

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Gary Rathbun and Erma Herrick, Claimants v. Paul S. Alexander and Ladenburg, Thalmann & Co., Inc., Respondents

Ladenburg, Thalmann & Co., Inc., Counter-Claimant v. Gary Rathbun, Counter-Respondent

Ladenburg, Thalmann & Co., Inc., Cross-Claimant v. Paul S. Alexander, Cross-Respondent

Case Number: 03-05813

Hearing Site: Las Vegas, Nevada

Nature of the Dispute: Customer v. Member and Associated Person

Nature of the Dispute: Member v. Customer

Nature of the Dispute: Member v. Associated Person

REPRESENTATION OF PARTIES

For Claimants and Counter-Respondent:

David Liebrader, Esq.
Law Offices of David
Liebrader, APC
Las Vegas, Nevada

For Respondent/Cross-Respondent Paul S. Alexander:

Paul S. Alexander
Pro Se
Henderson, Nevada

For Respondent/Counter-Claimant/Cross-Claimant
Ladenburg, Thalmann & Co., Inc.:

David S. Smith, Esq.
Smith Campbell, LLP
New York, New York

CASE INFORMATION

Statement of Claim filed: September 22, 2003

Claimants' Joint Uniform Submission Agreement signed but not dated

Statement of Answer filed by Respondent Ladenburg, Thalmann & Co., Inc.: December 15, 2003

Counterclaim filed by Respondent Ladenburg, Thalmann & Co., Inc.: December 15, 2003

Cross-claim filed by Respondent Ladenburg, Thalmann & Co., Inc.: December 15, 2003

Response to Counterclaim filed by Counter-Respondent Gary Rathbun: April 30, 2004

CASE SUMMARY

Claimants alleged breach of fiduciary duty, fraud, misrepresentation, negligence, churning, violation of Nevada Revised Statutes Sections 90.570 and 90.660, violation of Nevada Revised Statutes Section 598.092 (deceptive trade practices), and control person liability. Claimants' allegations involved transactions in their margin account and in unspecified securities.

Respondent Ladenburg, Thalmann & Co, Inc. denied the allegations of wrongdoing set forth in Claimants' Statement of Claim.

Counter-Claimant Ladenburg, Thalmann & Co., Inc. alleged negligent or intentional misconduct on the part of Counter-Respondent Gary Rathbun.

Counter-Respondent Gary Rathbun denied the allegations of wrongdoing set forth in Counter-Claimant's claim.

Cross-Claimant Ladenburg, Thalmann & Co., Inc. alleged breach of the duty of care on the part of Respondent Paul S. Alexander.

RELIEF REQUESTED

Claimants requested \$195,290.00 in compensatory damages, unspecified punitive and exemplary damages, pre- and post-judgment interest, and costs, including attorney's fees.

Respondent Ladenburg, Thalmann & Co., Inc. requested dismissal of Claimants' Statement of Claim in its entirety.

Counter-Claimant Ladenburg, Thalmann & Co., Inc. requested contribution from Counter-Respondent Gary Rathbun.

Counter-Respondent Gary Rathbun requested dismissal of Counter-Claimant's claim in its entirety.

Cross-Claimant Ladenburg, Thalmann & Co., Inc. requested indemnity or contribution from Cross-Respondent Paul S. Alexander.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Paul S. Alexander did not file with NASD Dispute Resolution a properly executed submission agreement, but he is required to submit to arbitration pursuant to the Code of Arbitration Procedure and is bound by the determination of the Panel on all issues submitted.

Respondent Ladenburg, Thalmann & Co., Inc. did not file with NASD Dispute Resolution a

properly executed submission agreement, but said Respondent is required to submit to arbitration pursuant to NASD's Code of Arbitration Procedure (the "Code"), and, having answered the claim and having appeared and testified at the hearing, said Respondent is bound by the determination of the Panel on all issues submitted.

Upon review of the file and the representations made on behalf of Claimants, the undersigned Panel determined that Respondent Paul Alexander was 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 Code.

On August 11, 2004, Respondent Ladenburg, Thalmann & Co., Inc. made a Motion for Summary Judgment regarding Claimant's Nevada Securities Act claims. After due deliberation, the Panel denied the motion on August 19, 2004.

