

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Paula Lewis, individually and as Executrix on behalf of the Estate of George Lewis (Claimant)
vs. Paul L. Forchheimer & Co., Inc., Mark D. Goldsmith and US Clearing a/k/a US Clearing
Services (Respondents)

Case Number: 04-03795

Hearing Site: New York, New York

Nature of the Dispute: Customers vs. Member, Associated Person and Non-Member

REPRESENTATION OF PARTIES

Claimants Paula Lewis, individually and as Executrix on behalf of the Estate of George Lewis, hereinafter referred to as ("Claimants"): Edward J. Toscano, Esq., Toscano & Associates, P.C. New York, NY.

Respondent Paul L. Forchheimer & Co., Inc. hereinafter referred to as ("Forchheimer & Co."): Arthur D. Felsenfeld, Esq., Andrews Kurth, LLP, New York, NY.

Respondent Mark D. Goldsmith hereinafter referred to as ("Goldsmith"): Wayne M. Josel, Esq., Kaufman, Feiner, Yamin, Gildin & Robbins, LLP New York, NY.

Respondent US Clearing a/k/a US Clearing Services hereinafter referred to as ("US Clearing"): Joel E. Davidson, Esq., Davidson & Grannum, LLP Orangeburg, NY.

CASE INFORMATION

Statement of Claim filed on or about: May 26, 2004.

Claimants signed the Uniform Submission Agreement: February 1, 2004 and June 1, 2004.

Statement of Answer filed by Forchheimer & Co. on or about: November 5, 2004.

Forchheimer & Co. signed the Uniform Submission Agreement: August 24, 2004.

Statement of Answer filed by Goldsmith on or about: September 27, 2004.

Goldsmith signed the Uniform Submission Agreement: September 7, 2004.

Statement of Answer and Motion to Dismiss filed by US Clearing on or about: September 2, 2005.

US Clearing signed the Uniform Submission Agreement: September 12, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract, breach of fiduciary duty, unsuitability, gross negligence, fraud, conversion, failure to supervise, violations of securities laws and New York General Business Law and intentional infliction of emotional distress. The causes of action relate to unspecified securities products.

Unless specifically admitted in its Answer, Forchheimer & Co. denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

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

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$500,000.00; punitive damages in the amount of \$250,000.00; pre and post judgment interest; reasonable attorneys' fees; costs; filing and forum fees.

Forchheimer & Co. requested that the Panel dismiss this proceeding and award it costs; attorneys' fees; and such other relief as the Panel may deem just and proper.

Goldsmith requested that the Panel dismiss all claims against him; expungement of his CRD records; costs and fees; reasonable attorneys' fees; and such other relief as the Panel deems appropriate.

US Clearing requested the dismissal of the Statement of Claim in its entirety, and costs of this proceedings against the Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

On November 1, 2005, the Panel dismissed with prejudice, the Claimants' claims against Forchheimer & Co., Goldsmith and US Clearing.

On December 14, 2005, a telephonic hearing was held on Mark Goldsmith's motion to expunge this matter from his CRD records and his request for attorneys' fees. On January 10, 2006, the Panel entered its decision granting Goldsmith's motion to expunge his CRD records and denied Goldsmith's request for attorneys' fees.

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. Claimants' claims are dismissed in their entirety, with prejudice.
2. The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Mark D. Goldsmith's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Mark D. Goldsmith must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130 of the NASD Code of Arbitration Procedure, the Arbitration Panel has made the following affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

3. Claimants are liable for and shall pay all forum fees in this arbitration.
4. Goldsmith's request for attorneys' fees in this arbitration is denied.
5. 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 = \$ 375.00

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, Paul L. Forchheimer & Co., Inc. is a party.

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00
Total Member fees	= \$ 7,000.00

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 @ \$1,200.00/session	= \$	2,400.00
Pre-hearing conferences: March 28, 2005 1 session		
November 1, 2005 1 session		
One (1) Hearing session @ \$1200.00/session	= \$	1,200.00
Hearing Date: December 14, 2005 1 session		
Total Forum Fees	= \$	3,600.00

1. The Panel has assessed \$3,600.00 of the forum fees to the Claimants.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$	375.00
<u>Forum Fees</u>	= \$	3,600.00
Total Fees	= \$	3,975.00
<u>Less payments</u>	= \$	1,650.00
Balance Due NASD Dispute Resolution	= \$	2,325.00

2. Forchheimer & Co. is solely liable for:

<u>Member Fees</u>	= \$	7,000.00
Total Fees	= \$	7,000.00
<u>Less payments</u>	= \$	5,750.00
Balance Due NASD Dispute Resolution	= \$	1,250.00

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

ARBITRATION PANEL

Donald R. Bluth	-	Public Arbitrator, Presiding Chairperson
Roy W. Romberger	-	Public Arbitrator
Judith C. Greene	-	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, which is my award.

Donald R. Bluth
Donald R. Bluth
Public Arbitrator, Presiding Chairperson

JAN 26, 2006
Signature Date

Roy W. Romberger
Roy W. Romberger
Public Arbitrator

Signature Date

Judith C. Greene
Judith C. Greene
Non-Public Arbitrator

Signature Date

January 27, 2006

Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution
Arbitration No. 04-03795
Award Page 5 of 5

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Signature Date



Roy W. Romberger
Public Arbitrator

01/25/06

Signature Date

Judith C. Greene
Non-Public Arbitrator

Signature Date

January 27, 2006

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Non-Public Arbitrator

1/25/06

Signature Date

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