

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Maybetty B. Calvo
Priscilla Calvo
Jose Vasquez

Case Number: 04-05547

Names of the Respondent

Max International Broker/Dealer Corp.
David Scott Isolano
Danny Dean Giraldo

Hearing Site: Philadelphia, Pennsylvania

Nature of the Dispute: Customer vs. Member and Associated Persons.

REPRESENTATION OF PARTIES

Claimants Maybetty B. Calvo ("M. Calvo"), Priscilla Calvo ("P. Calvo"), and Jose Vasquez ("Vasquez"), hereinafter collectively referred to as "Claimants", were represented by Wayne M. Josel, Esq. and David E. Robbins, Esq., Kaufmann, Feiner, Yamin, Gildin & Robbins, LLP, New York, New York.

Respondent Max International Broker/Dealer Corp. ("Max International"), hereinafter referred to as "Respondent Max International", was represented by Stephen S. Lux, Esq., Shustak Jalil & Heller, P.C., San Diego, California.

Respondent David Scott Isolano ("Isolano"), hereinafter referred to as "Respondent Isolano", represented himself.

Respondent Danny Dean Giraldo ("Giraldo"), hereinafter referred to as "Respondent Giraldo", represented himself at the hearing.

CASE INFORMATION

Statement of Claim filed on August 3, 2004.

Amended Statement of Claim filed on November 9, 2004.

Claimant M. Calvo signed the Uniform Submission Agreement on July 30, 2004.

Claimant P. Calvo signed the Uniform Submission Agreement on November 8, 2004.

Claimant Vasquez signed the Uniform Submission Agreement on November 8, 2004.

Statement of Answer filed by Respondent Max International and Isolano on August 26, 2004.

Respondent Max International filed an Answer to the Amended Statement of Claim on January 26, 2005.

Respondent Isolano filed an Answer to the Amended Statement of Claim on January 26, 2005.

Respondent Giraldo filed an Answer to the Amended Statement of Claim on January 26, 2005.

Respondent Max International did not file an executed Uniform Submission Agreement with

NASD Dispute Resolution.

Respondent Isolano signed the Uniform Submission Agreement on September 26, 2004.

Respondent Giraldo signed the Uniform Submission Agreement on September 29, 2004.

Respondent Isolano filed a Motion to Dismiss the Statement of Claim on November 2, 2004.

Claimants did not file a Response to the Motion to Dismiss.

Respondent Isolano filed a Request for a Stay of the Arbitration on December 15, 2004.

Claimants filed a Response to the Request for a Stay of Arbitration on December 16, 2004.

CASE SUMMARY

Claimants, in their Statement of Claim and Amended Statement of Claim, asserted the following causes of action, among others: churning, authorization, breach of fiduciary duty, breach of duty to exercise reasonable care, and negligent supervision. The causes of action relate to the purchase and sale of various securities and call options in various securities including, but not limited to: Continental Airlines stock; Sonus Networks, Inc.; Capstead Mortgage Corp.; Goodyear Tire and Rubber stock; Primewest Energy Trust Units; Akamai Technologies, Inc.; and, Northwest Airlines Corp. stock.

Unless specifically admitted in their Answer to the Statement of Claim and their Answers to the Amended Statement of Claim, Respondents Max International and Isolano denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted the following defenses, among others: Claimants were advised of all risks; Claimants' claims are barred by Claimants' own negligence, contributory negligence, or comparative negligence; authorization; ratification; Claimants' claims are barred by the doctrines of waiver, unclean hands, estoppel, laches, release and accord, and satisfaction; failure to state a claim upon which relief may be granted; no private right of action exists for violation of the Rules of any exchange or regulatory authority; Claimants' claims are barred by the economic loss doctrine; adequate supervision was in place; failure to mitigate damages; and, Claimants' claims are barred by the doctrine of *in pari delicto*.

Unless specifically admitted in his Answer to the Statement of Claim and his Answer to the Amended Statement of Claim, Respondent Giraldo denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted the following defenses, among others: Claimants were advised of all risks; Claimants' claims are barred by Claimants' own negligence, contributory negligence, or comparative negligence; authorization; ratification; Claimants' claims are barred by the doctrines of waiver, unclean hands, estoppel, laches, release and accord, and satisfaction; failure to state a claim upon which relief may be granted; no private right of action exists for violation of the Rules of any exchange or regulatory authority; Claimants' claims are barred by the economic loss doctrine; adequate supervision was in place; failure to mitigate damages; and, Claimants' claims are barred by the doctrine of *in pari delicto*.

RELIEF REQUESTED

Claimants in their Amended Statement of Claim requested:

| | |
|----------------------|--------------------|
| Compensatory Damages | \$ 228,296.00 |
| Punitive Damages | \$ 456,538.00 |
| Interest | amount unspecified |
| Attorneys' Fees | amount unspecified |
| Other Costs | amount unspecified |

Respondents Max International and Isolano requested that they be awarded all costs and expenses, including attorneys' fees, that Respondent Isolano's records maintained at the NASD Central Registration Depository ("CRD") be expunged, and for any such other relief as the Panel deems just and proper.

