

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Edwin R. and Connie Horner

Case Number: 02-05196

Names of the Respondents

Continental Broker Dealer, Corp.,
Anthony J. Calascione, and
Thomas M. Tiernan, Jr.

Hearing Site: Philadelphia, PA

Nature of the Dispute: Customers vs. Member and Associated Persons

REPRESENTATION OF PARTIES

Claimants, Edwin R. and Connie Horner, hereinafter collectively referred to as "Claimants", were represented by Nicholas J. Guiliano, Esq., Attorney at Law, Philadelphia, Pennsylvania.

Respondents, Continental Broker Dealer, Corp. ("Continental") and Thomas M. Tiernan, Jr. ("Tiernan"), were represented by Timothy Feil, Esq., Finkelstein & Feil, LLP, Garden City, New Jersey.

Respondent, Anthony J. Calascione ("Calascione"), neither had representation nor appeared at the hearing.

CASE INFORMATION

Statement of Claim filed on September 4, 2002.

Claimants signed the Uniform Submission Agreement on August 26, 2002.

Statement of Answer and Motion for a More Definite Statement of Claim filed by Respondents Continental and Tiernan on or about December 23, 2002.

Respondent Calascione did not file an Answer.

Respondents Continental, Tiernan and Calascione did not sign Uniform Submission Agreements.

Claimants file a Response to the Motion for a More Definite Statement of Claim on or about March 21, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: misrepresentations and omissions of material fact; violation of section 10(b) of the Exchange Act and Rule 10b-5; violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law; breach of fiduciary duty; and, failure to supervise. The causes of action relate to the purchase and sale of various stocks.

Unless specifically admitted in their Answer and Motion for a More Definite Statement of Claim, Respondents Continental and Tiernan denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$ 125,000.00; punitive damages, interest, and attorney's fees in an amount unspecified; and, any other relief that is just, fair and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

On or about January 15, 2004, Claimants withdrew their claims against Respondents Continental and Tiernan.

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

Respondent Calascione 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 is bound by the determination of the Panel on all issues submitted.

At the hearing on the merits, Claimants made a motion for default. The Panel denied said motion.

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 Calascione is liable to and shall pay to Claimants the sum of twenty-two thousand dollars and no cents (\$22,000.00) in compensatory damages with six percent (6%) simple interest per annum accruing from August 1, 2001 until award is paid in full;
2. Respondent Calascione is liable to and shall pay to Claimants the sum of forty-five hundred dollars and no cents (\$4,500.00) in attorney's fees pursuant to 73 PACSA § 201-9.2(a);
3. Respondent Calascione is liable to and shall pay to Claimants the sum of forty-seven hundred twenty-five dollars and sixty cents (\$4,725.60) for costs associated with this arbitration; and,
4. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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.

Accordingly, Continental is

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$1,125.00

Pre-hearing conference: November 13, 2003 1 session

Two (2) Hearing sessions @ \$1,125.00 = \$2,250.00

Hearing Date: June 15, 2004 2 sessions

Total Forum Fees = \$3,375.00

The Panel has assessed \$ 3,375.00 of the forum fees to Respondent Calascione.

Fee Summary

1. Claimants are jointly and severally assessed and shall pay:

Initial Filing Fee = \$ 300.00

Total Fees = \$ 300.00

Less payments = \$ 1,425.00

Refund owed Claimant from NASD Dispute Resolution = \$ 1,125.00

2. Respondent Continental is assessed and shall pay:

Member Fees = \$ 5,200.00

Total Fees = \$ 5,200.00

Less payments = \$ 5,200.00

Balance Due NASD Dispute Resolution = \$ 0.00

3. Respondent Calascione is assessed and shall pay:

Forum Fees	= \$ 3,375.00
Total Fees	= \$ 3,375.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,375.00


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

ARBITRATION PANEL

Jerry Schuchman, Esq.
William J. McDevitt, Esq.
Malcolm J. Irving

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator, Panelist
- Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures


Jerry Schuchman, Esq.
Public Arbitrator, Presiding Chairperson

7/9/2004
Signature Date

William J. McDevitt, Esq.
Public Arbitrator, Panelist

Signature Date

Malcolm J. Irving
Non-Public Arbitrator, Panelist

Signature Date

July 14, 2004
Date of Service (For NASD Dispute Resolution office use only)

ARBITRATION PANEL

Jerry Schuchman, Esq.
William J. McDevitt, Esq.
Malcolm J. Irving

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator, Panelist
- Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Jerry Schuchman, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


William J. McDevitt, Esq.
Public Arbitrator, Panelist

7/14/04
Signature Date

Malcolm J. Irving
Non-Public Arbitrator, Panelist

Signature Date

July 14, 2004
Date of Service (For NASD Dispute Resolution office use only)

ARBITRATION PANEL

Jerry Schuchman, Esq.	-	Public Arbitrator, Presiding Chairperson
William J. McDevitt, Esq.	-	Public Arbitrator, Panelist
Malcolm J. Irving	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Jerry Schuchman, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

William J. McDevitt, Esq.
Public Arbitrator, Panelist

Signature Date

Malcolm J. Irving
Non-Public Arbitrator, Panelist

7/10/04
Signature Date

July 14, 2004
Date of Service (For NASD Dispute Resolution office use only)