

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant / Counter-Respondent

Stanford Group Company

and

Case Number: 03-02025
Hearing Site: Houston, Texas

Name of Respondent / Counter-Claimant

Leyla M. Basagoitia

NATURE OF DISPUTE

Member Firm vs. Associated Person and Associated Person vs. Member Firm

REPRESENTATION OF PARTIES

Stanford Group Company ("**Claimant**" or "**Stanford Group**") was represented by Trey Henderson, Esq. and Stephen H. Lee, Esq., Doyle, Restrepo, Harvin & Robbins, LLP, Houston, Texas.

Leyla M. Basagoitia ("**Respondent**" or "**Basagoitia**") was represented by Michael C. Falick, Esq., Rothfelder & Falick, LLP, Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about March 21, 2003. The Submission Agreement of Claimant, Stanford Group Company, was signed on or about March 20, 2003.

Statement of Answer and Counter claim was filed by Respondent, Leyla M. Basagoitia, on or about October 14, 2003. Respondent, Leyla M. Basagoitia, did not file a Submission Agreement.

Answer to the Counter claim was filed on or about December 17, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: failure to repay debit balances on employment promissory notes. Claimant asserted the following: on or about November 1,

2000, Stanford Group hired Basagoitia as a financial advisor in the Houston, Texas branch office. In connection with Basagoitia's hire, on or about November 21, 2000, Stanford Group advanced to Basagoitia, as a loan, the sum of \$77,067.60. This loan was memorialized in a promissory note ("First Note"). On or about April 9, 2001, Stanford Group advanced to Basagoitia another loan in the sum of \$77,067.60. This loan was memorialized in a promissory note ("Second Note"). The First and Second Notes provide that if Basagoitia's employment should terminate, whether voluntarily or involuntarily, no part of the unpaid Principal Amount shall be forgiven.

Basagoitia was terminated on or about November 21, 2002, prior to the third forgiveness date of the First Note. Two of the five equal, annual installments of this loan, or \$30,827.04, were forgiven. According to the Claimant, the amount of the principal outstanding on the First Note on the date of Basagoitia's termination from Stanford Group was \$46,240.56.

Also, Basagoitia was terminated prior to the second forgiveness date of Second Note. One of the five equal, annual installments of this loan, or \$15,413.52, was forgiven. According to the Claimant, the amount of the principal outstanding on the Second Note on the date of Basagoitia's termination from Stanford Group was \$61,654.08.

The aggregate amount owed by Basagoitia to Stanford Group with respect to the First and Second Notes is \$107,782.34. The First and Second Notes further provided that should Basagoitia default in the timely payment of any portion of the principal amount, Basagoitia is obligated to pay interest on any such outstanding amounts.

Unless specifically admitted in its Answer, Respondent, Basagoitia, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Stanford Group fraudulently induced Basagoitia into accepting certain employment terms, including the forgivable loan, and Claimant's failure to meet many of those terms resulted in the non-payment of the notes; there was a failure of consideration from Claimant to Basagoitia, which obviates any liability of Respondent to Claimant on the notes; Basagoitia is entitled to offset any liability to the Claimant in the amount of her lost commissions; and Claimant failed to meet its contractual obligations to Basagoitia that were conditions precedent to her obligations, and which resulted in the non-payment of the notes and the draw.

In her Counter claim, Respondent, Basagoitia, asserted the following causes of action: fraudulent inducement, fraud and misrepresentation, breach of contract, loss of business profits, slander per se, tortious interference with business relations, intentional infliction of emotional distress, negligent misrepresentation, gross negligence and mental anguish. Respondent alleged that Claimant is engaged in a Ponzi scheme to defraud its clients, and that she filed this Counter claim under the appropriate Whistleblower statutes. Basagoitia alleged that prior to accepting the position at Stanford Group, she emphasized that it was not her intent to allocate any of her clients' funds to Stanford Group's offshore bank,

Stanford International Bank, Ltd. ("SIBL"). Her clients were mainly foreign nationals of Latin America, and Basagoitia stated that she believed these investments to be risky in nature, unsuitable, and not the interest of her clients. Basagoitia asserts that her continued reluctance to push SIBL and its products proved fatal to her employment at Stanford Group. In addition, Basagoitia alleged that Stanford Group slandered her with false documentation to the NASD, stole funds from her personal Bear Stearns account and sought to steal the clients she brought with her to Stanford Group.

