

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Sam Zullo (Claimant) v. First Montauk Securities Corp. fka Montauk Financial Group, Gerald Sharpe, Thomas Fallon, and Nick D'Amico (Respondents)

Case Number: 04-07983

Hearing Site: Cleveland, Ohio

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

REPRESENTATION OF PARTIES

Claimant Sam Zullo, hereinafter referred to as "Claimant": James S. Jones, Esq., Poland, OH.

Respondent First Montauk Securities Corp. fka Montauk Financial Group ("First Montauk"): Joel Levinson, Esq., First Montauk Securities Corp., Red Bank, NJ.

Respondents Gerald Sharpe ("Sharpe"), Thomas Fallon ("Fallon"), Nick D'Amico ("D'Amico"): Ruthann Niosi, Esq., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: November 16, 2004.

Claimant signed the Uniform Submission Agreement: November 12, 2004.

Statement of Answer filed by Respondent First Montauk on or about: January 7, 2005.

Respondent First Montauk signed the Uniform Submission Agreement: January 7, 2005.

Joint Statement of Answer, Motion for a More Particular Statement of Claim as against Sharpe and D'Amico, or in the alternative, Motion to Dismiss Sharpe and D'Amico filed by Respondents Sharpe, Fallon and D'Amico on or about: January 23, 2005.

Respondents Sharpe, Fallon and D'Amico did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: excessive activity/churning; unauthorized trading; suitability; breach of fiduciary duty; and intentional misrepresentation. The causes of action relate to unspecified securities.

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

Unless specifically admitted in their Answer, Respondents Sharpe, Fallon and D'Amico denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$67,000.00; disgorgement of excessive commissions, spreads, and margin interest in an amount to be determined upon discovery; prejudgment interest at the statutory legal rate; the lost opportunity cost of what the Claimant's account would have earned if invested properly from the date of purchase to the date of any arbitration award, in an amount according to proof; attorneys' fees, expert fees and other disbursements and costs necessary to bring this action as permitted by the NASD Code of Arbitration; punitive damages in an amount of \$400,000.00; and such other and further relief as this Panel deems just and appropriate.

Respondent First Montauk requested that the Statement of Claim be dismissed in its entirety, and for such other relief as the Arbitration Panel deems just and proper.

Respondents Sharpe, Fallon and D'Amico requested that the Statement of Claim be dismissed in its entirety; an Order of Expungement be issued as against Respondents Sharpe, Fallon and D'Amico; should the Panel find against Respondents Sharpe, Fallon and D'Amico, the Award be specifically apportioned among Respondents Sharpe, Fallon and D'Amico; and that the costs of the hearing not be held against Respondents Sharpe, Fallon and D'Amico.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Sharpe, Fallon and D'Amico did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

On July 19, 2005, the Panel conducted a telephonic pre-hearing conference with the parties to hear oral arguments on Respondents' Motion to Dismiss. After due deliberation, the Panel determined to dismiss Claimant's claims without prejudice.

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 Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their entirety without prejudice.
2. 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 = \$ 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 persons at the time of the events giving rise to the dispute. Accordingly, First Montauk Securities Corp. is a party.

Member surcharge = \$ 1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,750.00

Total Member Fees = \$ 5,200.00

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:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00 per session = \$ 2,250.00

Pre-hearing conferences: April 1, 2005 1 session

July 19, 2005 1 session

Total Forum Fees = \$ 2,250.00

1. The Panel has assessed \$2,250.00 of the forum fees against Claimant.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee = \$ 300.00

Forum Fees = \$ 2,250.00

Total Fees = \$ 2,550.00

Less payments = \$ 1,425.00

Balance Due NASD Dispute Resolution = \$ 1,125.00

2. Respondent First Montauk is solely liable for:

Member Fees = \$ 5,200.00

Total Fees = \$ 5,200.00

Less payments = \$ 5,200.00

Balance Due NASD Dispute Resolution = \$ 0.00


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

ARBITRATION PANEL

Elmer G. Cowan, Esq.	-	Public Arbitrator, Presiding Chairperson
John S. Weisheit	-	Public Arbitrator
Robert Shiffra, Esq.	-	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.


Elmer G. Cowan, Esq.
Public Arbitrator, Presiding Chairperson

AUG 29 2005
Signature Date

John S. Weisheit
Public Arbitrator

Signature Date

Robert Shiffra, Esq.
Non-Public Arbitrator

Signature Date

SEPTEMBER 1, 2005
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL.

Elmer G. Cowan, Esq.	-	Public Arbitrator, Presiding Chairperson
John S. Weisheit	-	Public Arbitrator
Robert Shiffra, Esq.	-	Non-Public Arbitrator

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Elmer G. Cowan, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

John S. Weisheit
John S. Weisheit
Public Arbitrator

8-29-05
Signature Date

Robert Shiffra, Esq.
Non-Public Arbitrator

Signature Date

SEPTEMBER 1, 2005
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Elmer G. Cowan, Esq.	-	Public Arbitrator, Presiding Chairperson
John S. Weisheit	-	Public Arbitrator
Robert Shiffra, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

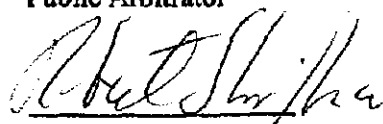
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Elmer G. Cowan, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

John S. Weisheit
Public Arbitrator

Signature Date



Robert Shiffra, Esq.
Non-Public Arbitrator

8-19-05
Signature Date

SEPTEMBER 1, 2005
Date of Service (For NASD Dispute Resolution use only)