

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Names of the Claimants

Paul D. Fajerski and
Michele Fajerski, t/a
Fajerski Family Limited Partnership

Case Number: 03-06581

Name of the Respondent

Leman Brothers, Inc.

Hearing Site: Pittsburgh, PA

Nature of the Dispute: Customers vs. Member

REPRESENTATION OF PARTIES

Claimants, Paul D. Fajerski and Michele Fajerski, t/a Fajerski Family Limited Partnership, hereinafter referred to as "Claimants", was represented by Foster S. Goldman, Jr., Esq., Markel, Schafer & Goldman, P.C., Pittsburgh, Pennsylvania.

Respondent, Leman Brothers, Inc., hereinafter referred to as "Respondent", was represented by Scott A. Browdy, Esq., and Patrick G. King, Esq. of Neal, Gerber & Eisenberg, LLP, Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed on September 9, 2003.

Claimants signed the Uniform Submission Agreement on September 3, 2003.

Statement of Answer and Affirmative Defenses filed by Respondent on December 19, 2003.

Respondent signed the Uniform Submission Agreement on December 17, 2003.

Claimants' Response to Answer and Affirmative Defenses filed on June 7, 2004.

Respondent's Reply to Claimants' Response to Answer and Affirmative Defenses filed on June 22, 2004.

Respondent's Motion to Dismiss filed on July 8, 2004.

Claimants' Response to Respondent's Motion to Dismiss filed on July 19, 2004.

Claimants' Motion for Sanctions and Motion to Amend the Statement of Claim filed on September 23, 2004.

Respondent's Response to the Motion for Sanctions and Motion to Amend filed on October 11, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: suitability; violations of the Securities Act of 1933, the Securities Exchange Act of 1934, Pennsylvania Securities Act of 1972 and NASD rules; common law fraud; negligent misrepresentation; breach of fiduciary duty; violation of Pennsylvania Unfair Trade Practices and Consumer Protection Law; unauthorized trading; failure to supervise; and, *respondeat superior*. The causes of action relate to the purchase and sale of various stocks.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses among others: failure to state a claim upon which relief may be granted; ratification, waiver, laches and estoppel; economic loss doctrine; statutes of limitation; and, failure to mitigate.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$541,542.21, treble damages, interest at the statutory rate of 6%, and attorneys' fees and forum fees in unspecified amounts.

Respondent requested that the Statement of Claim be dismissed, with all fees and costs assessed against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

Claimants withdrew their claim of suitability on August 9, 2004.

The Arbitration Panel (the "Panel") denied in part and granted in part Respondent's Motion to Dismiss in an Order dated July 30, 2004. It ruled in relevant part as follows: "all claims for relief under the Pennsylvania Securities Act for acts or omissions which occurred more than one year prior to the filing of the Claimants' claim and which are subject to the one year bar in the Pennsylvania Securities Act are hereby dismissed; provided that nothing in this paragraph shall be construed to prevent the Claimants from obtaining relief under other statutes, rules, regulations, common law or case law for acts or omissions which occurred more than one year prior to the filing of the Claimants' claim".

The Panel denied Claimants' Motion for Sanctions and Motion to Amend the Statement of Claim in an Order dated October 19, 2004.

At the hearing on the merits, Respondent made a motion to dismiss the matter. The Panel denied Respondent's motion.

AWARD

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

1. Claimants' claims are denied in their entirety;
2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,
3. Any and all relief not specifically addressed herein, including treble damages, is denied in its entirety.

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	= \$ 500.00
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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, Leman Brothers, Inc. 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:

Respondent's request for hearings on August 2-4, 2004	= \$ 1,200.00
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Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 2,400.00
Pre-hearing conferences:	
April 13, 2004	1 session
July 27, 2004	1 session

Five (5) Hearing sessions @ \$1,200.00 = \$ 6,000.00
Hearing Dates: November 15, 2004 2 sessions
November 16, 2004 2 sessions
November 17, 2004 1 session

Total Forum Fees = \$ 8,400.00

1. The Panel has assessed \$4,200.00 of the forum fees to Claimants.
2. The Panel has assessed \$4,200.00 of the forum fees to Respondent.

Fee Summary

1. Claimants are assessed and shall pay:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 4,200.00
Total Fees	= \$ 4,700.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 3,000.00

2. Respondent is assessed and shall pay:

Member Fees	= \$ 8,550.00
Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$ 4,200.00
Total Fees	= \$13,950.00
Less payments	= \$14,750.00
Refund owed from NASD Dispute Resolution	= \$ 800.00

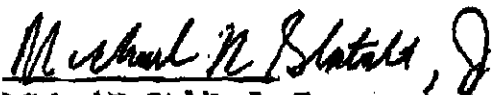
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Michael R. Stabile, Jr., Esq.
Edward A. Grupp, Esq.
Donald A. Olszewski

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator, Panelist
- Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



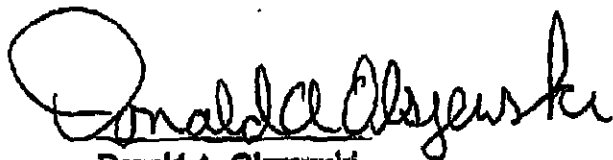
Michael R. Stabile, Jr., Esq.
Public Arbitrator, Presiding Chairperson

11-26-04

Signature Date

Edward A. Grupp, Esq.
Public Arbitrator, Panelist

Signature Date



Donald A. Olszewski
Non-Public Arbitrator, Panelist

11-26-04

Signature Date

November 29, 2004

Date of Service (For NASD Dispute Resolution office use only)

ARBITRATION PANEL

Michael R. Stabile, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Edward A. Grupp, Esq.	-	Public Arbitrator, Panelist
Donald A. Olszewski	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Michael R. Stabile, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date:



Edward A. Grupp, Esq.
Public Arbitrator, Panelist

November 26, 2004

Signature Date:

Donald A. Olszewski
Non-Public Arbitrator, Panelist

Signature Date:

November 29, 2004

Date of Service (For NASD Dispute Resolution office use only)