

**Stipulated Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Joseph A. Foglia, Claimant v. Joseph Michael Araiz, the Concord Equity Group, LLC, Imperial Capital, LLC, Ladenburg, Thalmann & Co., Inc. and M.J. Whitman, Inc., Respondents.

Case Number: 02-06396

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

For Claimant:

Thomas Wilinsky
Biancone & Wilinsky, LLP
230 Park Avenue, 26th Floor
New York, New York 10169
Attorney for Joseph A. Foglia

For Respondents:

Carole R. Bernstein
The Law Offices of Carole R. Bernstein
41 Maple Avenue North
Westport, Connecticut 06880
Attorney for Joseph Michael Araiz

Robert H. Logan
Elizabeth A. Logan
Keesal, Young & Logan
400 Oceangate, Suite 1400
Long Beach, CA 90802
Attorney for Imperial Capital, LLC

CASE INFORMATION

Statement of Claim filed: October 22, 2002

Claimant's Uniform Submission Agreement signed: October 22, 2002

Respondent Joseph Michael Araiz's Statement of Answer and Counterclaim
filed: December 18, 2002

Respondent Joseph Michael Araiz's
Uniform Submission Agreement signed: November 4, 2002

Respondent Imperial Capital, LLC's ("Imperial Capital"),
Statement of Answer filed: January 17, 2003

Respondent Imperial Capital's Uniform Submission Agreement signed:
January 16, 2003

CASE SUMMARY

Claimant alleged that Respondents engaged in fraudulent inducement, unsuitable trading, failed to "know their customer" and negligently performed and breached their duties owed to Claimant. Claimant also alleged that those persons at the Respondent's Brokerage firm with supervisory duties negligently failed to supervise Araiz.

Respondents Imperial Capital and Joseph Michael Araiz denied each and every allegation of wrongdoing and liability set forth or implied in the Statement of Claim and the Amended Statement of Claim. Respondents Imperial Capital and Joseph Michael Araiz further denied that Claimant was injured in the amount claimed, or in any amount, by virtue of any conduct by Respondents.

Respondent Araiz alleged in his counterclaim against Claimant's suit was frivolous and commenced solely to harass Araiz.

RELIEF REQUESTED

Claimant requested an award of damages of \$500,000 plus \$750,000 in punitive damages and attorneys fees and costs of arbitration, and any other relief which the Panel deemed just and appropriate.

Respondent Joseph Michael Araiz requested that Claimant's Statement of Claim be denied in its entirety, that Respondent Joseph Michael Araiz be awarded his full attorney's fees and costs of arbitration, damages of \$1,000,000 and any other relief the Panel deemed just and appropriate. Additionally, Respondent Araiz requested an order expunging this matter from his Central Registration Depository ("CRD") record.

Respondent Imperial Capital, LLC, requested that Claimant take nothing by way of his Statement of Claim, the matter be dismissed in its entirety and for costs of the suit, including arbitrators' fees and expenses as well as any other relief the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Claims by Claimant against Respondents Concord Equity Group, LLC Ladenburg, Thalmann & Co., Inc. and M.J. Whitman, Inc. were previously settled and dismissed.

The parties to the Arbitration have agreed that the Award in this matter may be

executed in counterpart copies or that a handwritten, signed Award may be entered.

The parties have entered into a confidential settlement agreement pursuant to which Claimant and Respondents have agreed to dismiss all claims with prejudice. All claims against Claimant and Respondents are hereby dismissed with prejudice.

AWARD

After considering the Stipulation of the parties, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1.) The Panel acknowledges the parties' confidential settlement. Each of Claimant's claims asserted against Respondents Joseph Michael Araiz and Imperial Capital, LLC, and Joseph Michael Araiz' counterclaim against Claimant are dismissed with prejudice;
- 2.) The Panel recommends the expungement of all reference to the above captioned Arbitration from Respondent Joseph Michael Araiz'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 Joseph Michael Araiz must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
- 3.) Joseph A. Foglia's NASD forum fees up to this point and moving forward shall be proportionally paid by Respondent Imperial Capital (60%) and Respondent Joseph Michael Araiz (40%) per the parties' stipulation. Further fees for the expungement proceeding will be paid solely by Respondent Joseph Michael Araiz.

SIGNATURES CONTINUED ON NEXT PAGE

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Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$5,000.00
Total Member Fees	= \$8,550.00

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. In this matter, Ladenburg, Thalmann & Co., Inc. is a party.

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$5,000.00
Total Member Fees	= \$8,550.00

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. In this matter, M.J. Whitman, Inc. is a party.