Respondent Giraldo requested that he be awarded all costs and expenses, including attorneys' fees, that Respondent Giraldo's records maintained by CRD be expunged, and for any such other relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Max International did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

The Arbitration Panel (the "Panel") denied Respondent Isolano's Request for a Stay of Arbitration on January 19, 2005.

On or about May 13, 2005, Claimants settled their disputes with Respondents Max International and Isolano, and these Respondents were dismissed from this matter. The case proceeded solely against Respondent Giraldo.

The Panel did not rule on Respondent Isolano's Motion to Dismiss.

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. Respondent Giraldo shall pay Claimants, jointly and severally, compensatory damages in the amount of \$ 40,616.00, plus simple interest at a rate of 6% per annum from May 18, 2004 through July 13, 2005;
2. All claims for punitive damages and attorneys' fees are denied in their entirety;
3. The parties shall bear their respective costs, except as Fees are specifically addressed below; and

4. Any and all relief not specifically addressed herein is denied in its entirety.

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 person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Max International 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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

April 13 – 15 and 20 - 21, 2005 = \$ 1,200.00

adjournment by Respondent Max International

May 4 – 7, 2005 = \$ 1,200.00

adjournment by all parties

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator @ \$ 450.00 = \$ 900.00

Pre-hearing conferences: February 28, 2005 1 session

March 21, 2005 1 session

One (1) Pre-hearing session with Panel @ \$ 1,200.00 = \$ 1,200.00

Pre-hearing conference: December 20, 2004 1 session

Two (2) Hearing sessions @ \$ 1,200.00 = \$ 2,400.00

Hearing Date: July 13, 2005 2 sessions

Total Forum Fees = \$ 4,500.00

1. The Panel has assessed \$ 900.00 of the forum fees jointly and severally to Claimants.

2. The Panel has assessed \$ 680.00 of the forum fees to Respondent Max International.
3. The Panel has assessed \$ 2,240.00 of the forum fees to Respondent Giraldo.
4. The Panel has assessed \$ 680.00 of the forum fees to Respondent Isolano.

FEE SUMMARY

Claimants are jointly and severally assessed and shall pay:

| | |
|-------------------------------------|---------------|
| Initial Filing Fee | = \$ 375.00 |
| Adjournment Fee | = \$ 300.00 |
| Forum Fees | = \$ 900.00 |
| Total Fees | = \$ 1,575.00 |
| Less payments | = \$ 1,575.00 |
| Balance Due NASD Dispute Resolution | = \$ 00.00 |

Respondent, Max International, is assessed and shall pay:

| | |
|-------------------------------------|---------------|
| Member Fees | = \$ 7,000.00 |
| Adjournment Fee | = \$ 1,500.00 |
| Forum Fees | = \$ 680.00 |
| Total Fees | = \$ 9,180.00 |
| Less payments | = \$ 8,200.00 |
| Balance Due NASD Dispute Resolution | = \$ 980.00 |

Respondent, Isolano, is assessed and shall pay:

| | |
|-------------------------------------|-------------|
| Adjournment Fee | = \$ 300.00 |
| Forum Fees | = \$ 680.00 |
| Total Fees | = \$ 980.00 |
| Less payments | = \$ 00.00 |
| Balance Due NASD Dispute Resolution | = \$ 980.00 |

Respondent, Giraldo, is assessed and shall pay:


| | |
|-------------------------------------|---------------|
| Adjournment Fee | = \$ 300.00 |
| Forum Fees | = \$ 2,240.00 |
| Total Fees | = \$ 2,540.00 |
| Less payments | = \$ 00.00 |
| Balance Due NASD Dispute Resolution | = \$ 2,540.00 |

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

ARBITRATION PANEL

| | | |
|------------------------------|---|--|
| John Lovering Truscott, Esq. | - | Public Arbitrator, Presiding Chairperson |
| Richard M. Rosenbleeth, Esq. | - | Public Arbitrator, Panelist |
| Jeffrey Steinberg | - | Non-Public Arbitrator, Panelist |

Concurring Arbitrators' Signatures


John Lovering Truscott, Esq.
Public Arbitrator, Presiding Chairperson

7/21/05
Signature Date

Richard M. Rosenbleeth, Esq.
Public Arbitrator, Panelist

Signature Date

Jeffrey Steinberg
Non-Public Arbitrator, Panelist

Signature Date

July 22, 2005
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

John Lovering Truscott, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Richard M. Rosenbleeth

Richard M. Rosenbleeth, Esq.
Public Arbitrator, Panelist

7/22/05
Signature Date

Jeffrey Steinberg
Non-Public Arbitrator, Panelist

Signature Date

July 22, 2005
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

John Lovering Truscott, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Richard M. Rosenbleeth, Esq.
Public Arbitrator, Panelist

Signature Date



Jeffrey Steinberg
Non-Public Arbitrator, Panelist

July 20, 2005
Signature Date

July 22, 2005
Date of Service (For NASD Dispute Resolution office use only)