

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

*Shirley D. Simon and Adam F. Simon, Claimants v. Marshall J. Field, The Heritage Group, Inc.,
Marshall J. Field & Co., Inc., Passport Securities, Inc., and American National Municipal
Corporation, Respondents*

Case Number: 02-07804

Hearing Site: Los Angeles, California

Nature of the Dispute: Customers v. Members and Associated Person

REPRESENTATION OF PARTIES

For Claimants:

Michael A. Bertz, Esq.
Attorney at Law
Los Angeles, California

For Respondents Marshall J. Field,
Marshall J. Field & Co., Inc., and
American National Municipal Corporation:

Steve A. Buchwalter, Esq.
Law Offices of Steve A. Buchwalter, P.C.
Encino, California

For Respondent The Heritage Group, Inc.:

William Slivka
The Heritage Group, Inc.
San Francisco, California

For Respondent Passport Securities, Inc.:

Douglas B. Martin, Jr., Esq.
Attorney at Law
San Francisco, California

CASE INFORMATION

Statement of Claim filed: December 23, 2002

Claimants' Joint Uniform Submission Agreement signed: December 18, 2002

Joint Statement of Answer filed by Respondents Marshall J. Field, Marshall J. Field & Co., Inc.,
and American National Municipal Corporation: April 4, 2003

Statement of Answer filed by Respondent Passport Securities, Inc.: March 17, 2003

Respondent American National Municipal Corporation's Uniform Submission Agreement signed:
August 28, 2003

Respondent Marshall J. Field's Uniform Submission Agreement signed: August 28, 2003

Respondent Marshall J. Field & Co., Inc.'s Uniform Submission Agreement signed: August 28, 2003

Respondent Passport Securities, Inc.'s Uniform Submission Agreement signed: March 14, 2003

CASE SUMMARY

Claimants alleged breach of fiduciary duty, fraud and deceit, and financial abuse of an elder. Claimants' allegations involved the purchase and sale of municipal bonds, including bonds in Sierra Foothills, Legends Golf Club, Chimney Rock Community, Roddy Ranch, Jensen Ranch, and Desert Springs.

Respondents Marshall J. Field, Marshall J. Field & Co., Inc., and American National Municipal Corporation denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted various affirmative defenses.

Respondent Passport Securities, Inc. denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested unspecified compensatory damages, punitive damages in an amount which would make the total award no greater than \$3,000,000.00, interest, and costs, including attorney's fees.

Respondents Marshall J. Field, Marshall J. Field & Co., Inc., and American National Municipal Corporation requested dismissal of Claimants' Statement of Claim in its entirety.

Respondent Passport Securities, Inc. requested dismissal of Claimants' Statement of Claim in its entirety and costs.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent The Heritage Group, Inc. did not file with the 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 June 12, 2003, Claimants dismissed Respondent The Heritage Group, Inc. without prejudice.

On August 27, 2003, Claimants dismissed Respondent Passport Securities, Inc. with prejudice, and dismissed Marshall J. Field with prejudice as to his actions as an agent or representative of Passport Securities, Inc., and as to transactions entered at Passport Securities, Inc.

On February 5, 2003, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On February 12, 2003 counsel for Respondents Marshall J. Field, Marshall J. Field & Co., and American National Municipal Corporation signed a Waiver Agreement on behalf of said Respondents, expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On May 27, 2004, Claimants filed a Report on Respondents Marshall J. Field, Marshall J. Field & Co., Inc., and American National Municipal Corporation's Failure to Comply with Discovery Orders and Request for Sanctions. On June 15, 2004, said Respondents filed a Response to Claimants' Report. Claimants filed a Reply in support of the Report on Respondents' Failure to Comply with Discovery Orders and Request for Sanctions on June 15, 2004. On June 17, 2004, Respondents submitted a response to Claimants' Reply, and on June 18, 2004, Claimants filed a Sur-Reply in support of the Report. On June 22, 2004, the Chair issued an Order stating that "[a]t the conclusion of this case the entire panel will seriously consider and evaluate the pleadings and the evidence submitted by both parties as they related to the Request for Sanctions and will incorporate it's ruling in it's final decision."

