

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Catherine Lucan (Claimant) vs. Lebenthal & Co., Inc., Harry M. Weiss, Ruben Augusta and Gerald M. Tankersley (Respondents) vs. Joan Honahan (Third-Party Respondent)

Case Number: 01-06815

Hearing Site: New York, New York

Nature of the Dispute: Customer vs. Member and Associated Persons vs. Non-member

REPRESENTATION OF PARTIES

Claimant Catherine Lucan hereinafter referred to as "Claimant": Gene T. Anton, Esq., McAndrew, Conboy & Prisco, LLP, Woodbury, NY.

Respondents Lebenthal & Co., Inc. ("Lebenthal"), Harry M. Weiss ("Weiss"), Ruben F. Augusta ("Augusta") and Gerald H. Tankersley ("Tankersley"), hereinafter collectively referred to as "Respondents": Dominick Evangelista, Esq., Bressler, Amery & Ross, New York, NY.

Third-Party Respondent Joan Honahan hereinafter referred to as "Honahan": Harry Issler, Esq., The Law Firm of Harry Issler, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: December 12, 2001.
Claimant signed the Uniform Submission Agreement.

Joint Statement of Answer filed by Respondents on or about: March 27, 2002.
In their Joint Statement of Answer Respondents also included a Counterclaim and Third-Party Claim.
Respondent Lebenthal signed the Uniform Submission Agreement: March 25, 2002.
Respondent Weiss signed the Uniform Submission Agreement: March 25, 2002.
Respondent Augusta signed the Uniform Submission Agreement: March 22, 2002.
Respondent Tankersley signed the Uniform Submission Agreement: March 25, 2002.

Statement of Answer filed by Honahan on or about: August 13, 2002.
Honahan signed the Uniform Submission Agreement: August 9, 2002.

CASE SUMMARY

Claimant asserted the following causes of action: negligence, fraud and misrepresentation, misappropriation of securities and funds, breach of fiduciary duty, breach of contract and unauthorized trading.

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

In its Counterclaim, Respondent Lebenthal asserted the following causes of action: contractual indemnification.

In their Third-Party Claim Respondents asserted the following causes of action: contribution and indemnification.

Unless specifically admitted in her Answer, Honohan denied the allegations made in Respondents' Third-Party Claim.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$242,000.00, for breach of contract and breach of fiduciary duty the amount of \$2,000,000.00 together with costs and disbursements of this action.

Respondents requested dismissal of the Statement of Claim with prejudice or in the alternative, indemnification on the counterclaim, contribution on the third-party claim against Honahan to the extent of wrongful conduct and indemnification, costs and expenses, attorney's fees and such other and further relief as the Panel deems just and proper.

In its Counterclaim, Lebenthal requested contractual indemnification from Claimant for the claims which she has asserted against it.

In their Third-Party Claim, Respondents requested common law contribution to the extent of Honahan wrongful conduct as to any sums that may be awarded by the Panel against Respondents in favor of Claimant. Respondents also requested indemnification of any amounts that may be adjudged against them.

Honohan requested that the Third-Party claim be dismissed with prejudice, costs and expenses, attorney's fees and such other and further relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

The Panel granted Respondents Motion to Dismiss Gerald Tankersley from this proceeding and granted expungement of his CRD record.

The Panel denied in their entirety the claims against Respondents Henry Weiss and Ruben Augusta and granted their Motion to Expunge their CRD records.

