

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Larry Creech and Lynda Creech, (Claimants) v. Clearing Services of America and Ronald Sarno, Sr. (Respondents)

Case Number: 03-02215

Hearing Site: New York, NY

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

REPRESENTATION OF PARTIES

Claimants Larry Creech ("Larry Creech") and Lynda Creech ("Lynda Creech") hereinafter collectively referred to as "Claimants": Robert Stevens, Esquire, Attorney at Law, Princeton, NJ.

Respondents Clearing Services of America, Inc. ("CSA") and Ronald Sarno, Sr. ("Sarno") hereinafter collectively referred to as "Respondents": Barry R. Temkin, Esq., Fiedelman Garfinkel & Lesman, New York, NY. Previously represented by: Donald J. Mehan, Jr., Esq., Moline, Shostak & Mehan, LLC, St. Louis, MO.

CASE INFORMATION

Statement of Claim filed on or about: March 25, 2003.

Claimants signed the Uniform Submission Agreement: January 29, 2003.

Joint Statement of Answer and Motion for a More Definite Statement filed by Respondents on or about: July 24, 2003.

Respondent Sarno signed the Uniform Submission Agreement: August 14, 2003.

Respondent CSA did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: alleged unsuitable recommendations, breach of fiduciary duty, negligence, breach of contract, common law and statutory fraud.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted the following defenses: The claimants were sophisticated investors, the purchases were ratified, the claims were barred by the applicable statute of limitations, the subject accounts did not experience any decline beyond market losses, the statement of claim fails to state a claim upon which relief can be granted, the claimants are barred by their laches and waiver. Respondents also averred that claimants executed active trading disclosure forms, and indicated on their signed new account forms that they desired short term trading as their stated investment objective. Respondents further noted that the claimants

had a prior investment history at another brokerage firm in which they invested in large positions of individual equities.

RELIEF REQUESTED

Claimants requested compensatory damages of \$100,000.00; punitive damages; attorneys' fees; costs; forum fees; and such other relief as the Panel deems fair and proper.

Respondents requested dismissal of the Statement of Claim in its entirety and expungement of their records before the Central Registration Depository (CRD).

OTHER ISSUES CONSIDERED AND DECIDED

On September 8, 2003, the Securities Investor Protection Corporation (SIPC) filed an application in the United States District Court for the Eastern District of Missouri seeking a protective decree under the Securities Investor Protection Act with respect to respondent Clearing Services of America (CSA). Pursuant to that application, CSA was placed in liquidation and the matter was transferred to the U.S. Bankruptcy Court for the Eastern District of Missouri, and all proceedings against CSA were stayed by virtue of the automatic stay provisions of 11 U.S. Code Section 362. By Order dated November 5, 2004, the Bankruptcy Court, by order of Judge James J. Barta, acknowledged that CSA's insurance policy was an asset of its estate, and that relief from the automatic stay is granted as to CSA and its interest in the insurance policy, subject to further approval of the court. Therefore, all claims against Respondent CSA are stayed.

On or about December 10, 2004, NASD Dispute Resolution was notified that the parties settled this matter.

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

On December 10, 2004, the parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for entry of an Award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. The parties have entered into a confidential settlement agreement resulting in the payment of a monetary amount that fully and fairly compensates claimants.
2. The Claimants have dismissed all claims with prejudice against individual Respondent Sarno.

