

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Aaron J. Fleishaker, Sheryl H. Fleishaker, Andrea Elyse Fleishaker, a minor, by her parents Aaron J. Fleishaker and Sheryl H. Fleishaker, David Adam Fleishaker, a minor, by his parents Aaron J. Fleishaker and Sheryl H. Fleishaker, and Kara Joy Fleishaker, a minor, by her parents Aaron J. Fleishaker and Sheryl H. Fleishaker, and AKD Real Estate (Claimants) b. First Montauk Securities Corporation, David Garfinkel, and Herbert Kurinsky (Respondents)

Case Number: 02-05259

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimants Aaron J. Fleishaker ("A. Fleishaker"), Sheryl H. Fleishaker ("S. Fleishaker"), Andrea Elyse Fleishaker, a minor, by her parents Aaron J. Fleishaker and Sheryl H. Fleishaker ("Andrea Fleishaker"), David Adam Fleishaker ("D. Fleishaker"), a minor, by his parents Aaron J. Fleishaker and Sheryl H. Fleishaker, and Kara Joy Fleishaker, a minor, by her parents Aaron J. Fleishaker and Sheryl H. Fleishaker ("K. Fleishaker"), Aaron J. Fleishaker and Sheryl H. Fleishaker ("A. and S. Fleishaker"), and AKD Real Estate ("AKD"), hereinafter collectively referred to as "Claimants": Dan Brecher, Esq., Law Offices of Dan Brecher, New York, NY.

Respondents First Montauk Securities Corporation ("First Montauk") and Herbert Kurinsky ("Kurinsky"): Luigi Spadafora, Esq., Winget, Spadafora & Schwartzberg, LLP, New York, NY.

Respondent David Garfinkel ("Garfinkel"): Thomas M. Campbell, Esq., Smith Campbell, LLP, New York, NY. Previously represented by: Luigi Spadafora, Esq., Winget, Spadafora & Schwartzberg, LLP, New York, NY.

First Montauk, Kurinsky, and Garfinkel are hereinafter collectively referred to as "Respondents".

CASE INFORMATION

Statement of Claim filed on or about: September 5, 2002.

Opposition to Respondents First Montauk's and Kurinsky's Motion to Stay and Kurinsky's Motion for Dismissal and Expungement filed by Claimants on or about: November 26, 2002.

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

Joint Statement of Answer and Motion to Stay filed by Respondents First Montauk and Kurinsky on or about: November 7, 2002.

Motion to Dismiss and for an Order of Expungement filed by Respondent Kurinsky on or about:

November 7, 2002.

Respondent First Montauk did not sign the Uniform Submission Agreement.

Respondent Kurinsky did not sign the Uniform Submission Agreement.

Respondent Garfinkel did not file a Statement of Answer or sign the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitability; common law fraud, statutory fraud, and fraudulent misrepresentation; breach of fiduciary duties; failure to supervise; breach of contract; and negligence. The causes of action relate to corporate bonds.

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

RELIEF REQUESTED

Claimants requested:

- (1) Compensatory damages in the amount of \$50,000.00 as to the A. Fleishaker account;
- (2) Compensatory damages in the amount of \$65,000.00 as to the S. Fleishaker account;
- (3) Compensatory damages in the amount of \$300,000.00 as to the A. and S. Fleishaker account;
- (4) Compensatory damages in the amount of \$65,000.00 as to the account for D. Fleishaker;
- (5) Compensatory damages in the amount of \$75,000.00 as to the account for K. Fleishaker;
- (6) Compensatory damages in the amount of \$75,000.00 as to the account for Andrea Fleishaker;
- (7) Compensatory damages in the amount of \$100,000.00 as to the account for AKD;

Claimants also requested compensatory damages in the amount of \$100,000.00; punitive damages; costs; attorneys' fees; forum fees; interest; and such other and further relief as the Panel deems just, equitable, and proper.

In their Opposition to the Motion to Stay and Motion for Dismissal and Expungement, Claimants requested that the Motions be denied.

Respondents First Montauk and Kurinsky requested that the Panel dismiss the Statement of Claim; costs and attorneys' fees; and such other and further relief as the Panel deems just and appropriate, including expungement of this matter from Respondents' relevant records. In his Motion to Dismiss and for an Order of Expungement, Respondent Kurinsky requested an award dismissing the Statement of Claim as against him in its entirety; costs; attorneys' fees; and expungement of this matter from his regulatory record.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Respondents Garfinkel 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"). In addition, counsel for Respondent Garfinkel appeared at the hearing and made his opening statement, but left after being told that the hearing would proceed.

Respondents First Montauk and Kurinsky did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, and appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

On or about July 21, 2003, Claimants notified NASD Dispute Resolution that they settled with Respondents First Montauk and Kurinsky.

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, and 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 Garfinkel is solely liable for and shall pay to Claimants compensatory damages in the amount of \$422,566.24, plus interest at the rate of 6% per annum from October 7, 2004 through the date of payment of the award.
2. Any and all relief not specifically addressed herein, including punitive damages, 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 = \$375.00

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. Accordingly, First Montauk Securities Corporation is a party.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

July 7,8,14, and 15, 2004, adjournment by Respondent Garfinkel = Waived

Forum Fees and Assessments

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

Four (4) Pre-hearing sessions with Panel @ \$1,200.00 = \$4,800.00

Pre-hearing conferences:	April 3, 2003	1 session
	October 28, 2003	1 session
	May 17, 2004	1 session
	June 29, 2004	1 session

One (1) Hearing session @ \$1,200.00 = \$1,200.00

Hearing Date: October 7, 2004 1 session

Total Forum Fees = \$6,000.00

1. The Panel has assessed \$3,000.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$3,000.00 of the forum fees against Respondent Garfinkel.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$3,000.00
Total Fees	= \$3,375.00
Less payments	= \$1,575.00
Balance Due NASD Dispute Resolution	= \$1,800.00

2. Respondent First Montauk is solely liable for:

Member Fees	= \$7,000.00
Total Fees	= \$7,000.00
Less payments	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondent Garfinkel is solely liable for:

Forum Fees	= \$3,000.00
Total Fees	= \$3,000.00
Less payments	= \$ 0.00
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

William E. Nuckel	-	Public Arbitrator, Presiding Chairperson
Constantine N. Katsoris, Esq.	-	Public Arbitrator
John Cleaveland Palmer, CFP, CIMA	-	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 is which is my award.

William E. Nuckel
Public Arbitrator, Presiding Chairperson

Signature Date

Constantine N. Katsoris, Esq.
Public Arbitrator

Signature Date

John Cleaveland Palmer, CFP, CIMA
Non-Public Arbitrator

Signature Date

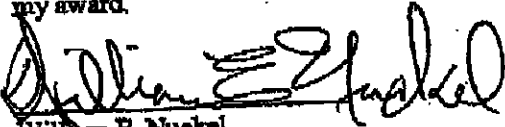
Date of Service (For NASD Dispute Resolution use only)

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William E. Nuckel
Public Arbitrator, Presiding Chairperson

10/28/2004
Signature Date

Constantine N. Katsoris, Esq.
Public Arbitrator

Signature Date

John Cleaveland Palmer, CFP, CIMA
Non-Public Arbitrator

Signature Date

October 28, 2004
Date of Service (For NASD Dispute Resolution use only)

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Constantine N. Katsoris, Esq.
Public Arbitrator

Signature Date


John Cleaveland Palmer, CFP, CIMA
Non-Public Arbitrator

10-28-04

Signature Date

October 28, 2004
Date of Service (For NASD Dispute Resolution use only)