

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Richard W. Dorman IRA, Barbara K. Roman IRA, Richard W. Dorman as Trustee for the Defined Benefit Plan, Richard W. Dorman and Barbara K. Roman JTEN, Richard W. Dorman and Barbara K. Roman Marital Trust, Barbara K. Roman Family Trust U/A, Richard W. Dorman Family Trust U/A, TRS of Meyers Lamanna & Roman 401K (Claimants) v. Sagemark Consulting, Lincoln Financial Advisors Corporation, and Richard Weinstein (Respondents)

Case Number: 03-06432

Hearing Site: Cleveland, Ohio

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

**REPRESENTATION OF PARTIES**

Claimants Richard W. Dorman IRA ("R. Dorman IRA"), Barbara K. Roman IRA ("B. Roman IRA"), Richard W. Dorman as Trustee for the Defined Benefit Plan ("R. Dorman TTEE"), Richard W. Dorman and Barbara K. Roman JTEN ("R. Dorman and B. Roman JTEN"), Richard W. Dorman and Barbara K. Roman Marital Trust ("Marital Trust"), Barbara K. Roman Family Trust U/A ("B. Roman Family Trust"), Richard W. Dorman Family Trust U/A ("R. Dorman Family Trust"), TRS of Meyers Lamanna & Roman 401K ("TRS") hereinafter collectively referred to as "Claimants": Alan N. Hirth, Esq., Meyers, Roman, Friedberg & Lewis, Cleveland, OH.

Respondents Sagemark Consulting ("Sagemark") and Lincoln Financial Advisors Corporation ("Lincoln"): Mark E. Elsener, Esq., Porter Wright Morris & Arthur, LLP, Cincinnati, OH.

Respondent Richard Weinstein ("Weinstein"): Andrew J. Dorman, Esq., Janik & Dorman, LLP, Cleveland, OH.

Sagemark, Lincoln, and Weinstein are hereinafter collectively referred to as "Respondents".

**CASE INFORMATION**

Statement of Claim filed on or about: September 3, 2003.

Claimant B. Roman signed the Uniform Submission Agreement: August 20, 2003.

Claimant R. Dorman signed the Uniform Submission Agreement: August 20, 2003.

Joint Statement of Answer filed by Respondents Sagemark and Lincoln on or about: December 12, 2003.

Respondent Lincoln signed the Uniform Submission Agreement: January 20, 2004.

Respondent Sagemark did not sign the Uniform Submission Agreement.

Statement of Answer filed by Respondent Weinstein on or about: January 7, 2004.  
Respondent Weinstein did not sign the Uniform Submission Agreement.

### **CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability; breach of fiduciary duty; negligence; breach of contract; and failure to supervise. Claimants' claim involved mutual funds.

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

Unless specifically admitted in his Answer, Respondent Weinstein denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested unspecified compensatory damages; punitive damages; attorneys' fees and costs; damages related to tax adjustments; and such other relief, in law or equity, as the Arbitration Panel deems just and appropriate.

Respondents Sagemark and Lincoln requested that an award be entered in their favor, and against Claimants, including attorneys' fees and costs.

Respondent Weinstein requested that the Statement of Claim be dismissed in its entirety, with prejudice; that an award be entered in his favor and against Claimants; costs and expenses, including attorneys' fees, expenses and forum fees; and that all references to this matter be expunged from the public record.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents Sagemark and Weinstein did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, and appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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. The claims of Claimants are dismissed in their entirety.
2. Any and all relief not specifically addressed herein, including punitive 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 = \$250.00

#### **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, Lincoln Financial Advisors Corporation is a party.

Member surcharge = \$1,500.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,200.00

#### **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 a single arbitrator @ \$450.00 = \$ 450.00

Pre-hearing conference: September 29, 2004 1 session

One (1) Pre-hearing session with Panel @ \$1,000.00 = \$1,000.00

Pre-hearing conference: May 25, 2004 1 session

Eight (8) Hearing sessions @ \$1,000.00 = \$8,000.00

Hearing Dates: October 4, 2004 2 sessions

October 5, 2004 3 sessions

October 6, 2004 3 sessions

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Total Forum Fees = \$9,450.00

1. The Panel has assessed \$4,725.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$4,725.00 of the forum fees jointly and severally against Respondents.

### **Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee = \$ 250.00

Forum Fees = \$4,725.00

Total Fees = \$4,975.00

Less payments = \$1,250.00

Balance Due NASD Dispute Resolution = \$3,725.00

2. Respondent Lincoln is solely liable for:

<u>Member Fees</u>	= \$4,450.00
<u>Total Fees</u>	= \$4,450.00
<u>Less payments</u>	= \$4,450.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$4,725.00
<u>Total Fees</u>	= \$4,725.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$4,725.00

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

Michael L. King, J.D.	-	Public Arbitrator, Presiding Chairperson
Ellen Holland Keller, J.D.	-	Public Arbitrator
Dennis W. Zauszniewski	-	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 is which is my award.

Michael L. King  
Michael L. King, J.D.  
Public Arbitrator, Presiding Chairperson

Oct. 29, 2004  
Signature Date

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Ellen Holland Keller, J.D.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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Dennis W. Zauszniewski  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

November 3, 2004  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**


Michael L. King, J.D.	-	Public Arbitrator, Presiding Chairperson
Ellen Holland Keller, J.D.	-	Public Arbitrator
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Michael L. King, J.D.  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
\_\_\_\_\_  
Ellen Holland Keller, J.D.  
Public Arbitrator

11-4-2004  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Dennis W. Zauszniewski  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

November 3, 2004  
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Public Arbitrator, Presiding Chairperson

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Signature Date

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Ellen Holland Keller, J.D.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

  
Dennis W. Zauszniewski  
Non-Public Arbitrator

10/19/04  
Signature Date

November 3, 2004  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)