

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Efrain T. Suarez, Marilyn E. Suarez, Bruce S. Hampton, Venese I. Hampton, Jonel Ricker in his capacity as Trustee for The Suarez Irrevocable Insurance Trust, The Petra Charitable Trust, The Doran Charitable Trust, Hampton Revocable Insurance Trust, Hampton I Charitable Trust, Hampton 2 Charitable Trust, Claimants v. Pacific Select Distributors, Inc., Multi-Financial Securities Corp. f/k/a Vestax Securities Corp., Colin Patrick Lindsey, Respondents

Pacific Select Distributors, Inc., Cross-Claimant v. Multi-Financial Securities, Corp., and Colin Patrick Lindsey, Cross-Respondents

Case Number: 04-03810

Hearing Site: Portland, Oregon

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

REPRESENTATION OF PARTIES

For Claimants:

Richard M. Layne, Esq.
Layne & Lewis LLP
Portland, Oregon

For Respondent/Cross-Claimant:
Pacific Select Distributors, Inc.

Melvin G. Moseley, Jr.
Warner Norcross & Judd
LLP
Grand Rapids, Michigan

For Respondent/Cross-Respondent
Multi Financial Securities Corp.:

Shannon L. McDougald, Esq.
Shannon McDougald P.S.
Seattle, Washington

For Respondent/Cross-Respondent
Colin Patrick Lindsey:

Steven N. Fuller, Esq.
Nixon Peabody LLP
Boston, Massachusetts

CASE INFORMATION

Statement of Claim filed: May 25, 2004

Revised Statement of Claim filed: June 4, 2004

Amended Statement of Claim filed: September 24, 2004

Claimants' Joint Uniform Submission Agreement signed: June 14, 2004

Statement of Answer and Cross-Claim filed by Respondent Pacific Select Distributors, Inc.: September 16, 2004

Statement of Answer filed by Respondent Multi-Financial Securities Corp.:
September 17, 2004

Statement of Answer filed by Respondent Colin Patrick Lindsey: October 4, 2004

Respondent Pacific Select Distributors, Inc.'s Uniform Submission Agreement signed:
August 25, 2004

Respondent Multi-Financial Securities Corp.'s Uniform Submission Agreement signed:
None Submitted

Respondent Colin Patrick Lindsey's Uniform Submission Agreement signed:
August 19, 2005

CASE SUMMARY

In their Revised and Amended Statements of Claim, Claimants alleged breach of contract, breach of fiduciary duty, negligence, conversion, common law fraud and violations of State and Federal Securities laws involving the purchase of various universal variable life insurance policies on the life of each of the individual Claimants.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Revised and Amended Statements of Claim and set forth various affirmative defenses.

RELIEF REQUESTED

Claimants requested unspecified compensatory damages, unspecified punitive damages, pre- and post-judgment interest at a rate of 9% per annum, and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, and costs, including attorney's fees.

In its Cross-Claim, Respondent Pacific Select Distributors, Inc. requested indemnification from the other Respondents for any losses, expenses, or damages of any kind arising out of this action for which Respondent Pacific Select Distributors, Inc. is found liable.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Multi-Financial Securities Corp. did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the *Code* and having answered the claim and having appeared at the hearing, is bound by the determination of the Panel on all issues submitted.

On or about October 14, 2005, Respondent Pacific Select Distributors Inc. withdrew its Cross-claim against Respondent Multi-Financial Securities Corp. without prejudice.

At the hearing, Respondent Pacific Select Distributors, Inc. moved the Panel for an Order Dismissing the Claimants' case against it. After due deliberation, the Panel granted the motion. Respondent Pacific Select Distributors, Inc. then withdrew its Cross-Claim and was dismissed from the proceedings.

At the hearing, at the close of the Claimants' case in chief, Respondent Multi-Financial Securities Corp. moved the panel for an Order Dismissing the Claimants' Claims against it. After due deliberation, the Panel granted the motion.

At the hearing, at the close of the Claimants' case-in-chief, Respondent Colin Patrick Lindsey moved the Panel for an Order dismissing the Claimants' Claims against him. After due deliberation, the Panel granted the motion with the exception of Claimants' claim for breach of fiduciary duty insofar as it related solely to the issue of whether Mr. Lindsey breached a fiduciary duty in that he did not disclose, consistent with his fiduciary duties as a co-trustee, his ownership interest in the Morgan Ross real estate firm, which participated to some extent in a referral fee from J.P. King Auctioneers and/or General Land Company.

RATIONALE

As stated in the section below entitled "Award," the panel has dismissed Claimants' Claim against Colin Lindsey for breach of fiduciary duty. The Panel chooses to provide a brief explanation of its decision to deny Claimants' claim against Respondent Colin Patrick Lindsey as to the alleged breach of fiduciary duty as a co-trustee. This explanation is not intended as a complete explanation of every aspect of the Panel's award, but is provided merely as a courtesy to the parties.

In this case, the claim of breach of fiduciary duty by a trustee, whether fraudulent or negligent in origin, is covered by the two-year statute of limitation set out at ORS 12.110. NASD rules and regulations do not extend that time limit. The time limit set out at ORS 12.110 does not begin to run until a beneficiary knows, or reasonably should know, that he or she was damaged by a trustee's alleged fraud or negligence. It is not required that a claimant understand every aspect of his or her claim for the statute of limitations to start running. It's sufficient that a claimant knew, or should have known, of the existence of some cause of action.

Based on the facts established at hearing, the Panel concludes that the Claimants knew or should have known no later than by January 2001 that: (1) a recipient of a portion of the real estate sales commission from the ranch sale was the Morgan Ross real estate firm; (2) that Respondent Lindsey had a close business connection with that company; and (3) that Respondent Lindsey therefore benefited from the payment Claimants made to the Morgan Ross firm.