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, and the submissions filed between the first and second hearing dates, the Panel decided in full and final resolution of the issues submitted for determination as follows:

Initial Claim:

- 1) Respondents Ladenburg, Thalmann & Co., Inc. and Paul Alexander are jointly and severally liable to and shall pay Claimant Erma Herrick the sum of \$171,000.00 in compensatory damages.
- 2) Claimant Gary Rathbun's claims are denied in their entirety.
- 3) Respondents Ladenburg, Thalmann & Co., Inc. and Paul Alexander are jointly and severally liable to and shall pay Claimant Erma Herrick interest in the amount of \$29,000.00.
- 4) Respondents Ladenburg, Thalmann & Co., Inc. and Paul Alexander are jointly and severally liable to and shall pay Claimant Erma Herrick the sum of \$25,000.00 in attorney's fees.

Counterclaim:

- 5) Respondent Ladenburg, Thalmann & Co., Inc.'s Counterclaim against Gary Rathbun is denied.

Cross-Claim:

- 6) Cross-Respondent Paul S. Alexander is liable to and shall pay Cross-Claimant Ladenburg, Thalmann & Co., Inc. the sum of \$55,000.00 in compensatory damages.

- 7) Except as set forth in paragraph 3, the parties shall bear their respective costs, including attorney's fees.
- 8) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 300.00
Respondent Ladenburg, Thalmann & Co., Inc.'s Counterclaim & Cross-Claim filing fee	= \$1,000.00

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, the member firm Ladenburg, Thalmann & Co., Inc. is a party, and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,750.00
Total Member Fees	= \$5,200.00

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 or the parties and the Panel. The following fees are assessed:

1 Pre-hearing conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: July 21, 2004 1 session	
1 Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: April 27, 2004 1 session	
4 Hearing sessions @ \$1,125.00/session	= \$4,500.00
Hearings: July 30, 2004 2 sessions	
August 19, 2004 2 sessions	
Total Forum Fees	= \$6,075.00

1. The Panel assessed \$3,037.50 of the forum fees jointly and severally to Claimants Gary Rathbun and Erma Herrick.
2. The Panel assessed \$3,037.50 of the forum fees jointly and severally to Respondents Ladenburg, Thalmann & Co., Inc. and Paul Alexander.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Respondent Ladenburg, Thalmann & Co., Inc., requested 3 hearing tapes
@\$15.00/per tape: = \$ 45.00

Fee Summary

1. Claimants Gary Rathbun and Erma Herrick are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 3,037.50
Total Fees	= \$ 3,337.50
Less payments	= \$(1,425.00)
Balance Due NASD Dispute Resolution	= \$ 1,912.50
2. Respondent Ladenburg, Thalmann & Co., Inc. is charged with the following fees and costs:

Counterclaim and Cross-Claim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Administrative Costs	= \$ 45.00
Total Fees	= \$ 6,245.00
Less payments	= \$(6,200.00)
Balance Due NASD Dispute Resolution	= \$ 45.00
3. Respondents Ladenburg, Thalmann & Co., Inc. and Paul Alexander are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 3,037.50
Less Payments by Respondent Ladenburg, Thalmann & Co., Inc.	= \$(1,125.00)
Balance Due NASD Dispute Resolution	= \$ 1,912.50

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

NASD Dispute Resolution
Arbitration No. 03-05813
Award Page 6 of 6

ARBITRATION PANEL

Rew R. Goodenow, Esq.
Jordan H. Bodenstein, Esq.
Alan Duncan

- *Public Arbitrator, Presiding Chair*
- *Public Arbitrator*
- *Non-Public Arbitrator*

Concurring Arbitrators' Signatures



Rew R. Goodenow, Esq.
Chair, Public Arbitrator

8/27/09
Signature Date

Jordan H. Bodenstein, Esq.
Public Arbitrator

Signature Date

Alan Duncan
Non-Public Arbitrator

Signature Date

8/31/09
Date of Service

ARBITRATION PANEL

Rew R. Goodenow, Esq.
Jordan H. Bodenstein, Esq.
Alan Duncan

- **Public Arbitrator, Presiding Chair**
- **Public Arbitrator**
- **Non-Public Arbitrator**

Concurring Arbitrators' Signatures

Rew R. Goodenow, Esq.
Chair, Public Arbitrator

Signature Date

Jordan H. Bodenstein, Esq.
Public Arbitrator

Signature Date

Alan Duncan
Alan Duncan
Non-Public Arbitrator

8-27-04
Signature Date

8/31/04
Date of Service

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<i>Rew R. Goodenow, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Jordan H. Bodenstein, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Alan Duncan</i>	-	<i>Non-Public Arbitrator</i>

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Chair, Public Arbitrator

Signature Date

Jordan H. Bodenstein, Esq.

Jordan H. Bodenstein, Esq.
Public Arbitrator

8/30/04

Signature Date

Alan Duncan
Non-Public Arbitrator

Signature Date

Date of Service