

Award
NASD Dispute Resolution

COPY

In the Matter of the Arbitration Between:

Hugo Chabaneix, Hideko Chabaneix, Kenneth Chin, Francisco Cubias, Aracely Hernandez, Dolores A. Herrera, Barbara Maxham, Eliseo Jose Mercado Gaitan, Emiko Okabe, Hector Ortega, Dan Shaw, Ana Judith Vela, Ever Lovato, Silvia Lovato, Mayra Lovato, Martha Barragan, Betty Lou Evans, Jeffrey Maynard, Larry Pennington, Jorge Montoya, Rosa L. Hernandez, Manuel A. Melgar and Joe Pernyeszi, Claimants v. Next Advisors Securities and George Patrick Bell, Respondents

Case Number: 05-00028

Hearing Site: San Francisco, California

Nature of the Dispute: Customers vs. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimants:

Kirk G. Smith, Esq.
Shepherd, Smith & Bebel, P.C.
Houston, Texas

For Respondent Next Advisors Securities:

Elizabeth Kabanek
Next Advisors Securities
Jefferson, Ohio

For Respondent George Patrick Bell:

George Patrick Bell
Jefferson, Ohio

CASE INFORMATION

Statement of Claim filed: May 14, 2003

Claimants' Supplemental Statement of Claim filed: January 6, 2004

Claimants' Motion to Amend Statement of Claim and Second Amended Statement of Claim filed: February 26, 2004

Claimants' Motion to Employ Default Procedures Under Code of Arbitration Procedure Rule 10314(e) filed: October 1, 2004

Kirk G. Smith's correspondence of January 24, 2005 regarding Motion to Employ Default Procedures Under Code of Arbitration Procedure Rule 10314(e) filed: January 24, 2005

Claimant Hugo Chabaneix's Uniform Submission Agreement signed: May 10, 2003

Claimant Hideko Chabaneix's Uniform Submission Agreement signed: May 10, 2003

Claimant Kenneth Chin's Uniform Submission Agreement signed: May 12, 2003

Claimant Francisco Cubias' Uniform Submission Agreement signed: May 22, 2003

Claimant Aracely Hernandez's Uniform Submission Agreement signed: May 12, 2003

Claimant Dolores A. Herrera's Uniform Submission Agreement signed: May 10, 2003

Claimant Barbara Maxham's Uniform Submission Agreement signed: May 10, 2003

Claimant Eliseo Jose Mercado Gaitan's Uniform Submission Agreement signed: May 9, 2003

Claimant Emiko Okabe's Uniform Submission Agreement signed: May 13, 2003

Claimant Hector Ortega's Uniform Submission Agreement signed: May 8, 2003

Claimant Dan Shaw's Uniform Submission Agreement signed: May 15, 2003

Claimant Ana Judith Vela's Uniform Submission Agreement signed: May 18, 2003

Claimant Ever Lovato's Uniform Submission Agreement signed: May 13, 2003

Claimant Silvia Lovato's Uniform Submission Agreement signed: May 13, 2003

Claimant Mayra Lovato's Uniform Submission Agreement signed: May 19, 2003

Claimant Martha Barragan's Uniform Submission Agreement signed: May 19, 2003

Claimant Betty Lou Evans' Uniform Submission Agreement signed: May 14, 2003

Claimant Jeffrey Maynard's Uniform Submission Agreement signed: May 12, 2003

Claimant Larry Pennington's Uniform Submission Agreement signed: May 14, 2003

Claimant Jorge Montoya's Uniform Submission Agreement signed: May 27, 2003

Claimant Rosa L. Hernandez's Uniform Submission Agreement signed: May 29, 2003

Claimant Manuel A. Melgar's Uniform Submission Agreement signed: May 29, 2003

Claimant Joe Pernyeszi's Uniform Submission Agreement signed: May 21, 2003

CASE SUMMARY

Claimants alleged the following claims with respect to Claimants' purchase of securities in Next Advisors, Inc. 1) Breach of Contract and Warranties, Promissory Estoppel; 2) Consumer Protection & Deceptive Trade Practices; 3) The Federal Securities Exchange Act; 4) State Securities Statutes; 5) State Fraud Statutes; and 6) Claims Under Common Law.