This proceeding was commenced in 2004, more than two years after January 2001. Accordingly, the claim against Colin Patrick Lindsey for breach of fiduciary duty is time barred by ORS 12.110.

EXPUNGEMENT

Pursuant to NASD Rule 2130, Respondent Colin Patrick Lindsey requested the Panel waive the requirement that NASD be named as a party in any future court expungement confirmation process. The Panel, having considered the facts established at hearing and the standards set forth in Rule 2130, deny 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, 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 against Respondents are denied in their entirety and dismissed with prejudice.
- 2) All Cross-Claims are dismissed with prejudice.
- 3) Respondent Colin Patrick Lindsey's request for Expungement is denied.
- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) All other relief requested and not expressly granted 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	= \$ 250.00
Respondent Pacific Select Distributors, Inc.'s Cross-Claim	= \$ 500.00

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 Multi-Financial Securities Corp. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,200.00</u>
Total Member Fees	= \$ 4,450.00

The member firm Pacific Select Distributors, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,200.00</u>
Total Member Fees	= \$ 4,450.00

Adjournment Fees

The following adjournment fees are assessed:

July 25-28, 2005, August 3- 4, 2005, adjournment requested by Claimants 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:

(3) Pre-hearing conference sessions with a single arbitrator @ \$ 450.00/session = \$1,350.00

Pre-hearing conferences:	August 4, 2005	1 session
	October 26, 2005	1 session
	January 19, 2006	1 session

(4) Pre-hearing conference sessions with the Panel @ \$1,000.00/session = \$ 4,000.00

Pre-hearing conferences:	November 3, 2004	1 session
	March 29, 2005	1 session
	October 5, 2005	1 session
	November 29, 2005	1 session

(14) Hearing sessions @ \$1,000.00/session = \$14,000.00

Hearings:	January 23, 2006	3 sessions
	January 24, 2006	3 sessions
	January 25, 2006	3 sessions
	January 26, 2006	3 sessions
	January 27, 2006	2 sessions

Total Forum Fees	= \$19,350.00
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1. The Panel assessed \$9,675.00 of the forum fees to Claimant Jonel Ricker in his capacity as Trustee of The Suarez Irrevocable Insurance Trust.
2. The Panel assessed \$9,675.00 of the forum fees to Respondent Colin Patrick Lindsey.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 250.00
<u>Less payments</u>	= \$(250.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Claimant Jonel Ricker in his capacity as Trustee of The Suarez Irrevocable Insurance Trust is charged with the following fees and costs

Forum Fee	= \$ 9,675.00
<u>Less payments</u>	= \$ 1,000.00
Balance Due NASD Dispute Resolution	= \$ 8,675.00

3. Respondent Multi-Financial Securities Corp. is charged with the following fees and costs:

Member Fees	= \$ 4,450.00
<u>Less payments</u>	= \$(4,450.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondents Pacific Select Distributors, Inc. is charged with the following fees and costs:

Cross-Claim Filing Fee	= \$ 500.00
<u>Member Fees</u>	= \$ 4,450.00
Total Fees	= \$ 4,950.00
<u>Less payments</u>	= \$(5,950.00)
Refund Due Respondent Pacific Select Distributors, Inc.	= \$(1,000.00)

5. Respondent Colin Patrick Lindsey is charged with the following fees and costs:


<u>Forum Fees</u>	= \$9,675.00
Balance Due NASD Dispute Resolution	= \$9,675.00

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

William B. Kirby, Esq.	-	Public Arbitrator, Presiding Chair
John A. Bender, Jr., Esq.	-	Public Arbitrator
David G. Rongerude	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


William B. Kirby, Esq.
Chair, Public Arbitrator

3/11/06
Signature Date

John A. Bender, Jr., Esq.
Public Arbitrator

Signature Date

David G. Rongerude
Non-Public Arbitrator

Signature Date

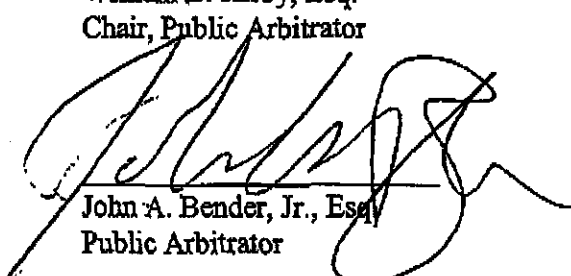
3/13/06
Service Date

ARBITRATION PANEL

William B. Kirby, Esq.	-	Public Arbitrator, Presiding Chair
John A. Bender, Jr., Esq.	-	Public Arbitrator
David G. Rongerude	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

William B. Kirby, Esq.
Chair, Public Arbitrator



John A. Bender, Jr., Esq.
Public Arbitrator

David G. Rongerude
Non-Public Arbitrator

Signature Date



Signature Date

Signature Date

3/13/06
Service Date

ARBITRATION PANEL

William B. Kirby, Esq.	-	Public Arbitrator, Presiding Chair
John A. Bender, Jr., Esq.	-	Public Arbitrator
David G. Rongerude	-	Non-Public Arbitrator

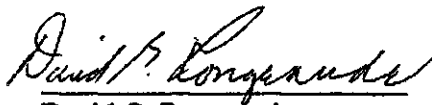
Concurring Arbitrators' Signatures

William B. Kirby, Esq.
Chair, Public Arbitrator

Signature Date

John A. Bender, Jr., Esq.
Public Arbitrator

Signature Date



David G. Rongerude
Non-Public Arbitrator

03/10/06

Signature Date

3/13/06

Service Date