
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Charlotte Seltzer
Carl H. Seltzer

Case Number: 04-03428

Name of the Respondent

Calton & Associates, Inc.

Hearing Site: Orlando, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Charlotte Seltzer and Carl H. Seltzer, hereinafter collectively referred to as "Claimants": Philip J. Snyderburn, Esq., Snyderburn, Rishoi & Swann, P.A., Orlando, Florida.

For Calton & Associates, Inc., hereinafter referred to as "Respondent": Robert Persante, Esq., Persante & McCormack, P.A., Clearwater, Florida.

CASE INFORMATION

Statement of Claim filed on or about: May 7, 2004.

Claimants signed the Uniform Submission Agreement on: April 30, 2004.

Statement of Answer filed by Respondent on or about: July 19, 2004.

Respondent did not file an executed Uniform Submission Agreement.

CASE SUMMARY

Claimants alleged the following causes of action: 1) fraudulent inducement; 2) breach of fiduciary duty; 3) negligence; and 4) breach of contract. The causes of action relate to day trading of hundreds of various securities, including shares of stock.

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

RELIEF REQUESTED

Claimants requested: 1) compensatory damages in the amount of \$185,449.00; 2) interest; 3) costs; 4) punitive damages; and 5) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondent requested: 1) that the Statement of Claim be denied in its entirety; 2) costs, including forum fees and expert witness fees; 3) attorneys' fees, if available at law; and 4) such other relief the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent 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, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

At the evidentiary hearing, Respondent requested Arbitrator Pearthree to recuse himself from the Panel. Claimant objected to the request. Thereafter, Arbitrator Pearthree denied the request.

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

1. Respondent is liable and shall pay jointly and severally to Claimants compensatory damages in the amount of \$76,000.00, pre-judgment interest denied. Respondent is liable on the claim of breach of fiduciary duty. Respondent is not liable on all other claims.
2. Claimants' request for punitive damages is denied.
3. Respondent's request for attorneys' fees is denied.
4. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim 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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent is a member firm and a party.

| | |
|-------------------------|--------------|
| 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:

There were no adjournments requested during these proceedings for which fees were assessed.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings.

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.

There were no injunctive relief fees assessed during these proceedings.

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 Panel @ \$1,125.00 per session | = \$1,125.00 |
| Pre-hearing conference: September 30, 2004 1 session | |

| | |
|---|--------------|
| Seven (7) Hearing sessions @ \$1,125.00 per session | = \$7,875.00 |
| Hearing Dates: February 15, 2005 2 sessions | |
| February 16, 2005 2 sessions | |
| February 17, 2005 3 sessions | |

| | |
|------------------|--------------|
| Total Forum Fees | = \$9,000.00 |
|------------------|--------------|

The Panel has assessed forum fees in the amount of \$4,500.00 jointly and severally to Claimants.

The Panel has assessed forum fees in the amount of \$4,500.00 to Respondent.

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.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

| | |
|-------------------------------------|--------------|
| Initial Filing Fee | = \$ 300.00 |
| <u>Forum Fees</u> | = \$4,500.00 |
| Total Fees | = \$4,800.00 |
| <u>Less payments</u> | = \$1,425.00 |
| Balance Due NASD Dispute Resolution | = \$3,375.00 |

Respondent is solely liable for:

| | |
|-------------------------------------|--------------|
| Member Fees | = \$5,200.00 |
| <u>Forum Fees</u> | = \$4,500.00 |
| Total Fees | = \$9,700.00 |
| <u>Less payments</u> | = \$5,200.00 |
| Balance Due NASD Dispute Resolution | = \$4,500.00 |

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

ARBITRATION PANEL

| | | |
|-------------------------------|---|---|
| <i>Benjamin L. Abramowitz</i> | - | <i>Public Arbitrator, Presiding Chairperson</i> |
| <i>Kenneth J. Bennett</i> | - | <i>Public Arbitrator</i> |
| <i>Gustavus L. Pearthree</i> | - | <i>Non-Public Arbitrator</i> |

