
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 02-07792

Rasiklal Nagda
Harshada Nagda
Sofia R. Nagda Custodial Account
Drew Nadga Custodial Account
Sonia R. Nagda Custodial Account

Names of the Respondents

Hearing Site: Orlando, Florida

New England Securities Corp.
Dipak Shah
Sami Qutby
New England Life Insurance Company

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

REPRESENTATION OF PARTIES

For Rasiklal Nagda, Harshada Nagda, Sofia R. Nagda Custodial Account, Drew Nadga Custodial Account, and Sonia R. Nagda Custodial Account, hereinafter collectively referred to as "Claimants": Meenakshi A. Hirani, Esq., Meenakshi A. Hirani, P.A., Winter Park, Florida.

For New England Life Insurance Company, hereinafter referred to as "Respondent NELIC", and New England Life Securities, Inc., hereinafter referred to as "Respondent NELS": Katherine C. Lake, Esq., Fowler White Boggs Banker, P.A., Tampa, Florida.

Dipak Shah, hereinafter referred to as "Respondent Shah", appeared *pro se*.

For Sami Qutby, hereinafter referred to as "Respondent Qutby": Lloyd R. Schwed, Esq. and Jeremy M. Colvin, Esq., Kubicki Draper, P.A., West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed on or about: January 15, 2003.

Claimant Rasiklal Nagda signed the Uniform Submission Agreement on: October 4, 2002.

Claimant Harshada Nagda signed the Uniform Submission Agreement on: October 4, 2002.

Claimant Sofia R. Nagda Custodial Account signed the Uniform Submission Agreement on: October 4, 2002.

Claimant Drew Nadga Custodial Account signed the Uniform Submission Agreement on: October 4, 2002.

Claimant Sonia R. Nagda Custodial Account signed Uniform Submission Agreements on: October 4, 2002 and November 18, 2002.

Statement of Answer filed by Respondent NELS on or about: May 9, 2003.

Respondent NELIC did not file a Statement of Answer.

Motion to Dismiss filed by Respondent NELIC on or about: May 9, 2003.

Statement of Answer filed by Respondent Qubty on or about: October 13, 2003.

Motion to Dismiss filed by Respondent Shah on or about: June 2, 2003.

Respondent NELIC signed the Uniform Submission Agreement on: August 29, 2003.

Respondent NELS signed the Uniform Submission Agreement on: April 18, 2003.

Respondent Shah did not file an executed Uniform Submission Agreement.

Respondent Qubty signed the Uniform Submission Agreement on: March 14, 2003.

Claimants' Reply to Respondent NELIC's Response and Affirmative Defenses to the Statement of Claim filed on or about: May 27, 2003.

CASE SUMMARY

Claimants alleged causes of action for breach of contract and fraudulent inducement for commissions charged in connection with various investments, including shares of stock in Yahoo, Inc. and Amazon.com, Inc., in Claimants' accounts. Claimants further alleged a cause of action for fraudulent activities by Respondents NELIC and NELS for obtaining and keeping on file blank forms that were signed by the client as illustrated in their "How We Do Business" manual in violation of the Florida Securities and Investor Protection Act, Fla. Stat. Ch. 517.301.

Unless specifically admitted in their Answer, Respondents NELIC, NELS and Qubty denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimants requested: 1) refund of \$32,924.49 in commissions charged to Claimants' accounts; 2) punitive damages, or alternatively, treble damages for fraudulent misrepresentation; 3) compensatory damages for Claimants' loss of time to pursue recovery from Respondents; 4) interest on commission from the date monies were debited from Claimants' accounts until payment; 5) court costs and attorneys' fees for filing a civil action against Respondents; 6) cost of filing for arbitration; and 7) attorneys' fees.

Respondents NELS and NELIC requested: 1) dismissal of the Statement of Claim in its entirety; 2) costs; and 3) attorneys' fees.

