

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Thomas McAdam (Claimant) vs. David Nagel; Willis Mitchell, d/b/a Mitchell Nagel, Associates (Respondents)

Case Number: 04-03407

Hearing Site: Buffalo, New York

Nature of the Dispute: Associated Person vs. Associated Persons

REPRESENTATION OF PARTIES

Claimant Thomas McAdam ("McAdam") hereinafter referred to as "Claimant": M. David Sayid, Esq., Sayid and Associates, LLP, New York, NY.

Respondents David Nagel ("Nagel"), Willis Mitchell ("Mitchell") d/b/a Mitchell Nagel, Associates ("Mitchell Nagel") hereinafter collectively referred to as "Respondents": Richard A. McGuirk, Esq., Nixon Peabody LLP, Rochester, NY.

CASE INFORMATION

Statement of Claim filed on or about: May 6, 2004.

Claimant signed the Uniform Submission Agreement: April 30, 2004.

Joint Statement of Answer filed by Respondents on or about: July 30, 2004.

Respondent Nagel signed the Uniform Submission Agreement: July 30, 2004.

Respondent Mitchell signed the Uniform Submission Agreement: July 30, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: fraud; breach of contract; unjust enrichment and tortious interference.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$200,000.00; punitive damages in the amount of \$300,000.00; an order to the Respondents to provide an accurate accounting of the commissions received from ING; an award of the payment of all commissions due to the Claimant; costs; attorneys' fees and any other relief the Panel deems just and equitable.

Respondents requested that the claims against them be denied in their entirety; that all forum fees be awarded against Claimant, that they be awarded costs and attorneys' fees; and such other and further relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

At the conclusion of Claimant's case, Respondents filed a Motion to Dismiss. After due deliberation, the Panel the Motion was denied without prejudice.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are denied 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	= \$ 300.00
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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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Nathan & Lewis, Securities, Inc. and ING Financial Advisers, LLC are the parties' former firms.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

October 10-13, 2005 adjournment by Respondents	= Waived
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Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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 Panel @ \$1,125.00	= \$2,250.00
Pre-hearing conferences: October 13, 2004 1 session	
February 22, 2005 1 session	
Six (6) Hearing sessions @ \$1,125.00	= \$6,750.00
Hearing Dates: March 6, 2006 2 sessions	
March 7, 2006 2 sessions	
March 8, 2006 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$9,000.00

1. The Panel has assessed \$9,000.00 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$1,425.00
<u>Refund Due</u>	= \$1,125.00

2. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$9,000.00
<u>Total Fees</u>	= \$9,000.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$9,000.00

3. Nathan & Lewis Securities, Inc. is liable for:

<u>Member Fees</u>	= \$5,200.00
<u>Total Fees</u>	= \$5,200.00
<u>Less payments</u>	= \$7,000.00
<u>Refund Due</u>	= \$1,800.00

4. ING Financial Advisers, LLC is liable for:

<u>Member Fees</u>	= \$5,200.00
<u>Total Fees</u>	= \$5,200.00
<u>Less payments</u>	= \$7,000.00
<u>Refund Due</u>	= \$1,800.00

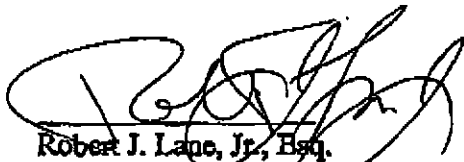
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Robert J. Lane, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Henry W. Cornell, III	-	Public Arbitrator
Robert Shiffra, Esq.	-	Non-Public Arbitrator

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 which is my award.

Concurring Arbitrators' Signatures


Robert J. Lane, Jr., Esq.
Public Arbitrator, Presiding Chairperson

3/23/06
Signature Date

Henry W. Cornell, III
Public Arbitrator

Signature Date

Robert Shiffra, Esq.
Non-Public Arbitrator

Signature Date

March 28, 2006

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

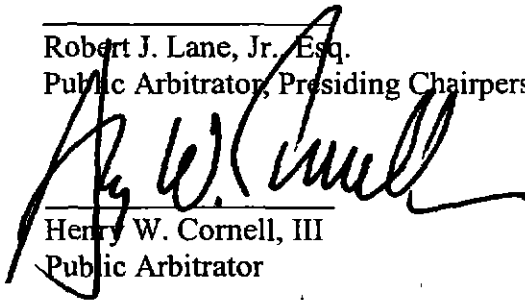
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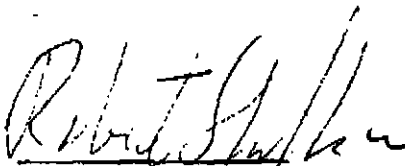
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Signature Date

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