Concurring Arbitrators' Signatures

_____/s/
Benjamin L. Abramowitz
Public Arbitrator, Presiding Chairperson

February 18, 2005
Signature Date

Kenneth J. Bennett
Public Arbitrator

February 19, 2005
Signature Date

NASD Dispute Resolution
Arbitration No. 04-03428
Award Page 5

/s/

Gustavus L. Pearthree
Non-Public Arbitrator

February 21, 2005

Signature Date

February 23, 2005

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

Feb 18 2005 12:41PM NASD

No. 5434 P. 5

NASD Dispute Resolution
Arbitration No. 04-03428
Award Page 4

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.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

| | |
|-------------------------------------|--------------|
| Initial Filing Fee | = \$ 300.00 |
| <u>Forum Fees</u> | = \$4,500.00 |
| Total Fees | = \$4,800.00 |
| <u>Less payments</u> | = \$1,425.00 |
| Balance Due NASD Dispute Resolution | = \$3,375.00 |

Respondent is solely liable for:

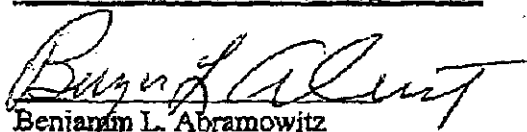
| | |
|-------------------------------------|--------------|
| Member Fees | = \$5,200.00 |
| <u>Forum Fees</u> | = \$4,500.00 |
| Total Fees | = \$9,700.00 |
| <u>Less payments</u> | = \$5,200.00 |
| Balance Due NASD Dispute Resolution | = \$4,500.00 |

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

ARBITRATION PANEL

| | | |
|------------------------|---|--|
| Benjamin L. Abramowitz | - | Public Arbitrator, Presiding Chairperson |
| Kenneth J. Bennett | - | Public Arbitrator |
| Gustavus L. Pearthree | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures


Benjamin L. Abramowitz
Public Arbitrator, Presiding Chairperson

18 Feb 2005
Signature Date

Kenneth J. Bennett
Public Arbitrator

Signature Date

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.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

| | |
|-------------------------------------|---------------------|
| Initial Filing Fee | = \$ 300.00 |
| <u>Forum Fees</u> | <u>= \$4,500.00</u> |
| Total Fees | = \$4,800.00 |
| <u>Less payments</u> | <u>= \$1,425.00</u> |
| Balance Due NASD Dispute Resolution | = \$3,375.00 |

Respondent is solely liable for:

| | |
|-------------------------------------|---------------------|
| Member Fees | = \$5,200.00 |
| <u>Forum Fees</u> | <u>= \$4,500.00</u> |
| Total Fees | = \$9,700.00 |
| <u>Less payments</u> | <u>= \$5,200.00</u> |
| Balance Due NASD Dispute Resolution | = \$4,500.00 |

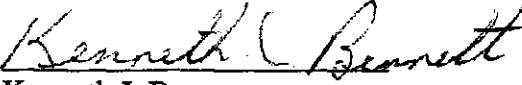
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

| | | |
|------------------------|---|--|
| Benjamin L. Abramowitz | - | Public Arbitrator, Presiding Chairperson |
| Kenneth J. Bennett | - | Public Arbitrator |
| Gustavus L. Pearthree | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

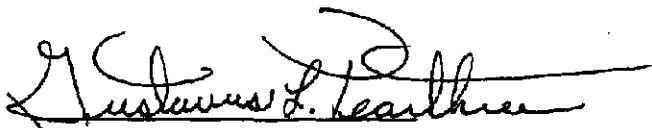
Benjamin L. Abramowitz
Public Arbitrator, Presiding Chairperson


Kenneth J. Bennett
Public Arbitrator

Signature Date

February 19, 2005
Signature Date

NASD Dispute Resolution
Arbitration No. 04-03428
Award Page 5



Gustavus L. Pearthree
Non-Public Arbitrator

2/21/05
Signature Date

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