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$5,000.00
Total Member Fees	= \$8,550.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$2,400.00
Pre-hearing conferences: July 24, 2003 1 session	
November 21, 2003 1 session	
Total Forum Fees	= \$2,400.00

1. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent Araiz has been assessed \$960.00 of the forum fees.
2. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent Imperial has been assessed \$1,440.00 of the forum fees.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= \$1,200.00
Total Fees	= \$1,700.00
<u>Less payments</u>	= \$1,700.00
Refund Due Claimant	= \$ 0.00

Pursuant to Rule 10332(f) of the NASD Code of Arbitration Procedure, NASD is retaining the total initial amount of the hearing session deposited by the Claimant because this office was notified by the parties that they settled within eight business days of the first scheduled hearing.

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2. Respondent Concord is solely liable for:

<u>Forum Fees</u>	= \$8,550.00
<u>Total Fees</u>	= \$8,550.00
<u>Less payments</u>	= \$8,870.00
Refund Due Concord	= \$ 320.00

3. Respondent Ladenburg is solely liable for:

<u>Member Fees</u>	= \$8,550.00
<u>Total Fees</u>	= \$8,550.00
<u>Less payments</u>	= \$8,870.00
Refund Due Ladenburg	= \$ 320.00

4. Respondent M.J. Whitman is solely liable for:

<u>Member Fees</u>	= \$8,550.00
<u>Total Fees</u>	= \$8,550.00
<u>Less payments</u>	= \$8,870.00
Refund Due M.J. Whitman	= \$ 320.00

5. Respondent Imperial is solely liable for:

<u>Member Fees</u>	= \$8,550.00
<u>Forum Fees</u>	= \$1,440.00
<u>Total Fees</u>	= \$9,990.00
<u>Less payments</u>	= \$8,870.00
Balance Due NASD Dispute Resolution	= \$1,120.00

6. Respondent Araiz is solely liable for:

<u>Counterclaim Filing Fee</u>	= \$ 375.00
<u>Forum Fees</u>	= \$ 960.00
<u>Total Fees</u>	= \$1,335.00
<u>Less payments</u>	= \$1,700.00
Refund Due Araiz	= \$ 365.00

All balances are due and payable to NASD Dispute Resolution

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THE FOREGOING HAS BEEN STIPULATED TO BY AND FOR UNDERSIGNED
COUNSEL.

Joseph A. Foglia

By: 

Thomas Wilinsky
Biancone & Wilinsky, LLP

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280 Park Avenue, 26th Floor
New York, New York 10169

Imperial Capital, LLC

By: _____

Robert H. Logan
Elizabeth A. Logan
Keesal, Young & Logan

Address:
400 Oceangate, Suite 1400
Long Beach, CA 90802

Joseph Michael Araiz

By: 

Carole R. Bernstein

STIPULATED AND AGREED.

Parties Signatures:


Joseph A. Foglia


Joseph Michael Araiz

Imperial Capital, LLC

By: _____

Its: _____

SIGNATURES CONTINUED ON NEXT PAGE

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COUNSEL.

Joseph A. Foglia

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Thomas Wilinsky
Biancone & Wilinsky, LLP

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Robert H. Logan
Elizabeth A. Logan
Keesal, Young & Logan

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Address:
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Long Beach, CA 90802

Joseph Michael Araiz

By: _____

Carole R. Bernstein

STIPULATED AND AGREED.

Parties Signatures:

Joseph A. Foglia

Joseph Michael Araiz

Imperial Capital, LLC

By: _____
Its: _____

SIGNATURES CONTINUED ON NEXT PAGE

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**THE FOREGOING HAS BEEN STIPULATED TO BY AND FOR UNDERSIGNED
COUNSEL.**

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Imperial Capital, LLC

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Address:
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Joseph Michael Araiz

By: _____
Carole R. Bernstein

STIPULATED AND AGREED.
Parties Signatures:

Joseph A. Foglia

Joseph Michael Araiz

Imperial Capital, LLC

By: Mark Markov
Its: CEO

SIGNATURES CONTINUED ON NEXT PAGE

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ARBITRATION PANEL

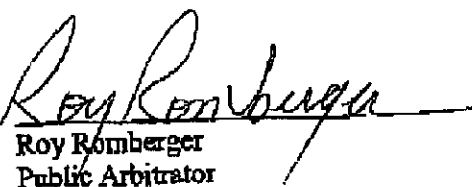
Paul Schiffres
Roy Romberger
William Haviland

Public Arbitrator, Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Paul Schiffres
Public Arbitrator, Chairperson

Signature Date


Roy Romberger
Public Arbitrator

12/10/04
Signature Date

William Haviland
Industry Arbitrator

Signature Date

December 29, 2004

Date of Service (For NASD office use only)

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ARBITRATION PANEL

Paul Schiffrin
Roy Rosenberg
William Haviland

Public Arbitrator, Chairperson
Public Arbitrator
Non-Public Arbitrator

Concerning Arbitrators' Signatures

Paul Schiffrin
Public Arbitrator, Chairperson

Signature Date

Roy Rosenberg
Public Arbitrator

Signature Date

William Haviland
Industry Arbitrator

12-10-2004
Signature Date

December 29, 2004

Date of Service (for NASD office use only)