c. Costs and attorneys' fees; and
- d. Punitive damages as a deterrent to the egregious conduct of Respondents.

Farrell and Gallo requested that a judgment be entered denying Claimant's claims in their entirety.

Hagan requested dismissal of this arbitration, with prejudice, and such other and further relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Farrell did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

A Motion for a Directed Verdict was made by Respondent Hagan at the conclusion of Claimant's case. The Panel denied said Motion.

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. Farrell, Gallo, and Hagan be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$32,783.60 as compensatory damages, plus interest at the rate of 8 1/2% accruing from the date of this Award until date of payment.
2. Claimant's request for punitive damages is hereby denied.
3. 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	= \$ 300.00
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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 firm that employed the associated persons at the time of the events giving rise to the dispute. In this matter, M.S. Farrell & Co., Inc. is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

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: December 10, 2001	1 session
One (1) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: November 6, 2001	1 session

Six (6) Hearing sessions x \$1,125.00 = \$6,750.00

Hearing Dates:	July 15, 2002	2 sessions
	July 16, 2002	2 sessions
	July 18, 2002	2 sessions

Total Forum Fees = \$8,325.00

1. The Panel has assessed \$4,162.50 of the forum fees against Claimant.
2. The Panel has assessed \$4,162.50 of the forum fees jointly and severally against Farrell, Gallo, and Hagan.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$4,162.50</u>
Total Fees	= \$4,462.50
<u>Less payments</u>	<u>= \$2,125.00</u>
Balance Due NASD Dispute Resolution	= \$2,337.50

2. Farrell be and hereby is solely liable for:

<u>Member Fees</u>	<u>= \$4,600.00</u>
Total Fees	= \$4,600.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$4,600.00

3. Farrell, Gallo, and Hagan be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$4,162.50</u>
Total Fees	= \$4,162.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$4,162.50


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

ARBITRATION PANEL

Malcolm H. Bloch, M.D.	-	Public Arbitrator, Presiding Chair
Lisa A. Dickey-Kemp	-	Public Arbitrator
Harry D. Frisch, Esq.	-	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.



Malcolm H. Bloch, M.D.
Public Arbitrator, Presiding Chair

8/27/02

Signature Date

Lisa A. Dickey-Kemp
Public Arbitrator

Signature Date

Harry D. Frisch, Esq.
Non-Public Arbitrator

Signature Date

August 30, 2002

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Malcolm H. Bloch, M.D.	-	Public Arbitrator, Presiding Chair
Lisa A. Dickey-Kemp	-	Public Arbitrator
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Public Arbitrator, Presiding Chair

Signature Date



Lisa A. Dickey-Kemp
Public Arbitrator

8/29/02

Signature Date

Harry D. Frisch, Esq.
Non-Public Arbitrator

Signature Date

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Concurring Arbitrators' Signatures

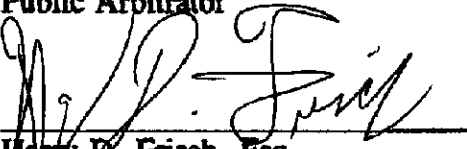
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Malcolm H. Bloch, M.D.
Public Arbitrator, Presiding Chair

Signature Date

Lisa A. Dickey-Kemp
Public Arbitrator

Signature Date


Harry D. Frisch, Esq.
Non-Public Arbitrator

8/27/2002
Signature Date

August 30, 2002

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