

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimants

Richard E. Stevens and Betty J. Stevens,
Individually and on behalf of The Richard
and Betty Stevens Living Trust

v.

04-04787
Denver, Colorado

Respondents

John Vincent Genna, Jr., Nicholas Varano
and James Michael Palladino

and

Counter-Claimant

Nicholas Varano

v.

Counter-Respondents

Richard E. Stevens and Betty J. Stevens,
Individually and on behalf of the Richard
and Betty Stevens Living Trust

Nature of Dispute: Customers v. Associated Persons and Associated Person v. Customers

REPRESENTATION OF PARTIES

Richard E. Stevens and Betty J. Stevens, Individually and on behalf of The Richard and Betty Stevens Living Trust, hereinafter collectively referred to as "Claimants," were represented by Susan N. Perkins, Esq., North Miami Beach, Florida.

John Vincent Genna, Jr. ("Genna") was represented by Martin S. Siegel, Esq., of Brown Rudnick Berlack Israels, LLP, New York, New York.

Nicholas Varano ("Varano") was represented by Michael S. Finklestein, Esq., of Finkelstein & Feil, LLP, Garden City, New York.

James Michael Palladino ("Palladino") did not appear.

CASE INFORMATION

The Statement of Claim was filed on or about July 2, 2004. The Submission Agreement of Claimants was signed on or about June 21, 2004.

A Statement of Answer was filed by Respondent, John Vincent Genna, Jr., on or about March 4, 2005. The Submission Agreement of Respondent, John Vincent Genna, Jr., was signed on or about March 3, 2005.

A Statement of Answer and Counterclaim was filed by Respondent, Nicholas Varano, on or about March 15, 2005. The Submission Agreement of Respondent, Nicholas Varano, was signed on or about July 19, 2005.

Respondent, James Michael Palladino, did not file a Statement of Answer or a Uniform Submission Agreement.

Claimants filed an Amended Statement of Claim on or about September 30, 2004.

Claimants filed a Motion to Preclude Answers by Respondents, Genna and Varano, on or about November 30, 2004. Varano filed an Opposition to Claimants' Motion to Preclude and Cross-Motion to Dismiss on or about December 23, 2004. Genna filed an Opposition to Claimants' Motion to Preclude and Cross-Motion to Dismiss on or about December 23, 2004. Claimants filed a Response to the Cross-Motions to Dismiss on or about January 3, 2005.

Claimants filed a Reply to Varano's Counterclaim on or about March 31, 2005.

Claimants filed a Motion to Bar Motions, Pleadings or Testimony of Respondent Varano Until and Unless He Files a Signed Uniform Submission Agreement on or about July 7, 2005. Respondent Varano filed a Reply in Opposition to Claimants' Motion to Bar on or about July 13, 2005.

Claimants filed a Motion for Reconsideration on the Panel's decision to the Motion to Bar on or about July 14, 2005.

CASE SUMMARY

Claimants asserted causes of action including the following: violation of the Colorado Securities Act, violation of NASD Rule 2310, breach of fiduciary duty, misrepresentations and breach of contract. The causes of action related to Claimants' allegations that Respondent Palladino made numerous unauthorized trades in various unspecified high-tech and telecommunication stocks and churned their accounts while employed with Preferred Securities Group ("PSG"). Claimants asserted that Genna refunded Claimants a portion of the commissions charged to Claimants, but later recommended that Claimants invest those proceeds in a hedge fund named Platinum Fund, which Claimants did.

Claimants alleged that Respondent Genna misrepresented that Platinum Fund was a large, well-capitalized fund with a return rate of 45%, and misrepresented that Varano and Genna were principals of PSG, when in fact they never passed the Series 24 exam. Claimants asserted that because of Respondents' recommendations and misrepresentations, they have lost all of their capital invested at PSG.

Respondent, John Vincent Genna, Jr., denied the allegations set forth in the Statement of Claim and asserted defenses including the following: the Statement of Claim failed to state any cause of action or other grounds to justify any award against Genna; Claimants approved of, consented to, ratified, actively participated in, or requested each of the actions complained of in the Statement of Claim; no act or conduct of Genna caused any damage to Claimants and any damages suffered by Claimants were in due, in whole or in part, to their own negligence, recklessness, or intentional conduct; and, at all times, Genna acted in compliance with all statutory and regulatory rules, laws and regulations in the conduct of his business, and as such Genna fully discharged his responsibilities to Claimants.

Respondent, Nicholas Varano, denied the allegations set forth in the Statement of Claim and asserted defenses including the following: the Statement of Claim failed to state a claim upon which relief can be granted; the claim for fraud is barred by the applicable statute of limitation and is barred for failing to plead fraud with the requisite specificity; Claimants approved of, consented to, ratified, actively participated in, or requested each of the actions complained of in the Statement of Claim; all of the activities of Varano were in accord with applicable rules and regulations; Varano disclosed to Claimants all risks associated with the investments being made in connection with the Platinum Fund; and Claimants are barred by their own unclean hands, and the doctrines of in pari delicto, from prevailing on their claims against Varano.

In his Counterclaim, Varano asserted the following causes of action: negligence and defamation. The causes of action related to Varano's assertion that he lacked involvement in any supervisory capacity as it related to Claimants and had no involvement with Claimants' accounts. Varano also alleged that Claimants must have a good faith basis for naming parties in an arbitration case and by naming Varano without conducting due diligence concerning their allegations against Varano, Claimants have defamed him.