Respondent Qubty requested: 1) dismissal of the Statement of Claim in its entirety; 2) expungement of all reference to the above captioned arbitration from Respondent Qubty's registration records maintained by the NASD Central Registration Depository ("CRD"); 3) costs; and 4) attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

On or about June 2, 2003, Respondent Shah filed his Motion to Dismiss. On or about July 21, 2003, the Panel: 1) granted Respondent Shah's motion; 2) dismissed with prejudice Respondent Dipak Shah as a party; and 3) denied Respondent NELIC's motion to dismiss.

On or about July 10, 2003, Claimants filed their Motion to Compel New England Life Insurance Company to Comply with Claimants' Discovery Request and to Submit Uniform Submission Agreement. On or about August 5, 2003, Respondent NELIC filed its response. On or about August 12, 2003, the Panel ordered Respondent NELIC to serve each party with an executed Uniform Submission Agreement and to file with the Director of Arbitration an executed Uniform Submission Agreement on or before August 31, 2003 in accordance with the requirements of Section 10314(b)(1) of the NASD Code of Arbitration Procedure (the "Code").

At the evidentiary hearing, Claimants moved to amend their Statement of Claim to add a third count with respect to Respondents Qubty, NELIC and NELS. Respondents NELIC and NELS made no objection to and consented to the amendment to the Statement of Claim with respect to them. Respondent Qubty objected to the amendment to the Statement of Claim as against him, and the Panel, therefore, denied the motion with respect to Respondent Qubty. The Panel permitted Claimants to amend their Statement of Claim as follows:

Claimants have alleged fraudulent activities by respondent for obtaining and keeping on file blank forms that were signed by the client as illustrated in their "How We Do Business" manual. This activity is in violation of Florida Securities and Investor Protection Act (FSIPA), Fla. Stat. Ch. 517. In Josephthal Lyon & Ross, Inc. v. Barbra L. Durham, 734 So. 2d 487 (Fla. 5th DCA 1999), the court held that success of the FSIPA claim entitles the party attorney fees pursuant to Fla. Stat. Ch. 517.211(6)."

At the evidentiary hearing, Claimants orally moved to amend that portion of their Statement of Claim requesting that their demand for treble damages be withdrawn but leaving intact the request for punitive damages for "fraudulent misrepresentation." The motion was granted and the demand for treble damages was stricken from the Statement of Claim.

At the conclusion of the case, Respondents NELIC and NELS orally renewed their Motion to Dismiss for Failure to State a Claim for Relief. The Panel elected to dispose of the motion in connection with the rendering of the Award.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims against Respondent Shah are dismissed with prejudice. See, Other Issues Decided and Considered.
2. Claimants' claims against Respondents NELIC, NELS and Qubty are denied in their entirety.
3. Claimants' request for punitive damages is denied.
4. Claimants' request for attorneys' fees is denied.
5. Respondent Qubty's request for attorneys' fees is denied.
6. Respondents NELIC and NELS' requests for attorneys' fees are granted. Based upon the Panel's finding that no violation of Section 517.301, Florida Statutes, of the Florida Securities and Investor Protection Act, by Respondents NELIC and NELS has been proven and an express finding by the Panel that it is not unjust to so do as provided in Section 517.211(6), Florida Statutes, Respondents NELIC and NELS may pursue recovery of reasonable attorneys' fees incurred in this proceeding from and including April 21, 2004 and thereafter in a court of competent jurisdiction. In addition, the Panel wishes to note that all parties stipulated that the Panel was to determine entitlement to attorneys' fees with the determination of the amount thereof to be reserved for the appropriate court having subject matter jurisdiction.
7. The Panel recommends expungement of all references to the above-captioned arbitration proceeding from Respondent Qubty's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Qubty must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
8. 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:

Initial claim filing fee = \$ 225.00

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, Respondent NELS is a member firm and a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

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:

Four (4) Pre-hearing sessions with a single arbitrator @ \$450.00 per session = \$1,800.00

