

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Richard A. Genau, Susan Genau, Richard A. Genau c/f Victoria A. Genau, and Richard Genau c/f Nicholas Genau, Richard A. Genau c/f Eric Genau (Claimants) v. McDonald Investments, Inc. and Ward M. Caldbick (Respondents)

Case Number: 03-02184

Hearing Site: Buffalo, New York

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

REPRESENTATION OF PARTIES

Claimants Richard A. Genau ("R. Genau"), Susan Genau ("S. Genau"), Richard A. Genau c/f Victoria A. Genau ("R. Genau c/f V. Genau"), Richard A. Genau c/f Eric Genau ("R. Genau c/f E. Genau") and Richard Genau c/f Nicholas Genau ("R. Genau c/f N. Genau") hereinafter collectively referred to as "Claimants": Donald G. McGrath, Esq., McGrath & Polvino, PLLC, Williamsville, NY.

Respondents McDonald Investments, Inc. ("McDonald") and Ward M. Caldbick ("Caldbick") hereinafter collectively referred to as "Respondents": Henry G. Grendell, Esq., Calfee, Halter & Griswold, LLP, Cleveland, OH.

CASE INFORMATION

Statement of Claim filed on or about: March 19, 2003.

Claimants signed the Uniform Submission Agreement: March 19, 2003.

Joint Statement of Answer filed by Respondents on or about: July 10, 2003.

Respondent McDonald signed the Uniform Submission Agreement: May 20, 2003.

Respondent Caldbick signed the Uniform Submission Agreement: July 8, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: directed and effected trades for the primary purpose of generating commissions; unauthorized trading; unsuitability; failure to follow customer directives; engaged in deceptive acts and practices; failure to follow the ERISA "prudent man" rules; breach of contract; breach of duty; violations of federal and state securities laws; violations of state consumer protection laws; breach of fiduciary duty; violations of the

rules and regulations of the NASD and various exchanges; respondeat superior; and failure to supervise. The causes of action relate to various shares of common stock.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$263,301.38, plus twelve months interest at 9%, or \$23,697.12; appropriate earnings and appreciation; punitive damages; costs, expenses, and disbursements, including reasonable attorneys' fees pursuant to New York General Business Law §349; and such other and further relief as the Panel deems just and proper.

Respondents requested that the Statement of Claim be dismissed and that the Claimants be assessed all hearing fees and expenses, along with Respondents' attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

At the close of Claimants case, Respondent made an oral Motion to Dismiss. After due deliberation, the Panel denied the Motion.

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.

AWARD

After considering the pleadings, and 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. The claims of Claimants are denied in their entirety.
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Ward Calbrick's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Ward Calbrick must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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 = \$300.00

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, McDonald Investments, Inc. 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. 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 Panel @ \$1,125.00 = \$ 1,125.00
Pre-hearing conference: January 12, 2004 1 session

Seven (7) Hearing sessions @ \$1,125.00 = \$ 7,875.00

Hearing Dates: November 29, 2004 2 sessions
November 30, 2004 2 sessions
December 1, 2004 2 sessions
December 2, 2004 1 sessions

Total Forum Fees = \$9,000.00

1. The Panel has assessed \$4,500.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$4,500.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee = \$ 300.00
Forum Fees = \$4,500.00
Total Fees = \$4,800.00
Less payments = \$1,425.00
Balance Due NASD Dispute Resolution = \$3,375.00

2. Respondent McDonald is solely liable for:

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

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$ 4,500.00</u>
<u>Total Fees</u>	<u>= \$ 4,500.00</u>
<u>Less payments</u>	<u>= \$ 2,750.00</u>
<u>Balance Due NASD Dispute Resolution</u>	<u>= \$ 1,750.00</u>

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

ARBITRATION PANEL

David Buch, Esq.	-	Public Arbitrator, Presiding Chairperson
George Massik	-	Public Arbitrator
Anthony D. McCaffrey, CFP	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, 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 instrument which is my award.



David Buch, Esq.
Public Arbitrator, Presiding Chairperson

12/28/04

Signature Date

George Massik
Public Arbitrator

Signature Date

Anthony D. McCaffrey, Esq.
Non-Public Arbitrator

Signature Date

January 3, 2005

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

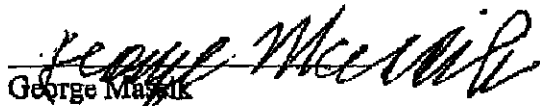
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