

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Bachrach & Associates, (Claimant) vs. Seaboard Securities, Inc., Mirsad A. Muharemovic, Anthony J. DiGiovanni, and Joseph T. Zappala, (Respondents)

Case Number: 01-02905

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Bachrach & Associates, hereinafter referred to as "Claimant": Steven B. Caruso, Esq., Maddox Koeller Hargett & Caruso, New York, NY.

Respondents, Seaboard Securities, Inc. ("Seaboard"), Mirsad A. Muharemovic ("Muharemovic"), Anthony J. DiGiovanni ("DiGiovanni"), and Joseph T. Zappala ("Zappala"), hereinafter collectively referred to as "Respondents": Michael P. Gilmore, Esq., Sims Moss Kline & Davis LLP, Mineola, NY.

CASE INFORMATION

Statement of Claim filed on or about: June 1, 2001.

Claimant signed the Uniform Submission Agreement: May 29, 2001.

Joint Statement of Answer filed by Respondents on or about: August 6, 2001.

Motion to Dismiss filed by DiGiovanni and Zappala on or about: August 6, 2001.

Seaboard signed the Uniform Submission Agreement: July 5, 2001.

Muharemovic signed the Uniform Submission Agreement: July 25, 2001.

DiGiovanni signed the Uniform Submission Agreement: July 10, 2001.

Zappala signed the Uniform Submission Agreement: July 11, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: misrepresentations and omissions of material facts; high pressure sales tactics; excessive trading; failure to diversify; violation of the Securities Exchange Act of 1934; violation of New Jersey and New York common law; fraud; negligence; breach of contract; breach of fiduciary duty; respondeat superior; violation of New York Stock Exchange Rules; violation of NASD Conduct Rules; violation of the New Jersey Securities Act; and violation of the New Jersey Consumer Protection Act. Claimant's claim involved unspecified financial products.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant has failed to state a claim against Respondents for which relief may be granted; Claimant's claims are barred by the applicable statute of limitations; Claimant, with full knowledge of all material facts concerning the relevant securities account, waived the alleged 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; 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; the Statement of Claim does not adequately set forth any specific rule violations of the NASD, or any state or federal laws, which are the proximate cause of Claimant's alleged losses, nor does the Statement of Claim state the wrongs or the circumstances of the wrongs complained of so that Respondents have adequate and meaningful notice of the Claim; Claimant is barred from seeking any recovery by its own unclean hands; Claimant was fully appraised of all activity in the account and failed to object to any alleged wrongdoing as long as the account remained profitable; and Claimant's claims are barred by the defense of ratification in that Claimant received notice of all transactions and by his conduct and words agreed to accept all transactions in the account.

RELIEF REQUESTED

Claimant requested that an Award be rendered in its favor as follows:

- a. For the sum of \$115,000.00, or such other and greater amount as may be determined at the hearing of this matter, representing the compensatory damages sustained by Claimant as a result of the conduct set forth in the Statement of Claim;
- b. For the sum to be determined, at the hearing of this matter, representing the imposition of the statutory remedies, costs, and reasonable attorneys' fees sustained by Claimant as a result of the conduct set forth in the Statement of Claim;
- c. For the sum to be determined, at the hearing of this matter, representing the lost interest and/or lost appreciation potential of Claimant as a result of the conduct set forth in the Statement of Claim;
- d. For the sum to be determined, at the hearing of this matter, representing the imposition of punitive damages as a result of the conduct set forth in the Statement of Claim;
- e. For the sum to be determined, at the hearing of this matter, representing the imposition of all forum fees solely against Respondents as a result of the conduct set forth in the Statement of Claim; and
- f. For such other and further relief as may be deemed just, proper, and equitable under the facts and circumstances presented.

Respondents requested:

- a. That Claimant's claims against DiGiovanni and Zappala be dismissed immediately in their entirety pursuant to the Motion to Dismiss;
- b. That Claimant's claims be dismissed in their entirety as to all remaining Respondents;
- c. That Claimant's claims, this arbitration, and all related matters be expunged from the securities industry records of Respondents; and
- d. That Respondents be awarded their costs, that all forum fees and other fees be assessed against Claimant, and for such other and further relief as the Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Zappala did not appear at the hearings in this matter, although he was represented by his attorney. Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Zappala 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 Zappala present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

The Panel denied the Motion to Dismiss made by DiGiovanni and Zappala.

In accordance with Rule 10313 of the Code, the parties agreed to proceed with a Panel of two arbitrators following the withdrawal of arbitrator Alan S. Braunschweiger.

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. All Respondents be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$35,000.00 as compensatory damages.
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

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, Seaboard Securities, 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 Panel x \$1,125.00 = \$1,125.00

Pre-hearing conference: January 15, 2002 1 session

Four (4) Hearing sessions x \$1,125.00 = \$4,500.00

Hearing Dates: August 13, 2002 2 sessions

August 14, 2002 2 sessions

Total Forum Fees = \$5,625.00

1. The Panel has assessed \$2,812.50 of the forum fees against Claimant.
2. The Panel has assessed \$2,812.50 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$2,812.50</u>
Total Fees	= \$3,112.50
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$1,687.50

2. Seaboard 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>= \$4,600.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$2,812.50</u>
Total Fees	= \$2,812.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$2,812.50

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

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ARBITRATION PANEL

Arthur D. Sporn, Esq. -
Roy L. Weiss, Esq. -

Public Arbitrator, Presiding Chair
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.


Arthur D. Sporn, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Roy L. Weiss, Esq.
Public Arbitrator

Signature Date

September 24, 2002

Date of Service (For NASD Dispute Resolution use only)

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ARBITRATION PANEL


Arthur D. Sporn, Esq.	-	Public Arbitrator, Presiding Chair
Roy L. Weiss, Esq.	-	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.

Arthur D. Sporn, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Roy L. Weiss, Esq.
Public Arbitrator

Signature Date

September 24, 2002

Date of Service (For NASD Dispute Resolution use only)