

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Pristine Securities LLC d/b/a Mastertrader.com, Pristine Services, Inc., Pristine Capital Holdings, Inc., Oliver L. Velez, and Gregory Capra (Claimants) v. Instinet Clearing Services, Inc., Terra Nova Trading, LLC, and George Luis Muniz (Respondents)

Case Number: 03-06185

Hearing Site: New York, New York

Nature of the Dispute: Member, Non-Members, and Associated Persons v. Members and Associated Person.

REPRESENTATION OF PARTIES

Claimants Pristine Securities LLC d/b/a Mastertrader.com ("Pristine Securities"), Pristine Services, Inc. ("Pristine Holdings"), Pristine Capital Holdings, Inc. ("Pristine Capital"), Oliver L. Velez ("Velez"), and Gregory Capra ("Capra") hereinafter collectively referred to as "Claimants": Dan A. Druz, Esq., Manasquan, NJ.

Respondent Instinet Clearing Services, Inc. ("Instinet"): David Campbell, Esq., Bressler, Amery & Ross, P.C., New York, NY.

Respondent Terra Nova Trading, LLC ("Terra Nova"): Jennifer C. Ryan, Esq., Katten Muchin Zavis Rosenman, Chicago, IL.

Respondent George Luis Muniz ("Muniz") appeared *pro se*. Previously represented by: Ira Lee Sorkin, Esq., Carter Ledyard & Milburn, LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: August 26, 2003.

Reply to Counterclaim of Terra Nova filed by Claimants on or about: January 23, 2004.

Claimant Pristine Securities signed the Uniform Submission Agreement: December 31, 2003.

Claimant Velez signed the Uniform Submission Agreement: February 21, 2004

Claimant Capra signed the Uniform Submission Agreement: February 23, 2004.

Statement of Answer, Motion to Dismiss, and Counterclaim filed by Respondent Terra Nova on or about: December 8, 2003.

Respondent Terra Nova did not sign the Uniform Submission Agreement.

Statement of Answer, Motion to Dismiss, and Counterclaim filed by Respondent Muniz on or about: December 8, 2003.

Respondent Muniz signed the Uniform Submission Agreement: February 25, 2004.

Respondent Instinet did not file a Statement of Answer or sign the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: fraud in the inducement; breach of contract; conversion and breach of fiduciary duty and contract; breach of contract; account stated; breach of contract; and conspiracy. Unless specifically admitted in its Reply to Respondent Terra Nova's Counterclaim, Claimant denied the allegation made in the Counterclaim.

Unless specifically admitted in its Answer, Respondent Terra Nova denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In its Counterclaim, Respondent Terra Nova asserted the following cause of action: breach of agreement by solicitation.

Unless specifically admitted in his Answer, Respondent Muniz denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In his Counterclaim, Respondent Muniz asserted the following cause of action: breach of contract.

RELIEF REQUESTED

Claimant requested the following relief:

- a) An immediate, permanent injunction directing Respondent Instinet to escrow all commission generated by the accounts listed in Exhibit "1", pending the resolution of this matter;
- b) Or, without dissolving the injunction pending the resolution of this controversy, an award of \$1,000,000.00 representing the present value of the future payment of commissions going forward after August 2003;
- c) \$1,000,000.00 to Claimants Capra and Velez for fraudulently inducing them to execute the contracts dated March 10, 2000 and January 1, 2002;
- d) \$250,000.00 in unpaid commissions generated by the securities accounts pursuant to the agreement dated January 1, 2002 for the period from April 2003 through August 2003;
- e) Repayment of the \$100,000.00 advance converted by Respondent Muniz;
- f) Rescission of the modification of the "access rights agreement" and \$400,000.00 in damages based upon the minimum charges initially negotiated by the parties and not paid by Terra Nova; or in the alternative \$72,000.00 in fees due and owing pursuant to the "access rights agreement" as modified, and annexed to the contract dated January 1, 2002;
- g) \$13,000.00 representing the added costs in consequence of the accelerated clearing costs;
- h) An unspecified amount for diversion of corporate opportunity;
- i) An Order compelling Respondent Muniz to surrender his two percent equity stake in Pristine Capital Holdings, Inc.;

- j) Pre- and post-judgment interest;
- k) Treble damages for Respondents Muniz's and Terra Nova's conspiracy to divert commissions rightfully belonging to Claimants;
- l) Punitive damages in the amount of \$1,000,000.00 for Respondents' fraud in the inducement;
- m) Punitive damages in the amount of \$100,000.00 for the advance illicitly converted by Respondent Muniz;
- n) Legal fees pursuant to Paragraph 19 of the January 1, 2002 contract, and other costs;
- o) And such other and further relief deemed appropriate by the Panel.

In the Reply to the Counterclaim, Claimants requested that the Counterclaim be dismissed in its entirety.

Respondent Terra Nova requested that Claimants' claims be dismissed.

Respondent Muniz requested that Claimants' claims be dismissed with prejudice; damages in excess of \$250,000.00 plus bonus and interest; and such other and further relief as may seem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Instinet did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement nor submit a Statement of Answer but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

Respondent Terra Nova did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, and appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On or about October 28, 2003, Claimants notified NASD Dispute Resolution that they withdrew their claims without prejudice against Respondent Instinet.