On June 23, 2004, Claimants filed a Request for Clarification of the above June 22, 2004 Order, and Respondents subsequently filed a Response thereto. On July 1, 2004, the Chair issued an Order stating that "[a]t the conclusion of this case, the full panel will consider the issues raised by Claimants' counsel and will give them appropriate weight during the deliberations."

On July 12, 2004, Claimants filed a Request for Immediate Ruling Regarding Respondents Marshall J. Field, Marshall J. Field & Co., Inc., and American National Municipal Corporation's Failure to Exchange Exhibits as Provided in the NASD Code of Arbitration Procedure. On July 14, 2004, said Respondents responded to Claimants' Request. The Panel deferred ruling on Claimants' Request until the evidentiary hearing.

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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents Marshall J. Field, Marshall J. Field & Co., Inc., and American National Municipal Corporation are jointly and severally liable to and shall pay Claimants the sum of \$295,960.00 in compensatory damages.
- 2) Respondents Marshall J. Field, Marshall J. Field & Co., Inc., and American National Municipal Corporation are jointly and severally liable to and shall pay Claimants the sum of \$3,500.00 in discovery sanctions.
- 3) The Parties shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 500.00
--------------------------	-------------

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Marshall J. Field & Co., Inc. is a party and the following fees are assessed:

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

The member firm American National Municipal Corp. is a party and the following fees are assessed:

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

The member firm Passport Securities, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,800.00
<u>Pre-Hearing Process Fee</u>	<u>= \$ 750.00</u>
Total Member Fees	= \$ 3,550.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

2 Pre-hearing conference sessions with a single arbitrator @ \$ 450.00/session	= \$ 900.00
Pre-hearing conferences:	
December 5, 2003	1 session
July 22, 2004	1 session
5 Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 6,000.00
Pre-hearing conferences:	
September 29, 2003	1 session
November 17, 2003	1 session
July 27, 2004	1 session
July 28, 2004	1 session
July 29, 2004	1 session
11 Hearing sessions @ \$1,200.00/session	= \$13,200.00
Hearings:	
August 2, 2004	2 sessions
August 3, 2004	2 sessions
August 5, 2004	2 sessions
August 6, 2004	2 sessions
August 9, 2004	1 session
August 10, 2004	2 sessions

Total Forum Fees	= \$20,100.00
-------------------------	----------------------

1. The Panel assessed \$ 8,250.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$ 11,850.00 of the forum fees jointly and severally to Respondents Marshall J. Field, Marshall J. Field & Co., Inc., and American National Municipal Corporation.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimants requested 188 photocopies @ \$0.50 each:	= \$ 94.00
Claimants requested copies of Awards:	= \$ 70.00

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 8,250.00
<u>Administrative Costs</u>	= \$ 164.00
Total Fees	= \$ 8,914.00
<u>Less payments</u>	= \$(1,770.00)
Balance Due NASD Dispute Resolution	= \$ 7,144.00

2. Respondent American National Municipal Corp. is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
<u>Less payments</u>	= \$(8,550.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondent Marshall J. Field & Co., Inc. is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
<u>Less payments</u>	= \$(0.00)
Balance Due NASD Dispute Resolution	= \$ 8,550.00

4. Respondent Passport Securities, Inc. is charged with the following fees and costs:

Member Fees	= \$ 3,550.00
<u>Less payments</u>	= \$(3,550.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

5. Respondents Marshall J. Field, Marshall J. Field & Co., Inc., and American National Municipal Corporation are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 11,850.00
<u>Less payments</u>	= \$(0.00)
Balance Due NASD Dispute Resolution	= \$ 11,850.00

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

ARBITRATION PANEL

Harry Miller	-	Public Arbitrator, Presiding Chair
Robert S. Granas	-	Public Arbitrator
Helmut F. Furth, Esq.	-	Non-Public Arbitrator

Harry Miller
Harry Miller
Chair, Public Arbitrator

Aug 11, 2004
Signature Date

Robert S. Granas
Robert S. Granas
Public Arbitrator

August 11, 2004
Signature Date

Helmut F. Furth
Helmut F. Furth, Esq.
Non-Public Arbitrator

August 11, 2004
Signature Date

8/11/04
Date of Service