

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Dino A. Primatesta-Melendez (Claimant) v. Max International Broker-Dealer Corporation, Jamie A. Gomez-Blaya, and Fiserv Securities, Inc. (Respondents)

Case Number: 04-08503

Hearing Site: New York, New York

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Nature of the Dispute: Customer v. Members and Associated Person.

**REPRESENTATION OF PARTIES**

Claimant Dino A. Primatesta, hereinafter referred to as "Claimant": Raymond A. Connell, Esq., McMahon & Connell, P.C., New York, NY.

Respondents Max International Broker/Dealer Corporation ("Max") and Jamie A. Gomez-Blaya ("Gomez"), hereinafter referred to as "Respondents": David Isolano, Max International Broker/Dealer Corporation, New York, NY.

Respondent Fiserv Securities, Inc., hereinafter referred to as "Fiserv": Richard Z. Freemann, Esq., previously represented by Scott Bennett Freemann, Esq., Freemann Law Offices, Philadelphia, PA.

**CASE INFORMATION**

Statement of Claim filed on or about: December 14, 2004.

Amended Statement of Claim (replaced the Statement of Claim) filed on or about: January 13, 2005.

Claimant signed the Uniform Submission Agreement: January 11, 2005.

Statement of Answer and Counterclaim filed by Respondents Max and Gomez on or about: March 15, 2005

Respondents Max and Gomez signed the Uniform Submission Agreement: March 10, 2005.

Statement of Answer and Motion to Dismiss filed by Respondent Fiserv on or about: March 29, 2005.

Respondent Fiserv signed the Uniform Submission Agreement: March 24, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; margin calls; negligence; failure to supervise; breach of fiduciary duty; churning; manipulations; suitability and unauthorized trading. The causes of action relate to Delta Airlines Stock.

Unless specifically admitted in their Answers, Respondents Max and Gomez denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

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

Respondent Max and Gomez asserted the following cause of action in their Counterclaim: expungement.

### **RELIEF REQUESTED**

Claimant requested that an award be made against the Respondents and Fiserv as follows:

1. An amount no less than \$40,491.12;
2. Interest, costs, expenses and reasonable attorneys' fees in this proceedings;
3. Punitive damages in the amount of \$100,000.00 or such other amount the arbitrators deem appropriate;
4. And for such other and further relief the arbitrators may deem just and proper.

Respondents Max and Gomez requested that the Statement of Claim be dismissed and that they be awarded an amount for reasonable costs, including legal fees.

In their Counterclaim, Respondents request that an award be made in their favor as follows:

1. An amount to be determined by the arbitrators at the time of hearing and currently estimated to be in excess of \$38,000.00;
2. All Respondents costs and expenses, including attorneys' fees associated with this arbitration proceeding;
3. Expungement of this proceedings from Respondents' NASD registration;
4. And for such other relief as the arbitration panel deems just and proper.

Respondent Fiserv requested that an award be entered dismissing all claims against it and ordering Claimant to pay attorneys' fees, costs and forum fees incurred in defending against the Amended Statement of Claim.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Gomez is not a member of NASD and does not have an agreement to arbitrate. However, Gomez signed the Uniform Submission Agreement, answered the Statement of Claim, appeared and testified at the hearing, and is, therefore, bound by the determination of the Panel on all issues submitted.

On or about September 8, 2005, Claimant withdrew his claims against Fiserv.

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. Respondents Max and Gomez are jointly and severally liable for and shall pay to Claimant compensatory damages in an amount of \$13,500.00. This amount assumes receipt by the Claimant of the balance in his account at Max amounting to \$3,480.00 within 30 days. In the absence of such payment, the award is increased to \$16,980.00.
2. Respondents Max and Gomez's Counterclaim is dismissed in its entirety.
3. Any and all relief not specifically addressed herein 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
Counterclaim filing fee	= \$ 1,000.00

#### **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 at the time of the events giving rise to the dispute. Accordingly, Respondent Max is a party.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	= \$ 2,750.00
Total Members fees	= \$ 5,200.00

Respondent Fiserv is also a party

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fees</u>	= \$ 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$1,125.00 per session = \$ 1,125.00

Pre-hearing conference: June 23, 2005 1 session

Four (4) Hearing sessions @ \$1,125.00 per session = \$ 4,500.00

Hearing Dates: October 6, 2005 2 sessions  
October 7, 2005 2 sessions

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Total Forum Fees = \$ 5,625.00

1. The Panel has assessed \$2,062.50 of the forum fees to Claimant.
2. The Panel has assessed \$187.50 of the forum fees to Respondent Fiserv.
3. The Panel has assessed \$1,687.50 of the forum fees to Respondent Max.
4. The Panel has assessed \$1,687.50 of the forum fees to Respondent Gomez.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$	300.00
Forum Fee	= \$	2,062.50
Total Fees	= \$	2362.50
Less payments	= \$	1,425.00
Balance Due NASD Dispute Resolution	= \$	937.50

2. Respondent Max International is liable for:

Filing Fee for Counterclaim	= \$	1,000.00
Member Fees	= \$	5,200.00
Forum Fees	= \$	1,687.50
Total Fees	= \$	7,887.50
Less payments	= \$	6,800.00
Balance Due NASD Dispute Resolution	= \$	1,087.50

3. Respondent Gomez is solely liable for:

Forum Fees	= \$	1,687.50
Total Fees	= \$	1,687.50
Less payments	= \$	00.00
Balance Due NASD Dispute Resolution	= \$	1,687.50

4. Respondent Fiserv is solely liable for:

Member Fees	= \$	5,200.00
Forum Fees	= \$	187.50
Total Fees	= \$	5,387.50
Less payments	= \$	5,200.00
Balance Due NASD Dispute Resolution	= \$	187.50

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

**ARBITRATION PANEL**

Peter P. Skomorowsky, Esq.	-	Public Arbitrator, Presiding Chairperson
Richard J. Schulman, Esq.	-	Public Arbitrator
Gerald A. Guild	-	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.



Peter P. Skomorowsky, Esq.  
Public Arbitrator, Presiding Chairperson

Oct 20, 2005

Signature Date

Richard J. Schulman, Esq.  
Public Arbitrator

Signature Date

Gerald A. Guild  
Non-Public Arbitrator

Signature Date

**October 21, 2005**

Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

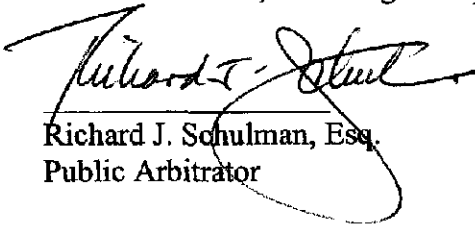
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Public Arbitrator, Presiding Chairperson

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Signature Date

  
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Richard J. Schulman, Esq.  
Public Arbitrator

10/19/05  
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Signature Date

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Gerald A. Guild  
Non-Public Arbitrator

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Signature Date

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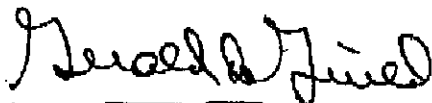
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Richard J. Schulman, Esq.  
Public Arbitrator

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Gerald A. Guild  
Non-Public Arbitrator

10.14.05  
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Signature Date

**October 21, 2005**

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