Unless specifically admitted in its Answer, Claimant denied the allegations made in the Counter claim and asserted affirmative defenses including the following: Respondent failed to state any cause of action against Stanford Group for which relief may be granted; Respondent's claims are barred in whole or in part by the doctrine of unclean hands, waiver and estoppel; Stanford Group made no oral agreements with Respondent and she is barred by the parol evidence rule and the statute of frauds from asserting any such oral agreements or promises.

RELIEF REQUESTED

Claimant requested an award in the amount of:

| | |
|-----------------------|--------------|
| Actual/Compensatory | \$107,782.34 |
| Attorney's Fees | Unspecified |
| Other Costs | Unspecified |
| Other Monetary Relief | Unspecified |
| Interest | Unspecified |

Respondent requested that the claims asserted against her be denied in their entirety and that she be awarded her actual damages, punitive damages, costs and attorneys' fees in her Counter claim.

OTHER ISSUES CONSIDERED & DECIDED

Respondent, Leyla M. Basagoitia, did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondents, Leyla M. Basagoitia, is liable for and shall pay to Claimant, Stanford Group Company, the sum of \$107,782.34 in compensatory damages;
- 2.) Respondent, Leyla M. Basagoitia, is liable for and shall pay to Claimant, Stanford Group Company, interest on damages as follows: 2.78% per annum from and including 11/21/02 through and including 12/31/2002, plus 1.52% from and including 1/1/2003 through and including 9/13/2004 pursuant to Texas statute;
- 3.) The Counter claim of Respondent, Leyla M. Basagoitia, is denied and dismissed with prejudice;
- 4.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 5.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

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 | = \$1,000.00 |
| Counter claim filing fee | = \$ 250.00 |

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. In this matter, the member firm is Stanford Group Company.

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

Adjournment Fees

Adjournments requested during these proceedings:

May 17-20, 2004, adjournment by Leyla M. Basagoitia = \$ 1,125.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

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|--|--------------|
| Two (2) Pre-hearing sessions with Panel x \$1,125.00 | = \$2,250.00 |
| Pre-hearing conferences: October 7, 2003 | 1 session |
| May 17, 2004 | 1 session |
| Three (3) Hearing sessions x \$1,125.00 | = \$3,375.00 |
| Hearing Date: September 13, 2004 | 3 sessions |
| Total Forum Fees | = \$5,625.00 |

The Arbitration Panel has assessed \$5,625.00 of the forum fees to Stanford Group Company.

FEE SUMMARY

Claimant, Stanford Group Company, is liable for:

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|-------------------------------------|----------------|
| Initial Filing Fee | = \$ 1,000.00 |
| Member Fees | = \$ 5,200.00 |
| Forum Fees | = \$ 5,625.00 |
| Total Fees | = \$ 11,825.00 |
| Less payments | = \$ 7,325.00 |
| Balance Due NASD Dispute Resolution | = \$ 4,500.00 |

Respondent, Leyla M. Basagoitia, is liable for:

| | |
|-------------------------------------|---------------|
| Counter claim Filing Fee | = \$ 250.00 |
| Adjournment Fee | = \$ 1,125.00 |
| Total Fees | = \$ 1,375.00 |
| Less payments | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$ 1,375.00 |

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

ARBITRATION PANEL

Ruth Smith Jackson - Non-Public Arbitrator, Presiding Chair
Robert E. Otto - Non-Public Arbitrator
Teresa A. Oxford, J.D. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Ruth Smith Jackson
Ruth Smith Jackson
Non-Public Arbitrator, Presiding Chair

September 15, 2004
Signature Date

/s/ Robert E. Otto
Robert E. Otto
Non-Public Arbitrator

September 15, 2004
Signature Date

/s/ Teresa A. Oxford, J.D.
Teresa A. Oxford, J.D.
Non-Public Arbitrator

September 15, 2004
Signature Date

September 15, 2004
Date of Service (For NASD office use only)

ARBITRATION PANEL

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Robert E. Otto - Non-Public Arbitrator
Teresa A. Oxford, J.D. - Non-Public Arbitrator

Concurring Arbitrators:



Ruth Smith Jackson
Non-Public Arbitrator, Presiding Chair

9/15/04

Signature Date

Robert E. Otto
Non-Public Arbitrator

Signature Date

Teresa A. Oxford, J.D.
Non-Public Arbitrator

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Signature Date

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Teresa A. Oxford, J.D.
Non-Public Arbitrator

9-15-04
Signature Date

Date of Service (For NASD office use only)