

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Michael Mortorano (Claimant) v. Ladenburg Capital Management (Respondent)

Case Number: 02-06969

Hearing Site: New York, New York

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

Claimant Michael Mortorano ("Mortorano") hereinafter referred to as "Claimant":
Morgan W. Bentley, Esq., Attorney at Law, Newark, NJ.

Respondent Ladenburg Capital Management ("LCM") hereinafter referred to as
"Respondent": Joseph Giovanniello, Jr., Esq., Ladenburg Capital Management, New
York, NY.

CASE INFORMATION

Statement of Claim filed on or about: November 13, 2002.

Claimant signed the Uniform Submission Agreement: November 9, 2002.

Statement of Answer and Motion for a More Definite Statement filed by Respondent on
or about: January 13, 2003.

Respondent signed the Uniform Submission Agreement: January 13, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitable activities and
recommendation (NASD Rule 2310); churning and excessive trading; breach of fiduciary
duty; breach of NASD Customer Protection Rules; breach of New Jersey securities
statutes; misrepresentations and omissions; negligence and gross negligence; and failure
to supervise. Claimant's claims involved unspecified securities.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the
Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested the reimbursement of his losses in the amount of \$34,056.00, plus
attorneys' fees, costs, and punitive damages.

Respondent requested that the Arbitrator dismiss the proceeding in its entirety, award LCM its costs, disbursements and attorneys' fees incurred herein, and assess all forum fees against the Claimant, and grant such other and further relief as the Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

A pre-hearing conference call was held in this matter on November 10, 2003. Counsel for both parties agreed that there were no documents provided to the Respondent since the issuance of the Scheduling Order of October 3, 2003. The documents to be produced by Claimant were as required under the NASD Discovery Guide production list. After the initial pre-hearing conference call of April 7, 2003, the parties had three (3) additional pre-hearing conference calls in which Claimant was directed to produce documents required under the NASD Discovery Guide and failed to do so.

At the October 3, 2003 pre-hearing conference call, Claimant's counsel, Mr. Bentley, told the participants that his client was in possession of the documents and that they would be produced by November 3, 2003. Further, both attorneys agreed that the case would be dismissed with prejudice if that final deadline was not adhered to.

Claimant did not produce the documents.

The Arbitrator found that there has been a willful and intentional material failure by the Claimant to comply with the Arbitrator's several Orders and therefore this case is dismissed with prejudice.

AWARD

After considering the pleadings, the testimony and evidence presented, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are hereby dismissed in their entirety with prejudice.
2. Any and all relief, including punitive damages, not specifically addressed herein 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	= \$175.00
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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, Ladenburg Capital Management is a party.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

Forum Fees and Assessments

The Arbitrator has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Five (5) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$2,250.00
Pre-hearing conferences:	
April 7, 2003	1 session
July 25, 2003	1 session
September 5, 2003	1 session
October 3, 2003	1 session
November 10, 2003	1 session
Total Forum Fees	= \$2,250.00

1. The Arbitrator has assessed forum fees in the sum of \$2,250.00 against the Claimant.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	= \$2,250.00
Total Fees	= \$2,425.00
<u>Less Payments</u>	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$1,450.00

2. Respondent is solely liable for:

<u>Member Fees</u>	= \$2,625.00
Total Fees	= \$2,625.00
<u>Less Payments</u>	= \$2,115.00
Balance Due NASD Dispute Resolution	= \$ 510.00

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

ARBITRATOR

Paul Weinberg

- Public Arbitrator, Presiding Chair

Arbitrator's Signature

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.



Paul Weinberg
Public Arbitrator, Presiding Chairperson



Signature Date

December 10, 2003

Date of Service (For NASD Dispute Resolution use only)