3. All other relief requests, including punitive damages, are denied.
4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Ronald Sarno's registration records maintained by the NASD Central Registration Depository, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Ronald Sarno must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. The statement of claim was filed prior to April 12, 2004, and the case is therefore not subject to amended NASD Rule 2130. Nonetheless, even under amended rule 2130, the panel would have the authority to recommend expungement based upon the following factors:
 - a. The individual named respondent was not involved in investment-related sales-practice violations, forgery, theft, misappropriation, churning or conversion of funds.
 - b. The claimants acknowledge that they signed active trading disclosure forms, and agree that the trading in their accounts was suitable and in accordance with their stated investment objectives.
 - c. The allegations of the statement of claim as to Sarno only were factually impossible or clearly erroneous, and Sarno was wrongfully accused in the statement of claim. While the allegations as to CSA are and continue to be meritorious, that entity is bankrupt.
 - d. Proceeding to a full evidentiary hearing would constitute a substantial hardship on claimant Lynda Creech, who is partially disabled.
 - e. The within resolution is made possible by payments from CSA's insurance policy, which is an asset of CSA's bankruptcy estate, and which may not be available for an extended period of time.
 - f. Registered representative Ronald Sarno has never been sanctioned or disciplined by the NASD or any other regulatory body.
 - g. The claims have been voluntarily dismissed as to Sarno.
 - h. Sarno is not at fault, engaged in no misconduct, and diligently cooperated in the prompt and mutually beneficial resolution of the claim.
 - i. Expungement would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements.

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

= \$ 225.00

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

December 14-17, 2004, settled by parties	= \$300.00
Claimants' share	= \$150.00
Respondent Sarno's share	= \$150.00

Forum Fees and Assessments

The 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. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with the Panel @ \$750.00/session	= \$750.00
<u>Pre-hearing conference: March 4, 2004 1 session</u>	
Total Forum Fees	= \$750.00

1. The Panel has assessed \$375.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$375.00 of the forum fees against Respondent Sarno.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Three Day Cancellation Fee	= \$ 150.00
Forum Fees	= \$ 750.00
Total Fees	= \$1,125.00
<u>Less payments</u>	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 150.00

Pursuant to Rule 10332(f) of the NASD Code of Arbitration Procedure, NASD is retaining the total initial amount of the hearing session deposited by the Claimants because this office was notified by the parties that they settled this matter within eight business days of the first scheduled hearing session.

2. Respondent Sarno is solely liable for:

Three Day Cancellation Fee	= \$ 150.00
Forum Fees	= \$ 375.00
Total Fees	= \$ 525.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 525.00

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3. Respondent CSA is solely liable for:

<u>Member Fees</u>	= \$1,850.00
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<u>Total Fees</u>	= \$1,850.00
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<u>Less payments</u>	= \$1,850.00
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<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00
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All balances are due and payable to NASD Dispute Resolution

Parties' Signatures

Larry Creech
Claimant

Signature Date

Lynda Creech
Claimant

Signature Date

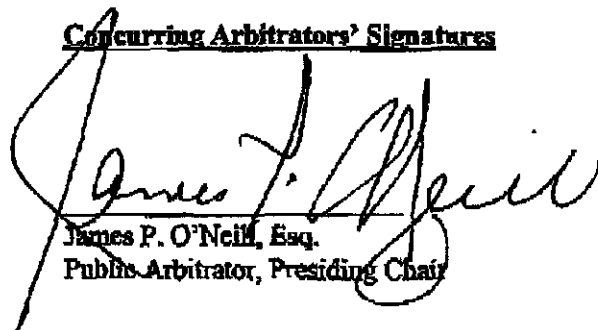
Ronald Sarno, Sr.
Respondent

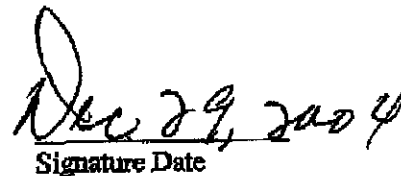
Signature Date

ARBITRATION PANEL

James P. O'Neill, Esq.	-	Public Arbitrator, Presiding Chair
Barnard Seligman, Ph.D, CFA	-	Public Arbitrator
Thomas Caiaffa	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


James P. O'Neill, Esq.
Public Arbitrator, Presiding Chair


Signature Date

Barnard Seligman, Ph.D, CFA
Public Arbitrator

Signature Date

Thomas Caiaffa
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Thomas Caiaffa

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Non-Public Arbitrator

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James P. O'Neill, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Barnard Seligman, Ph.D, CFA
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Public Arbitrator

JAN 3, 2015
Signature Date

Thomas Caiaffa
Non-Public Arbitrator

Signature Date

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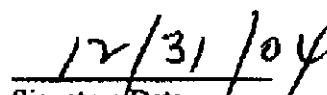
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