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. Respondent Lebenthal & Co., Inc. is liable for and shall pay to Claimant compensatory damages in the amount of \$40,000.00.
2. Respondent Lebenthal's Counterclaim is denied in its entirety.
3. Respondents Third-Party claim is denied in its entirety.
4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Harry M. Weiss' 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 Harry M. Weiss must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
5. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Ruben Augusta'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 Ruben Augusta must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
6. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Gerald M. Tankersley'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 Gerald M. Tankersley must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
7. Any and all relief not specifically addressed herein is 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 | = \$2,000.00 |

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 event giving rise to the dispute. Accordingly, Lebenthal & Co., Inc. is a party.

| | |
|-------------------------|---------------|
| Member Surcharge | = \$ 2,800.00 |
| Pre-hearing Process Fee | = \$ 750.00 |
| Hearing Process Fee | = \$ 5,000.00 |

Adjournment Fee

Adjournments granted during these proceedings for which fees were assessed:

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|---|----------|
| July 28 - 31, 2003, adjournment by Claimant | = Waived |
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Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A 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:

| | |
|--|---------------|
| Three (3) Pre-hearing sessions with Panel @ \$1,200.00/session | = \$ 3,600.00 |
| Pre-hearing conferences: December 30, 2002 | 1 session |
| August 4, 2003 | 1 session |
| October 21, 2005 | 1 session |
| Four (4) hearing sessions with Panel @ \$1,200.00/session | = \$ 4,800.00 |
| Hearing Dates: May 3, 2006 | 2 sessions |
| June 20, 2006 | 2 sessions |
| Total Forum Fees | = \$ 8,400.00 |

1. The Panel has assessed \$4,200.00 of the forum fees to Claimant.
2. The Panel has assessed \$4,200.00 of the forum fees jointly and severally to Respondents Lebenthal, Weiss, Agusta and Tankersley.

Fee Summary

1. Claimant is solely liable for:

| | |
|-------------------------------------|---------------|
| Initial Filing Fee | = \$ 500.00 |
| Forum Fees | = \$ 4,200.00 |
| Total Fees | = \$ 4,700.00 |
| Less payments | = \$ 1,700.00 |
| Balance Due NASD Dispute Resolution | = \$ 3,000.00 |

2. Respondent Lebenthal & Co., Inc. is solely liable for:

| | |
|-------------------------------------|---------------|
| Counterclaim Filing Fee | = \$ 2,000.00 |
| Member Fees | = \$ 8,550.00 |
| Total Fees | = \$10,550.00 |
| Less payments | = \$10,550.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

3. Respondents Lebenthal, Weiss, Augusta and Tankersley are jointly and severally liable for:

| | |
|-------------------------------------|---------------|
| <u>Forum Fees</u> | = \$ 4,200.00 |
| <u>Total Fees</u> | = \$ 4,200.00 |
| <u>Less payments</u> | = \$ 1,200.00 |
| Balance Due NASD Dispute Resolution | = \$ 3,000.00 |

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

ARBITRATION PANEL

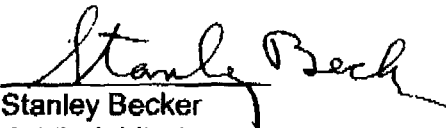
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|------------------|---|--|
| James J. Fishman | - | Public Arbitrator, Presiding Chairperson |
| Stanley Becker | - | Public Arbitrator |
| Michael Rosse | - | Non-Public Arbitrator |

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.

James J. Fishman
Public Arbitrator, Presiding Chairperson

Signature Date



Stanley Becker
Public Arbitrator

7-5-06
Signature Date

Michael Ross
Non-Public Arbitrator

Signature Date

July 6, 2006
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

| | | |
|------------------|---|--|
| James J. Fishman | - | Public Arbitrator, Presiding Chairperson |
| Stanley Becker | - | Public Arbitrator |
| Michael Rosse | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

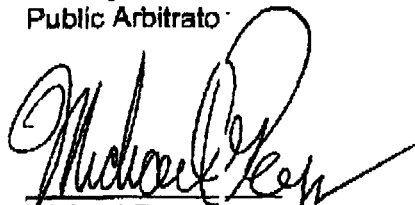
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James J. Fishman
Public Arbitrator, Presiding Chairperson

Signature Date

Stanley Becker
Public Arbitrator

Signature Date


Michael Ross
Non-Public Arbitrator

7-5-06
Signature Date

July 6, 2006
Date of Service (For NASD Dispute Resolution use only)