Counter-Respondents, denied the allegations set forth in the Counterclaim.

RELIEF REQUESTED

Claimants requested an award of \$165,000 in rescissory damages, plus disgorgement of all commissions paid, interest, costs, attorneys' fees, punitive damages and any other relief the panel deemed just and equitable.

Respondent, John Vincent Genna, Jr., requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees.

Respondent, Nicholas Varano, requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees. In addition, in Varano's Counterclaim, he requested an award of \$200,000 in compensatory damages, costs, attorneys' fee, expungement of all references of this matter maintained by the Central Registration Depository ("CRD"), and any other relief the panel deemed just and equitable.

OTHER ISSUES CONSIDERED & DECIDED

Respondent, James Michael Palladino, did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and is bound by the determination of the arbitration panel on all issues submitted.

Based on the representations made on behalf of the Claimants, the undersigned arbitrators have determined that Respondent, James Michael Palladino, had been served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined based on the representations made on behalf of the Claimants that Respondent, James Michael Palladino, received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

On or about July 13, 2005, the Panel denied Claimants' Motion to Bar.

At the arbitration hearing, the arbitration panel denied Claimants' Motion for Reconsideration of the Motion to Bar, but ordered that Respondent, Nicholas Varano, execute a Uniform Submission Agreement in the above-referenced case.

The parties present at the hearing agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, James Michael Palladino, is liable for and shall pay to Claimants, Richard E. Stevens and Betty J. Stevens, Individually and on behalf of The Richard and Betty Stevens

Living Trust, the sum of Eighty Two Thousand Dollars and No Cents (\$82,000.00) in compensatory damages;

2. Respondent, James Michael Palladino, is liable for and shall pay to Claimants, Richard E. Stevens and Betty J. Stevens, Individually and on behalf of The Richard and Betty Stevens Living Trust, interest on the above-referenced sum at the rate of 8%, compounded annually, from the date of service of this Award through and including the date this Award is paid in full;
3. Claimants' claims, each and all, against Respondents, John Vincent Genna, Jr., and Nicholas Varano, are denied and dismissed with prejudice;
4. Counter-Claimant, Nicholas Varano's claims, each and all, are denied and dismissed with prejudice in their entirety;
5. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages and expungement, are denied with prejudice; and
6. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fee for each claim:

Initial claim filing fee	= \$ 300
Counterclaim filing fee	= \$ 300

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 x \$ 1,125	= \$ 1,125
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Pre-hearing conference:	02/16/2005	1 session	
Seven (7) Hearing sessions with Panel x \$ 1,125			= \$ 7,875
Hearing Dates:	07/18/2005	3 sessions	
	07/19/2005	2 sessions	
	07/20/2005	2 sessions	
<hr/> Total Forum Fees			= \$ 9,000

The Arbitration Panel has assessed \$ 4,500 of the forum fees jointly and severally to Richard E. Stevens and Betty J. Stevens, Individually and on behalf of The Richard and Betty Stevens Living Trust.

The Arbitration Panel has assessed \$ 4,500 of the forum fees jointly and severally to John Vincent Genna, Jr., Nicholas Varano, and James Michael Palladino.

EEE SUMMARY

Claimants, Richard E. Stevens and Betty J. Stevens, Individually and on behalf of The Richard and Betty Stevens Living Trust, are jointly and severally liable for:

Initial Filing Fee	= \$ 300
<u>Forum Fees</u>	= \$ 4,500
Total Fees	= \$ 4,800
<u>Less payments</u>	= \$ 1,425
Balance Due NASD Dispute Resolution	= \$ 3,375

Respondent, Nicholas Varano, is liable for:

<u>Counterclaim Filing Fee</u>	= \$ 300
Total Fees	= \$ 300
<u>Less payments</u>	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 300

Respondents, John Vincent Genna, Jr., Nicholas Varano, and James Michael Palladino, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 4,500
Total Fees	= \$ 4,500
<u>Less payments</u>	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 4,500

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

ARBITRATION PANEL

Samuel E. Wing, Esq. - Public Arbitrator, Presiding Chair
James B. Eichberg - Public Arbitrator
Craig Stanley Ralston - Non-Public Arbitrator

Concurring Arbitrators:

Samuel E. Wing, Esq.
Public Arbitrator, Presiding Chair

Signature Date

James B. Eichberg
Public Arbitrator

Signature Date

Craig Stanley Ralston
Non-Public Arbitrator

Signature Date


2/1/05
Date of Service (NASD use only)

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Craig Stanley Ralston - Non-Public Arbitrator

Concurring Arbitrators:



Samuel E. Wing, Esq.
Public Arbitrator, Presiding Chair

7-29-05

Signature Date

James B. Eichberg
Public Arbitrator

Signature Date

Craig Stanley Ralston
Non-Public Arbitrator

Signature Date

8/1/05

Date of Service (NASD use only)

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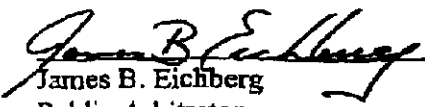
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Public Arbitrator



Signature Date

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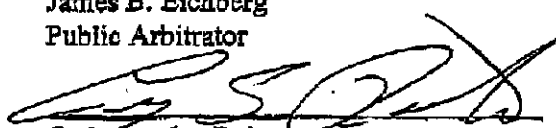
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Craig Stanley Ralston
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7-29-05
Signature Date

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