
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Larry D. Cooper

Case Number: 02-05880

Names of the Respondents

Clearing Services of America, Inc.
Donaldson, Lufkin & Jenrette Securities Corporation
Pershing Trading Company, L.P.
Dennis E. Sweenor
David E. Larue

Hearing Site: Orlando, Florida

REPRESENTATION OF PARTIES

For Larry D. Cooper, referred to as "Claimant": R. Kyle Gavin, Esq. and Geddes D. Anderson, Jr., Liles, Gavin, Costantino & Murphy, Jacksonville, Florida.

For Clearing Services of America, Inc. ("CSA"): Richard L. Martens, Esq. and Jason S. Haselkorn, Esq., Law Offices of Boose, Casey, Ciklin, Lubitz, Martens, McBane & O'Connell, West Palm Beach, Florida.

For Donaldson, Lufkin & Jenrette Securities Corporation ("DLJS"): Jesse Lawrence, Assistant Vice President and Counsel with Respondent DLJS, Jersey City, New Jersey.

For Respondent Pershing Trading Company, L.P. ("Pershing"): Jesse Lawrence, Assistant Vice President and Counsel with Respondent DLJS, Jersey City, New Jersey.

For Respondent Dennis E. Sweenor ("Sweenor"): Richard L. Martens, Esq. and Jason S. Haselkorn, Esq., Law Offices of Boose, Casey, Ciklin, Lubitz, Martens, McBane & O'Connell, West Palm Beach, Florida.

Respondent David E. Larue ("Larue") did not appear.

CASE INFORMATION

Statement of Claim filed on or about: October 1, 2002.

Claimant signed the Uniform Submission Agreement on: September 27, 2002.

Statement of Answer filed by Respondent CSA on or about: January 7, 2003.

Statement of Answer filed by Respondent DLJS on or about: December 2, 2002.

Statement of Answer filed by Respondent Sweenor on or about: April 25, 2003.

Respondent CSA signed the Uniform Submission Agreement on: January 2, 2003.

Respondent DLJS signed the Uniform Submission Agreement on: December 2, 2002.

Respondent Sweenor signed the Uniform Submission Agreement on: May 15, 2003.

Respondent Pershing did not file a Statement of Answer or executed Uniform Submission Agreement.

Respondent Larue did not file a Statement of Answer or executed Uniform Submission Agreement.

CASE SUMMARY

Claimant alleged the following causes of action: 1) churning; 2) unsuitability; 3) unauthorized trading; 4) misrepresentation; 5) negligence; 6) breach of contract; 7) violation of Florida Blue Sky Laws (Chapter 517, Florida Statutes); 8) violation of Section 10(b) of the Securities Exchange Act; 9) breach of fiduciary duty; and 10) failure to supervise. The causes of action relate to investments in shares of common stock, shares of mutual funds and government securities, including Motorola, Inc. and Cisco Systems, Inc.

Respondents CSA, DLJS and Sweenor denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant requested: 1) compensatory damages in excess of \$200,000.00 2) lost profits and income; 3) statutory damages; 4) interest; 5) punitive damages; 6) costs; 7) attorneys' fees; and 8) *such other relief the undersigned arbitrators (the "Panel") deemed just and proper.*

Respondents CSA and Sweenor requested: 1) dismissal of the Statement of Claim; and 2) attorneys' fees.

Respondent DLJS requested: 1) dismissal of the Statement of Claim in its entirety; 2) costs and expenses; and 3) *such other relief the Panel deemed just and proper.*

OTHER ISSUES CONSIDERED AND DECIDED

On or about January 23, 2003, Claimant filed his notice of voluntary dismissal without prejudice as to Respondent Pershing.

Respondents Sweenor and Larue did not appear at the evidentiary hearing. Upon review of the file and the representations made by/on behalf of the Claimant, the Panel determined that Respondents Sweenor and Larue were properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent Larue did not file with NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

On or about June 13, 2003, Claimant filed his Motion for Default against Respondent Larue for failure to serve any paper on Claimant or file any paper as required. The Panel has granted the motion as set forth in this Award.

On or about June 24, 2003, Claimant filed his notice of voluntary dismissal without prejudice as to Respondent DLJS. On or about July 11, 2003, Respondent DLJS filed its consent to Claimant's voluntary dismissal without prejudice.

At the evidentiary hearing, Respondent CSA moved the Panel for an adjournment of the evidentiary hearing. The Panel denied the motion.