Pre-hearing conferences:	November 13, 2003	1 session
	January 6, 2004	1 session
	March 23, 2004	1 session
	April 2, 2004	1 session

One (1) Pre-hearing session with Panel @ \$600.00 per session = \$ 600.00

Pre-hearing conference:	July 11, 2003	1 session
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Four (4) Hearing sessions @ \$600.00 per session = \$2,400.00

Hearing Dates:	April 20, 2004	2 sessions
	April 21, 2004	2 sessions

Total Forum Fees	= \$4,800.00
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The Panel has assessed \$450.00 in forum fees for the pre-hearing conference held on March 23, 2004 as follows: \$150.00 jointly and severally to Claimants; \$150.00 to Respondent Qubty; and \$150.00 jointly and severally to Respondents NELIC and NELS.

The Panel has assessed \$450.00 in forum fees for the pre-hearing conference held on April 2, 2004 as follows: \$225.00 jointly and severally to Claimants; and \$225.00 to Respondent Qubty.

The Panel has assessed forum fees for the pre-hearing conferences held on November 13, 2003, July 11, 2003 and January 6, 2004; and the hearing sessions held on April 20 – 21, 2004, in the total amount of \$3,900.00 jointly and severally to Claimants.

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

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$4,275.00
Total Fees	= \$4,500.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$3,525.00

Respondent NELS is solely liable for:

Member Fees	= \$3,550.00
Total Fees	= \$3,550.00
Less payments	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Qubty is solely liable for:

Forum Fees	= \$ 375.00
Total Fees	= \$ 375.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 375.00

Respondents NELIC and NELS are jointly and severally liable for:

Forum Fees	= \$ 150.00
Total Fees	= \$ 150.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 150.00

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

ARBITRATION PANEL

<i>Arthur R. Louv, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Susan Jefferbaum Beck</i>	-	<i>Public Arbitrator</i>
<i>Howard A. Tescher, Esq.</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
Arthur R. Louv, Esq.
Public Arbitrator, Presiding Chairperson

April 27, 2004
Signature Date

/s/
Susan Jefferbaum Beck
Public Arbitrator

April 28, 2004
Signature Date

/s/
Howard A. Tescher, Esq.
Non-Public Arbitrator

April 27, 2004
Signature Date

April 29, 2004

Date of Service (For NASD Dispute Resolution office use only)

Apr. 27. 2004 11:06

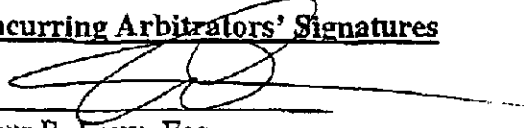
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ARBITRATION PANEL

Arthur R. Louv, Esq.	-	Public Arbitrator, Presiding Chairperson
Susan Jefferbaum Beck	-	Public Arbitrator
Howard A. Tescher, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Arthur R. Louv, Esq.
Public Arbitrator, Presiding Chairperson

4/27/04

Signature Date

Susan Jefferbaum Beck
Public Arbitrator

Signature Date

Howard A. Tescher, Esq.
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution

Arbitration No. 02-07792

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ARBITRATION PANEL

Arthur R. Louv, Esq.

Susan Jefferbaum Beck

Howard A. Tescher, Esq.

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Arthur R. Louv, Esq.

Public Arbitrator, Presiding Chairperson

Signature Date



Susan Jefferbaum Beck

Public Arbitrator

4-28-04

Signature Date

Howard A. Tescher, Esq.

Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

Apr. 27, 2004 11:36AM NASD

No. 5766 P. 8

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ARBITRATION PANEL

Arthur R. Louv, Esq.	-	Public Arbitrator, Presiding Chairperson
Susan Jefferbaum Beck	-	Public Arbitrator
Howard A. Tescher, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Arthur R. Louv, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Susan Jefferbaum Beck
Public Arbitrator

Signature Date



Howard A. Tescher, Esq.
Non-Public Arbitrator

4-27-04

Signature Date

Date of Service (For NASD Dispute Resolution office use only)