

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Margaret Tackbary, individually and Rosemary Spahn, individually, and Margaret Tackbary and Rosemary Spahn as Trustees of the William I. Tackbary Trust U/A 3/30/90 (Claimants) vs. Cantella & Co., Ilicob Sales Corp. and Peter Aleksandrowicz (Respondents)

Case Number: 03-00695

Hearing Site: Buffalo, New York

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

REPRESENTATION OF PARTIES

Claimants Margaret Tackbary, individually, ("Tackbary"), Rosemary Spahn, individually, ("Spahn"), and Tackbary and Spahn as Trustees of the William I. Tackbary Trust U/A 3/30/90 ("Trust") hereinafter collectively referred to as "Claimants": Andrea R. Polvino Esq., McGrath & Polvino, PLLC, Williamsville, NY.

Respondent Cantella & Co. ("Cantella"): Christopher B. Mulvihill, Esq., Winget, Spadafora & Schwartzberg, LLP, New York, NY.

Respondent Peter Aleksandrowicz ("Aleksandrowicz"): Gerard A. Strauss, Esq., Felman, Kieffer & Herman, LLP, Buffalo, NY.

Respondent Ilicob Sales Corp. ("Ilicob") did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: January 27, 2003.

Response to Motion to Dismiss filed by Cantella filed on or about: September 12, 2003.

Claimant Tackbary signed the Uniform Submission Agreement: January 15, 2003

Claimant Tackbary as Trustee of the William I. Tackbary Trust U/A 3/30/90 signed the Uniform Submission Agreement: January 15, 2003

Claimant Spahn signed the Uniform Submission Agreement: January 20, 2003.

Claimant Spahn as Trustee of the William I. Tackbary Trust U/A 3/30/90 signed the Uniform Submission Agreement: January 20, 2003.

Statement of Answer, Motion to Dismiss, and Motion for Costs filed by Respondent Cantella on or about: August 21, 2003.

Cantella did not submit a signed Uniform Submission Agreement.

Statement of Answer and Counterclaim filed by Aleksandrowicz on or about: August 6, 2003.

Supplement to Statement of Answer filed by Aleksandrowicz on or about: January 14, 2004.

Aleksandrowicz signed the Uniform Submission Agreement: August 3, 2003.

Ilicob did not file a Statement of Answer or submit a signed Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract, breach of fiduciary duty, violation of New York's Prudent Investor Act, and failure to supervise. The causes of action relate to Exxon stock.

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

Unless specifically admitted in his Answer, Respondent Aleksandrowicz denied the allegations made in the Statement of Claim and asserted the following causes of action: libel per se, reimbursement for legal fees incurred in defense of the Supreme Court lawsuit, and sanctions for commencement of a frivolous arbitration.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$111,045.00, plus interest from November 1998, punitive and treble damages in an amount not less than \$331,135.00, attorneys' fees, and disbursements.

Respondent Cantella requested that the Statement of Claim be dismissed in its entirety and that the cost of the proceeding be assessed against Claimants.

Respondent Aleksandrowicz requested that the Statement of Claim be dismissed in its entirety. In his Counterclaim, Aleksandrowicz requested compensatory damages in the amount of \$1,000,000.00, attorneys' fees, disbursements, costs, and fees in the amount of \$3,273.00, plus interest, that all future fees, costs, and disbursements be assessed to Claimants, with interest, and punitive damages.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Ilicob has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Ilicob did not file with NASD Dispute Resolution a properly executed Uniform 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.

Cantella did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim and appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

At the hearings, the Panel heard oral arguments on Cantella's Motion to Dismiss. After due deliberation, the Panel reserved its decision on the Motion to Dismiss.

At the hearings, the Panel heard oral arguments on Aleksandrowicz's Motion for Summary Judgment. After due deliberation, the Panel denied the Motion for Summary Judgment.

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. Respondent Aleksandrowicz is liable for and shall pay to Trust damages in the amount of \$23,096.00, plus interest in the amount of 9% per annum, beginning thirty (30) days from receipt of this Award until this Award is paid in full.
2. Respondent Aleksandrowicz is liable for and shall pay to Claimants \$100.00 as reimbursement for filing fees previously paid to NASD Dispute Resolution.
3. Respondent Cantella is liable for and shall pay to Claimants \$100.00 as reimbursement for filing fees previously paid to NASD Dispute Resolution.
4. Respondent Aleksandrowicz's Counterclaim is dismissed in its entirety.
5. Any and all relief not specifically addressed herein, including punitive and treble damages, is denied.

FEEES

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	= \$	300.00
Counterclaim filing fee	= \$	375.00

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, Cantella & Co. is a party.

Member surcharge	= \$	1,700.00
Pre-hearing process fee	= \$	750.00
Hearing process fee	= \$	2,750.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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 a single arbitrator @ \$450.00 = \$ 450.00
Pre-hearing conference: January 25, 2005 1 session

Three (3) Pre-hearing session with Panel @ \$1,200.00 = \$ 3,600.00
Pre-hearing conferences: February 23, 2004 1 session
December 20, 2004 1 session
February 4, 2005 1 session

Twelve (12) Hearing sessions @ \$1,200.00 = \$14,400.00
Hearing Dates: February 1, 2005 2 sessions
February 2, 2005 2 sessions
February 3, 2005 2 sessions
October 26, 2005 2 sessions
October 27, 2005 2 sessions
January 19, 2006 2 sessions

Total Forum Fees = \$ 18,450.00

1. The Panel has assessed \$6,150.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$12,300.00 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 6,150.00
<u>Total Fees</u>	= \$ 6,450.00
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 5,025.00

2. Respondent Cantella is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
<u>Total Fees</u>	= \$ 5,200.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondent Aleksandrowicz is solely liable for:

<u>Counterclaim Filing Fee</u>	= \$ 375.00
<u>Total Fees</u>	= \$ 375.00
<u>Less payments</u>	= \$ 375.00
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondent Cantella and Respondent Aleksandrowicz are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 12,300.00
<u>Total Fees</u>	= \$ 12,300.00
<u>Less payments</u>	= \$ 2,575.00

Balance Due NASD Dispute Resolution

= \$ 9,725.00

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

ARBITRATION PANEL

David K. Silverberg	-	Public Arbitrator, Presiding Chairperson
Richard J. Lehner	-	Public Arbitrator
Jeffrey Mark Schwartz	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, 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, which is my award.



David K. Silverberg
Public Arbitrator, Presiding Chairperson

2/7/06
Signature Date

Richard J. Lehner
Public Arbitrator

Signature Date

Jeffrey Mark Schwartz
Non-Public Arbitrator

Signature Date

February 9, 2006
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

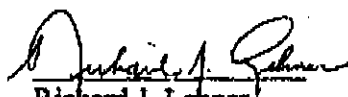
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NASD Dispute Resolution
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