The parties 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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents CSA, Sweenor and Larue are jointly and severally liable and shall pay to Claimant compensatory damages in the amount of \$102,400.00, plus interest at the rate of 4.00% per annum from December 1, 2000 through September 1, 2003.
2. The Panel finds Respondents CSA, Sweenor and Larue liable on the claims of churning, unsuitability, misrepresentation, negligence, violation of Florida Blue Sky Laws (Chapter 517, Florida Statutes), and breach of fiduciary duty.
3. The Panel finds Respondents Sweenor and Larue liable on the claim for violation of Section 10(b) of the Securities Exchange Act.
4. The Panel finds Respondent CSA liable on the claim for failure to supervise.
5. The Panel does not find liability on the claims of unauthorized trading or breach of contract.
6. Respondents CSA, Sweenor and Larue are jointly and severally liable and shall pay to Claimant punitive damages in the amount of \$100,000.00. Punitive damages are assessed against Respondents due to the clear and convincing evidence of the intentional, deliberate and contumacious conduct of the individual Respondents in churning Claimant's account, and thereafter deliberately providing him with false information regarding the status of his account and the actions being taken by the individual Respondents, after Claimant complained to Respondents about the churning which had already occurred. Likewise, Respondent CSA is jointly and

severally liable for the punitive damages assessed due to the clear and convincing evidence that it had actual knowledge of the unsuitability and churning of Claimant's account, and yet in contravention of its own standards allowed the individual Respondents to continue their churning activities. Thus, it actively and knowingly participated in the intentional conduct of its agents by continuing to process the trades made by the individual Respondents through its company. See also Petrites v. J.C. Bradford & Co., 646 F.2d 1033 (5th Cir. 1981).

7. Respondents CSA, Sweenor and Larue are jointly and severally liable and shall pay to Claimant costs in the amount of \$10,280.38.

8. Respondents CSA, Sweenor and Larue are jointly and severally liable and shall reimburse Claimant \$300.00 representing the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

9. Respondents CSA, Sweenor and Larue are jointly and severally liable and shall pay to Claimant attorneys' fees in an amount to be determined by a court of competent jurisdiction. Attorneys' fees are awarded pursuant to Section 517.211, Florida Statutes; Petrites v. J.C. Bradford & Co., 646 F.2d 1033 (5th Cir. 1981); and Moser v. Barron Chase Securities, 783 So.2d 231 (Fla. 2001).

10. Respondents CSA and Sweenor's requests for attorneys' fees are denied.

11. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

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|--------------------------|-------------|
| 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, Respondents CSA and DLJS are member firms and parties

| | |
|-------------------------|--------------|
| Member surcharge | = \$1,700.00 |
| Pre-hearing process fee | = \$ 750.00 |
| Hearing process fee | = \$2,750.00 |

The Panel waived the assessment of member fees as to Respondent Pershing.

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

On or about July 22, 2003, the Panel denied Respondents Clearing Services and Sweenor's request to adjourn the evidentiary hearing scheduled for July 30 – August 1, 2003.

At the evidentiary hearing, Respondent CSA moved the Panel for an adjournment of the evidentiary hearing. The Panel denied the motion.

Accordingly, there were no adjournments requested during these proceedings for which fees were assessed.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

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:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00 per session = \$2,250.00

| | | |
|--------------------------|----------------|-----------|
| Pre-hearing conferences: | April 25, 2003 | 1 session |
| | July 22, 2003 | 1 session |

Six (6) Hearing sessions @ \$1,125.00 per session = \$6,750.00

| | | |
|----------------|----------------|------------|
| Hearing Dates: | July 30, 2003 | 3 sessions |
| | July 31, 2003 | 1 session |
| | August 1, 2003 | 2 sessions |

| | |
|------------------|--------------|
| Total Forum Fees | = \$9,000.00 |
|------------------|--------------|

The Panel has assessed the total forum fees in the amount of \$9,000.00 jointly and severally to Respondents CSA, Sweenor and Larue.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

| | |
|---------------------------|-------------|
| <u>Initial Filing Fee</u> | = \$ 300.00 |
|---------------------------|-------------|

| | |
|----------------------|-------------|
| Total Fees | = \$ 300.00 |
| <u>Less payments</u> | = \$ 300.00 |
| Balance Due NASD | = \$ 0.00 |

Respondent CSA is solely liable for:

| | |
|----------------------|--------------|
| <u>Member Fees</u> | = \$5,200.00 |
| Total Fees | = \$5,200.00 |
| <u>Less payments</u> | = \$5,200.00 |
| Balance Due NASD | = \$ 0.00 |

Respondent DLJS is solely liable for:

| | |
|----------------------|--------------|
| <u>Member Fees</u> | = \$5,200.00 |
| Total Fees | = \$5,200.00 |
| <u>Less payments</u> | = \$5,200.00 |
| Balance Due NASD | = \$ 0.00 |

Respondents CSA, Sweenor and Larue are jointly and severally liable for:

| | |
|----------------------|--------------|
| <u>Forum Fees</u> | = \$9,000.00 |
| Total Fees | = \$9,000.00 |
| <u>Less payments</u> | = \$ 0.00 |
| Balance Due NASD | = \$9,000.00 |

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

ARBITRATION PANEL

| | | |
|----------------------------|---|---|
| <i>Cindy L. Anderson</i> | - | <i>Public Arbitrator, Presiding Chairperson</i> |
| <i>W. A. Westlake</i> | - | <i>Public Arbitrator</i> |
| <i>Matthew Mark Gillio</i> | - | <i>Non-Public Arbitrator</i> |

