

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Alex A. and Minica Casbara, Individuals and as Co-Trustees of Alex A. Casbara and Minica Casbara Family Trust, Claimants v. Diversified Securities, Inc. and Kevin J. Conway, Respondents

Case Number: 03-09188

Hearing Site: Los Angeles, California

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

REPRESENTATION OF PARTIES

For Claimants:

Rod M. Bidgoli, Esq.
Irvine Law Corporation, PLC
Irvine, California

For Respondents:

Todd N. Bressler, Esq.
Liner Yankelevitz Sunshine &
Regenstreif LLP
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: December 26, 2003

Claimants' Joint Uniform Submission Agreement signed: December 22, 2003

Joint Statement of Answer filed by Respondents: March 5, 2004

Respondent Kevin J. Conway's Uniform Submission Agreement signed: March 5, 2004

CASE SUMMARY

Claimants alleged unsuitable recommendations, material omissions, breach of fiduciary duty, failure to supervise, elder abuse, unfair or deceptive practices against senior citizens, violation of federal and state securities laws, violation of NASD and NYSE rules, and fraud. Claimants' allegations involved the purchase of an Allmerica Select Resource II Variable Annuity.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested general, compensatory, and treble damages in an amount not less than \$62,000.00, unspecified punitive damages, disgorgement of profits, unspecified consequential and lost opportunity damages, interest at the legal rate, and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety and that the claim be expunged from all Respondents' registration filings with NASD.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Diversified Securities, Inc. did not file with NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the *NASD Code of Arbitration Procedure* (Code) and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

On December 22, 2003, Claimants and Claimants' 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 Claimants 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.

By letter dated December 27, 2004, Claimant notified NASD Dispute Resolution that the matter was settled and dismissed with prejudice as to all Respondents.

By letter dated June 9, 2005, Respondents moved the Panel to reopen the matter in order to enter a Stipulated Award recommending the expungement of all reference to the above-captioned arbitration from Respondent Kevin J. Conway's registration records maintained by the NASD Central Registration Depository. On July 18, 2005, Claimant's attorney executed a confirmation that Claimants had no objection to Respondents' request that the matter be reopened to obtain a Stipulated Award recommending expungement of Respondent Kevin J. Conway's record. On September 30, 2005, after due deliberation of Respondents' request, the Arbitrators unanimously denied the request to reopen the matter and issue a Stipulated Award recommending expungement.

On October 18, 2005, Respondents moved the Panel to reconsider its decision to deny Respondents' request to reopen the matter and enter a Stipulated Award, based upon additional factual information not included in their prior request. The Panel agreed to hold an in-person hearing on December 1, 2005.

On December 1, 2005, Respondents appeared before the Panel to present evidence as to why the above-captioned arbitration should be expunged from Respondent Kevin J. Conway's registration record. Claimants made no appearance and filed no opposition to Respondents' motion to expunge.

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) Claimants' claims are dismissed in their entirety.
- 2) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Kevin J. Conway's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Kevin J. Conway must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted, including Claimants' request for punitive damages, 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
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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 Diversified Securities, Inc. is a party and the following fees are assessed:

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

Adjournment Fees

The following adjournment fees are assessed:

November 2 – 5, 2004, adjournment requested by parties = \$ 1,125.00

Pursuant to Rule 10304(b) of the Code, the adjournment fee is waived.

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:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session = \$ 1,125.00
Pre-hearing conference: June 16, 2004 1 session

One (1) Hearing session @ \$1,125.00/session = \$ 1,125.00
Hearing: December 1, 2005 1 session

Total Forum Fees = \$ 2,250.00

1. The Panel assessed \$562.50 of the forum fees jointly and severally to Claimants Alex A. and Minica Casbara, Individuals and as Co-Trustees of Alex A. Casbara and Minica Casbara Family Trust.
2. The Panel assessed \$562.50 of the forum fees jointly and severally to Respondents Diversified Securities, Inc. and Kevin J. Conway.
3. The Panel assessed \$1,125.00 of the forum fees to Respondent Diversified Securities, Inc.

Fee Summary

1. Claimants Alex A. and Minica Casbara, Individuals and as Co-Trustees of Alex A. Casbara and Minica Casbara Family Trust are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 862.50
Less Waiver of Initial Filing Fee	= \$ (300.00)
Less Unused Mediation Deposit	= \$ (125.00)
Less payments	= \$ (437.50)
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondents Diversified Securities, Inc. and Kevin J. Conway are charged jointly and severally with the following fees and costs:

<u>Forum Fee</u>	= \$ 562.50
<u>Total Fees</u>	= \$ 562.50
<u>Less Unused Mediation Deposit by Diversified Securities, Inc.</u>	= \$ (125.00)
<u>Less payment by Diversified Securities, Inc.</u>	= \$ (437.50)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondent Diversified Securities, Inc. is charged with the following fees and costs:

<u>Member Fees</u>	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 1,125.00
<u>Total Fees</u>	= \$ 6,325.00
<u>Less payments</u>	= \$ (5,200.00)
Balance Due NASD Dispute Resolution	= \$ 1,125.00

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.

ARBITRATION PANEL

Robert A. Lombardi	-	Public Arbitrator, Presiding Chair
Montgomery G. Griffin	-	Public Arbitrator
Rosa Linda Guadarrama	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Robert A. Lombardi
Robert A. Lombardi
Chair, Public Arbitrator

12/2/05
Signature Date

Montgomery G. Griffin
Public Arbitrator

Signature Date

Rosa Linda Guadarrama
Non-Public Arbitrator

Signature Date

12/02/05
Date of Service


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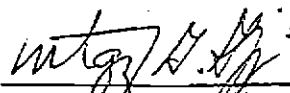
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