
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Ronald A. Pickering
Olivia Pickering

Case Number: 03-00233

Names of the Respondents

LH Ross & Company, Inc.
Fernando Fernandez

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Ronald A. Pickering and Olivia Pickering, hereinafter collectively referred to as "Claimants": Randall W. Henley, Esq., West Palm Beach, Florida.

For Respondent LH Ross & Company, Inc. ("LH Ross"): Alan P. Fraade, Esq., Mintz & Fraade, P.C., New York, New York.

For Respondent Fernando Fernandez ("Fernandez"): Delmer C. Gowing III, Esq., Delmer C. Gowing III, P.A., Delray Beach, Florida.

CASE INFORMATION

Statement of Claim filed on or about: January 14, 2003.

Claimants signed the Uniform Submission Agreement: January 7, 2003.

Statement of Answer filed by Respondent LH Ross on or about: March 12, 2003.

Statement of Answer filed by Respondent Fernandez on or about: April 15, 2003.

Respondent LH Ross signed the Uniform Submission Agreement: March 10, 2003.

Respondent Fernandez signed the Uniform Submission Agreement: January 28, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: 1) breach of fiduciary duty; and, 2) violation of Section 517.301, Florida Statutes. The causes of action relate to the purchase and sale of Cons Mercantile, Inc. stock in Claimants' account.

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

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

RELIEF REQUESTED

Claimants requested compensatory damages, jointly and severally, against Respondents in the amount of \$30,000.00, interest, costs and attorney's fees pursuant to Chapter 517, Florida Statutes.

Respondent LH Ross requested that the Statement of Claim be dismissed in its entirety with a declaration that they are not liable to the Claimants in any respect, in law or equity upon the evidence presented and that it be awarded its costs, attorney's fees and such other and further relief as deemed appropriate.

Respondent Fernandez requested that the Statement of Claim be dismissed and that he be awarded his costs and attorney's fees pursuant to Chapter 517, Florida Statutes.

OTHER ISSUES CONSIDERED AND DECIDED

During the final hearing, Claimants dismissed Respondent Fernandez, with prejudice, and requested an expungement of this matter from Respondent Fernandez's NASD Central Registration Depository (the "CRD") record. The Panel granted the request for expungement. Pursuant to this dismissal, the Panel made no other determinations as to Respondent Fernandez.

During the final hearing, Claimants requested that the Panel consider an award of punitive damages in this matter. The Panel granted Claimants' request. In addition, Claimants withdrew their request for attorney's fees.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten 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:

Respondent LH Ross is liable for breach of fiduciary duty and violation of Florida Statute Chapter 517.301, and shall pay to Claimants compensatory damages in the amount of \$17,000.00, plus post-judgment interest at the statutory rate in the state of Florida from the date of service of the Award until the date of payment of the Award. Pre-judgment interest is specifically denied.

Respondent LH Ross is liable and shall pay to Claimants punitive damages in the amount of \$17,000.00. Punitive damages are being awarded pursuant to the Panel's finding that the employer, principal, corporation or employees at LH Ross engaged in conduct that constituted gross negligence and contributed to the loss, damages and injury suffered by Claimants in violation of Florida Statutes Chapter 768.72. Respondent LH Ross sold Claimants' stock even though it was evident that the Claimants wanted their investment transferred to another firm. Respondent LH Ross also acted as principal on the sale of Claimants' security without proper disclosure of markup/markdown on the trade. The price received by the Claimants was well below the

published low price of the security on the day of the trade. The trade confirmation to the Claimants was also showing an agency trade with a flat commission amount rather than the principal trade that it was. The lack of supervision over branch operations clearly contributed to an environment allowing for such violations. The Panel concluded that Respondent's conduct was so lacking in care that it constituted a conscious indifference to the claimants in this matter. In view of this, the Panel was of the opinion that compensatory damages alone do not suffice and has decided to award punitive damages.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Fernandez's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Fernandez must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Any and all claims for relief not specifically addressed herein, including Respondent LH Ross' request for attorney's fees, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$150.00
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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, Respondent LH Ross is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$ 600.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

Adjournment Fees

No requests for adjournments were filed in this matter.

Injunctive Relief Fees

No injunctive relief fees were incurred during this proceeding.

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 the Panel @ \$600.00	= \$ 600.00
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Pre-hearing conference: September 3, 2003 1 session

Three (3) Hearing sessions with the Panel @ \$600.00 = \$1,800.00

Hearing Dates: March 9, 2004 2 sessions

March 10, 2004 1 session

Total Forum Fees = \$2,400.00

The Panel has assessed the total forum fees of \$2,400.00 to Respondent LH Ross.

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.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee = \$ 150.00

Total Fees = \$ 150.00

Less payments = \$ 150.00

Balance Due NASD Dispute Resolution = \$ 0.00

Respondent LH Ross is solely liable for:

Member Fees = \$ 2,350.00

Forum Fees = \$ 2,400.00

Total Fees = \$ 4,750.00

Less payments = \$ 2,350.00

Balance Due NASD Dispute Resolution = \$ 2,400.00

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

ARBITRATION PANEL

Michael Lau	-	Public Arbitrator, Presiding Chairperson
Gary Paul Whorton	-	Public Arbitrator
Harry C. Treber	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Michael Lau
Public Arbitrator, Presiding Chairperson

03/16/04
Signature Date

NASD Dispute Resolution

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/s/

Gary Paul Whorton
Public Arbitrator

03/16/04

Signature Date

/s/

Harry C. Treber
Non-Public Arbitrator

03/16/04

Signature Date

03/16/04

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

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Michael Lau
Gary Paul Whorton
Harry C. Treber


- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

Consenting Arbitrators' Signatures


Michael Lau
Public Arbitrator, Presiding Chairperson

3/16/2004
Signature Date

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Gary Paul Whorton
Public Arbitrator

03/16/2004

Signature Date

Harry C. Treber
Non-Public Arbitrator

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Gary Paul Whorton
Public Arbitrator

Signature Date

Harry C. Treber
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Non-Public Arbitrator

3/16/04
Signature Date

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