

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Dorothy Ames (Claimant) v. First Montauk Securities Corporation, David Garfinkel, and Herbert Kurinsky (Respondents)

Case Number: 02-06070

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant Dorothy Ames ("Ames") hereinafter referred to as "Claimant": 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.

CASE INFORMATION

Statement of Claim filed on or about: October 9, 2002.

Claimant's Opposition to Respondents First Montauk's, Kurinsky's, and Garfinkel's motions to stay, to dismiss, and to expunge filed on or about: January 30, 2003.

Claimant signed the Uniform Submission Agreement: September 10, 2002.

Joint Statement of Answer filed by Respondents First Montauk and Kurinsky on or about: January 3, 2003.

Motion to Dismiss and for an Order of Expungement filed by Respondent Kurinsky on or about: January 3, 2003.

Joint Motion to Stay filed by Respondents First Montauk, Kurinsky, and Garfinkel on or about: January 3, 2003.

Respondent First Montauk did not sign the Uniform Submission Agreement.

Respondent Kurinsky did not sign the Uniform Submission Agreement.

Statement of Answer filed by Respondent Garfinkel on or about: April 6, 2004.

Respondent Garfinkel did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; violation of Claimant's investment objectives; common law fraud; statutory fraud; fraudulent misrepresentation; breach of fiduciary duties; breach of supervisory duties and responsibilities; breach of contract; and negligence. The causes of action relate to but are not limited to the following financial products: McCaw International Ltd. Senior Discount NT corporate bonds and RCN zero coupon 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.

Unless specifically admitted in his Answer, Respondent Garfinkel denied the allegations made in the Statement of Claim and adopted Respondents First Montauk's and Kurinsky's Statement of Answer.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$465,000.00; compensatory damages in the amount of \$140,000.00; compensatory damages in the amount of \$75,000.00 for the return of all ill-gotten gains in the form of excess commissions, mark-ups, undisclosed trading profits charged to Claimant, fees and costs paid or charged to Claimant's account; punitive damages; costs, attorneys' fees, and forum fees; and such other and further relief as the Panel deems just, equitable, and proper.

Respondents First Montauk and Kurinsky requested an award dismissing the Statement of Claim; costs, including attorneys' fees; imposing forum fees on the Claimant; and such other and further relief as the Panel deems just and appropriate, including the expungement of this matter from the Answering Respondents' records.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents First Montauk, Kurinsky and Garfinkel 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, are bound by the determination of the Panel on all issues submitted.

By letter dated July 22, 2003, Claimant notified NASD Dispute Resolution that she settled with Respondents First Montauk and Kurinsky.

During the hearing, Respondent Garfinkel made a motion to stay the arbitration hearing. The Panel denied this motion, and the hearing went forward.

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 liable for and shall pay to Claimant compensatory damages in the amount of \$444,677.00 plus interest at the rate of 9% from October 15, 2003, until payment of the award.
2. Any and all relief not specifically addressed herein, including punitive damages and attorneys' fees, 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 person at the time of the events giving rise to the dispute. Accordingly, First Montauk Securities Corp. 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:

March 2, 4, 5, 9, 11, 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:

One (1) Pre-hearing session with Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference: August 14, 2003 1 session	
Two (2) Hearing sessions @ \$1,200.00	= \$2,400.00
Hearing Date: May 2, 2005 2 sessions	
Total Forum Fees	= \$3,600.00

The Panel has assessed \$3,600.00 of the forum fees solely against Respondent Garfinkel.

Fee Summary

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 375.00
<u>Total Fees</u>	= \$ 375.00
<u>Less payments</u>	= \$1,575.00
<u>Refund Due Claimant</u>	= \$1,200.00

2. Respondent First Montauk is solely liable for:

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

3. Respondent Garfinkel is solely liable for:

<u>Forum Fees</u>	= \$3,600.00
<u>Total Fees</u>	= \$3,600.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$3,600.00

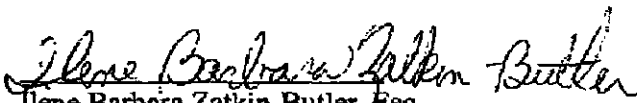
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Ilene Barbara Zatzkin-Butler, Esq.	-	Public Arbitrator, Presiding Chairperson
Joseph R. Sahid, Esq.	-	Public Arbitrator
Charles L. Henderson, Esq.	-	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.


Ilene Barbara Zatzkin-Butler, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Joseph R. Sahid, Esq.
Public Arbitrator

Signature Date

Charles L. Henderson, Esq.
Non-Public Arbitrator

Signature Date

June 15, 2005
Date of Service (For NASD Dispute Resolution use only)

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