RELIEF REQUESTED

Claimants requested that an award be entered ordering Respondents to pay, jointly and severally to Claimants, an amount between \$1,000,000.00 and \$3,000,000.00, including all direct and/or consequential damages and statutory and/or punitive damages; plus interest and costs, an amount which Claimants reserve the right to amend at any time including during hearings held on these matters, as follows:

1. All sums lost in their accounts on any or all transactions made or not made; plus, additionally or alternatively,
2. All lost opportunities incurred as a result of acts and/or omissions; plus, additionally or alternatively,
3. Rescission of any or all transactions as sought; plus, additionally or alternatively,
4. Statutory damages as provided by applicable law; plus, additionally or alternatively,
5. Punitive damages in an amount that the Panel shall deem appropriate; plus,
6. Pre-award and pre-judgment interest on all sums invested from the date deposited until the date of the award and/or judgment and until such sums are paid, all at the highest rate allowed by law; plus, additionally or alternatively,
7. All costs of these proceedings and for recovery of damages incurred, including legal fees, including while on appeal, if any, and for collection; plus, additionally or alternatively,
8. Any and all other relief available to Claimants, in law or equity or otherwise, which may be granted to them by this Arbitration Panel.

OTHER ISSUES CONSIDERED AND DECIDED

On August 4, 2003, Claimants Hugo Chabaneix and Hideko Chabaneix and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On September 20, 2003, Claimant Kenneth Chin and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On August 21, 2003, Claimant Francisco Cubias and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On August 8, 2003, Claimant Aracely Hernandez and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On August 2, 2003, Claimant Dolores A. Herrera and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On August 8, 2003, Claimant Barbara Maxham and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On August 12, 2003, Claimant Eliseo Jose Mercado Gaitan and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On August 2, 2003, Claimant Emiko Okabe and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On August 12, 2003, Claimant Hector Ortega and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On September 9, 2003, Claimant Dan Shaw and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On August 7, 2003, Claimant Ana Judith Vela and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On August 14, 2003, Claimants Ever Lovato, Silvia Lovato and Mayra Lovato and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On August 5, 2003, Claimant Martha Barragan and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On October 3, 2003, Claimant Betty Lou Evans and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On August 5, 2003, Claimant Jeffrey Maynard and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On September 8, 2003, Claimant Larry Pennington and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On August 8, 2003, Claimant Jorge Montoya and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On August 12, 2003, Claimant Rosa L. Hernandez and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On August 5, 2003, Claimant Manuel A. Melgar and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On September 11, 2003, Claimant Joe Pernyeszi and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100 the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

Pursuant to Rule 10328 of the Code, the Panel permitted the filing of Claimants' Second Amended Statement of Claim.

Initially, Claimants' claims against Respondents Next Advisors Securities and George Patrick Bell were arbitrated in NASD Arbitration Case # 03-03547. By correspondence filed October 1, 2004 and January 24, 2005, Claimants opted to proceed against Respondents Next Advisors Securities and George Patrick Bell pursuant to Rule 10314(e) of the NASD-DR Code of Arbitration Procedure ("Code"). The claims against Respondents were bifurcated from Case # 03-03547 because Respondents failed to file Answers. The arbitrator determined that Respondents Next Advisors Securities and George Patrick Bell were properly served in this matter and are required to submit to arbitration pursuant to the Code and are bound by the determination of the Arbitrator on all issues submitted.

AWARD

After considering the pleadings and Claimants' Motion to Employ Default Procedures, the Arbitrator decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Next Advisors Securities and George Patrick Bell are jointly and severally liable for and shall pay to Claimants, the sum of \$1,665,320.00.
2. Respondents Next Advisors Securities and George Patrick Bell are jointly and severally liable for and shall pay to Claimants, prejudgment interest at the rate of 10% from July 3, 2003 until December 15, 2004, in the amount of \$241,812.50.
3. Claimants' claims for punitive damages are denied.
4. Each party shall bear its own costs, including attorney's fees.
5. All other relief not expressly granted is denied.


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ARBITRATION PANEL

Barry S. Willdorf, Esq.

Public Arbitrator, Presiding Chair

Presiding Arbitrator's Signature


Barry S. Willdorf, Esq.
Chair, Public Arbitrator

Signature Date

2/4/05
Date of Service