

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Dilip Suranjith Gunawardena, Claimant v. Lehman Brothers Inc., Respondent

Case Number: 03-04323

Hearing Site: San Francisco, California

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

For Claimant:

Brett A. Alcala, Esq.
Alcala Law Firm
San Mateo, California

For Respondent:

Stephen Young, Esq.
Scott E. Hinsche, Esq.
Keesal, Young & Logan
San Francisco, California

CASE INFORMATION

Statement of Claim filed: June 10, 2003

Claimant's Uniform Submission Agreement filed: June 10, 2003

Statement of Answer filed by Respondent Lehman Brothers Inc. ("Lehman"): August 6, 2003

Respondent's Arbitration Brief filed: February 13, 2004

Respondent Lehman's Uniform Submission Agreement signed: July 2, 2003

CASE SUMMARY

Claimant alleged that the above-referenced dispute involves Claimant's investments in Netfish Technologies/IONA Technologies stock and further alleged the following claims with respect to his investments: 1) Failure to Supervise and Respondeat Superior; 2) Breach of Fiduciary Duty; 3) Failure to Execute; 4) Breach of Contract; 5) Negligence and Negligent Misrepresentation; 6) Breach of the Implied Covenant of Good Faith and Fair Dealing; and 7) Violation of State Securities Laws; NASD Rules of Fair Practice and NYSE Rules.

Respondent denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondent also asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages of \$2,640,485;
2. Pre-award and post-award interest from the date of the alleged violations as allowed by law; and
3. Legal fees (including expert fees) plus the costs incurred in this arbitration.

Respondent requested:

1. That Claimant take nothing by way of his Statement of Claim;
2. Costs, including legal fees, arbitrators' fees and expenses; and
3. Such other and further relief as the Panel may deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On June 30, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators. Pursuant to the Code of Arbitration Procedure IM-10100 the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

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

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

- 1) All claims by Claimant are dismissed.
- 2) Each party shall bear its own costs, including attorney's fees.
- 3) All other relief not expressly granted is denied.

FEEs

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$500.00

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, Lehman is a party and the following fees are assessed:

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$5,000.00</u>
Total Member Fees	= \$8,550.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

(2) Pre-hearing conferences with a single arbitrator @ \$450.00/session	= \$900.00
Pre-hearing conferences: February 11, 2004	1 session
February 23, 2004	1 session
(1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference: October 15, 2003	1 session
(6) Hearing sessions @ \$1,200.00/session	= \$7,200.00
Hearing: February 24, 2004	2 sessions
February 25, 2004	2 sessions
February 26, 2004	2 sessions
Total Forum Fees	= \$9,300.00

The Panel assessed the \$9,300.00 in forum fees to Claimant.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= \$ 9,300.00
Total Fees	= \$ 9,800.00
<u>Less Payments</u>	= \$ (1,700.00)
Balance Due NASD-DR	= \$ 8,100.00

2. Respondent is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
<u>Less Payments</u>	= \$(8,550.00)
Balance Due NASD-DR	= \$ 0.00

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

ARBITRATION PANEL

Paul A. D. Evans	-	Public Arbitrator, Presiding Chair
Gary H. Kahn	-	Public Arbitrator
Robert M. Greber	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Paul A. D. Evans
Chair, Public Arbitrator

Signature Date

Gary H. Kahn
Public Arbitrator

Signature Date

Robert M. Greber
Non-Public Arbitrator

Signature Date

3/15/04
Date of Service

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Paul A. D. Evans
Chair, Public Arbitrator

March 12, 2004
Signature Date

Gary H. Kahn
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Public Arbitrator

Signature Date

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Non-Public Arbitrator

Signature Date

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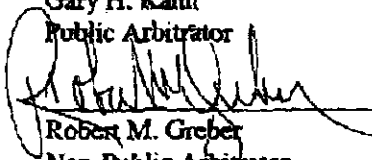
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