Prior to the hearings, the Panel granted Respondent Muniz's motion to dismiss.

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, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Terra Nova is liable for and shall pay to Claimant Pristine Securities damages in

the amount of \$388,000.00 for unpaid commissions, plus interest at the rate of 5% per annum from the date of the award through the date of payment of the award.

The claims for prospective damages were not ruled on and may be subject to arbitration when alleged actual damages can be calculated.

2. Claimant Pristine Securities is liable for and shall pay to Respondent Terra Nova damages in the amount of \$132,000.00 under the access rights agreement, plus interest at the rate of 5% per annum from the date of the award through the date of payment of the award.
3. Claimant Pristine Securities is liable for and shall pay to Respondent Terra Nova damages in the amount of \$90,128.00 due under the \$2 list, plus interest at the rate of 5% per annum from the date of the award through the date of payment of the award.
4. Any and all relief not specifically addressed herein, [including punitive [treble] damages], is denied.

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	= \$2,000.00
Terra Nova's Counterclaim filing fee	= \$ 500.00
Muniz's Counterclaim 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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Claimant Pristine Securities is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Respondent Instinet is a party.

Member surcharge	= \$2,800.00
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Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Respondent Terra Nova is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

October 18, 2004, joint adjournment request = Waived

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

1. Claimant Pristine Securities is assessed:

Injunctive relief surcharge = \$2,500.00

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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00 = \$ 900.00

Pre-hearing conferences: October 5, 2004 1 session
 November 12, 2004 1 session

Six (6) Pre-hearing sessions with Panel @ \$1,200.00 = \$ 7,200.00

Pre-hearing conferences: March 1, 2004 1 session
 March 18, 2004 2 sessions
 June 7, 2004 1 session
 September 7, 2004 1 session
 September 27, 2004 1 session

Fourteen (14) Hearing sessions @ \$1,200.00 = \$16,800.00

Hearing Dates: October 19, 2004 2 sessions
 October 20, 2004 2 sessions
 October 21, 2004 2 sessions
 November 3, 2004 2 sessions
 November 4, 2004 2 sessions
 November 5, 2004 2 sessions
 December 2, 2004 2 sessions

Total Forum Fees = \$24,900.00

1. The Panel has assessed \$12,450.00 of the forum fees against Claimant Pristine Securities.
2. The Panel has assessed \$12,450.00 of the forum fees against Respondent Terra Nova.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimants requested duplication of tapes = \$345.00

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 2,000.00
<u>Administrative Costs</u>	= \$ 345.00
Total Fees	= \$ 2,345.00
<u>Less payments</u>	= \$ 2,345.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Claimant Pristine Securities is solely liable for:

Member Fees	= \$ 8,550.00
Injunctive Relief Fees	= \$ 2,500.00
<u>Forum Fees</u>	= \$12,450.00
Total Fees	= \$23,500.00
<u>Less payments</u>	= \$12,160.00
Balance Due NASD Dispute Resolution	= \$11,340.00

3. Respondent Instinet is solely liable for:

<u>Member Fees</u>	= \$ 2,800.00
Total Fees	= \$ 2,800.00
<u>Less payments</u>	= \$ 3,550.00
Refund Due Instinet	= \$ 750.00

4. Respondent Terra Nova is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	= \$12,450.00
Total Fees	= \$21,500.00
<u>Less payments</u>	= \$10,050.00
Balance Due NASD Dispute Resolution	= \$11,450.00

5. Respondent Muniz is solely liable for:

<u>Counterclaim Filing Fee</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 300.00

NASD Dispute Resolution

Arbitration No. 03-06185

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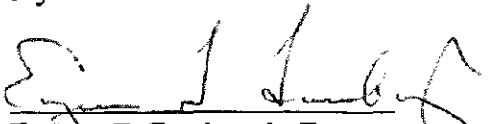
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Eugene F. Farabaugh, Esq.	-	Public Arbitrator, Presiding Chairperson
Kenneth L. Stewart	-	Public Arbitrator
William C. Struyk, Esq.	-	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.



Eugene F. Farabaugh, Esq.
Public Arbitrator, Presiding Chairperson

January 18, 2005
Signature Date

Kenneth L. Stewart
Public Arbitrator

Signature Date

William C. Struyk, Esq.
Non-Public Arbitrator

Signature Date

January 27, 2005
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL


Eugene F. Farabaugh, Esq.	-	Public Arbitrator, Presiding Chairperson
Kenneth L. Stewart	-	Public Arbitrator
William C. Struyk, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

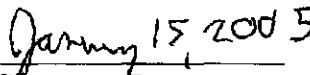
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Eugene F. Farabaugh, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Kenneth L. Stewart
Public Arbitrator



Signature Date

William C. Struyk, Esq.
Non-Public Arbitrator

Signature Date

January 27, 2005

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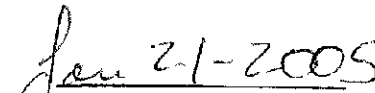
Signature Date

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Public Arbitrator

Signature Date



William C. Struyk, Esq.
Non-Public Arbitrator



Signature Date

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