Concurring Arbitrators' Signatures

_____/s/
Cindy L. Anderson
Public Arbitrator, Presiding Chairperson

August 25, 2003
Signature Date

_____/s/
W. A. Westlake
Public Arbitrator

August 25, 2003
Signature Date

_____/s/
Matthew Mark Gillio
Non-Public Arbitrator

August 25, 2003
Signature Date

NASD Dispute Resolution

Arbitration No. 02-05880

Award Page 7

August 27, 2003

Date of Service (For NASD use only)

NASD Dispute Resolution
Arbitration No. 02-05880
Award Page 6

| | |
|------------------|-------------|
| Total Fees | = \$ 300.00 |
| Less payments | = \$ 300.00 |
| Balance Due NASD | = \$ 0.00 |

Respondent CSA is solely liable for:

| | |
|------------------|--------------|
| Member Fees | = \$5,200.00 |
| Total Fees | = \$5,200.00 |
| Less payments | = \$5,200.00 |
| Balance Due NASD | = \$ 0.00 |

Respondent DLJS is solely liable for:

| | |
|------------------|--------------|
| Member Fees | = \$5,200.00 |
| Total Fees | = \$5,200.00 |
| Less payments | = \$5,200.00 |
| Balance Due NASD | = \$ 0.00 |

Respondents CSA, Sweenor and Larue are jointly and severally liable for:

| | |
|------------------|--------------|
| Forum Fees | = \$9,000.00 |
| Total Fees | = \$9,000.00 |
| Less payments | = \$ 0.00 |
| Balance Due NASD | = \$9,000.00 |

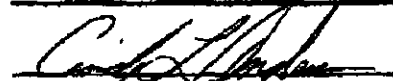
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ARBITRATION PANEL

Cindy L. Anderson
W. A. Westlake
Matthew Mark Gillio

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures


Cindy L. Anderson
Public Arbitrator, Presiding Chairperson

8/25/03
Signature Date

W. A. Westlake
Public Arbitrator

Signature Date

Matthew Mark Gillio
Non-Public Arbitrator

Signature Date

NASD Dispute Resolution
 Arbitration No. 02-05880
Award Page 6

| | |
|------------------|-------------|
| Total Fees | = \$ 300.00 |
| Less payments | = \$ 300.00 |
| Balance Due NASD | = \$ 0.00 |

Respondent CSA is solely liable for:

| | |
|------------------|--------------|
| Member Fees | = \$5,200.00 |
| Total Fees | = \$5,200.00 |
| Less payments | = \$5,200.00 |
| Balance Due NASD | = \$ 0.00 |

Respondent DLJS is solely liable for:

| | |
|------------------|--------------|
| Member Fees | = \$5,200.00 |
| Total Fees | = \$5,200.00 |
| Less payments | = \$5,200.00 |
| Balance Due NASD | = \$ 0.00 |

Respondents CSA, Sweenor and Larue are jointly and severally liable for:

| | |
|------------------|--------------|
| Forum Fees | = \$9,000.00 |
| Total Fees | = \$9,000.00 |
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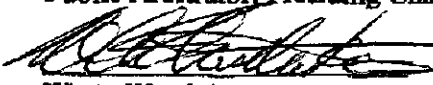
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| W. A. Westlake | - | Public Arbitrator |
| Matthew Mark Gillio | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

Cindy L. Anderson
 Public Arbitrator, Presiding Chairperson

Signature Date


 W. A. Westlake
 Public Arbitrator

8/25/2003
 Signature Date

Matthew Mark Gillio
 Non-Public Arbitrator

Signature Date

NASD Dispute Resolution
Arbitration No. 02-05880
Award Page 6

| | |
|------------------|-------------|
| Total Fees | = \$ 300.00 |
| Less payments | = \$ 300.00 |
| Balance Due NASD | = \$ 0.00 |

Respondent CSA is solely liable for:

| | |
|------------------|--------------|
| Member Fees | = \$5,200.00 |
| Total Fees | = \$5,200.00 |
| Less payments | = \$5,200.00 |
| Balance Due NASD | = \$ 0.00 |

Respondent DLJS is solely liable for:

| | |
|------------------|--------------|
| Member Fees | = \$5,200.00 |
| Total Fees | = \$5,200.00 |
| Less payments | = \$5,200.00 |
| Balance Due NASD | = \$ 0.00 |

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| Forum Fees | = \$9,000.00 |
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| Less payments | = \$ 0.00 |
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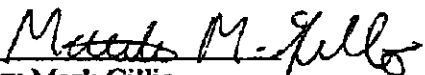
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Cindy L. Anderson
Public Arbitrator, Presiding Chairperson

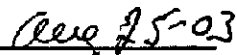
Signature Date

W. A. Westlake
Public Arbitrator

Signature Date



Matthew Mark Gillio
Non-Public Arbitrator



Signature Date