

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of Claimant

BBPPS, LP

vs.

Case Number: 06-00519
Hearing Site: Houston, Texas

Names of Respondents

Goldman, Sachs and Company,
Robert Joseph Mark, Jr.,
William David Leven,
LM Investment Capital, LP,
LM Capital Management, LP,
and LM Capital Management, LLC

NATURE OF THE DISPUTE

Customer vs. Member, Associated Persons, and Non-Members

REPRESENTATION OF PARTIES

BBPPS, LP ("Claimant" or "BBPPS") was represented by Terence W. McCormick, Esq., The Lax Law Firm, New York, New York.

Goldman, Sachs and Company ("Goldman Sachs") was represented by John T. Gerhart, Esq., Jenkins & Gilchrist, Dallas, Texas.

Robert Joseph Mark, Jr. ("Mark"), William David Leven ("Leven"), LM Investment Capital, LP, LM Capital Management, LP, and LM Capital Management, LLC, were represented by Lawrence J. Fossi, Esq., Fossi & Jewell, LLP, Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about February 2, 2006. The Submission Agreement of Claimant, BBPPS, LP, was signed on or about January 31, 2006. On or about August 29, 2006, Claimant filed a Memorandum of Law in Opposition to Respondents' Motions to Dismiss.

The Statement of Answer was filed by Respondent, Goldman, Sachs and Company, on or about April 21, 2006. The Submission Agreement of Respondent, Goldman, Sachs and

Company, was signed on or about March 14, 2006. On or about July 21, 2006, Respondent Goldman Sachs filed a Motion to Dismiss. On or about September 5, 2006, Respondent Goldman Sachs filed a Reply Brief in Support of its Motion to Dismiss.

The Statement of Answer was filed by Respondent, Robert Joseph Mark, Jr., on or about August 7, 2006. The Submission Agreement of Respondent, Robert Joseph Mark, Jr., was signed on or about August 7, 2006. On or about August 4, 2006, Respondent Mark filed a Motion to Dismiss Based on Lack of Subject Matter Jurisdiction and Expiration of the Statute of Limitations.

The Statement of Answer was filed jointly by Respondents, William David Leven, LM Investment Capital, LP, LM Capital Management, LP, and LM Capital Management, LLC, on or about May 2, 2006. The Submission Agreement of Respondent, William David Leven, was signed on or about April 20, 2006. The Submission Agreement of Respondents, LM Investment Capital, LP, LM Capital Management, LP, and LM Capital Management, LLC, was signed on or about April 20, 2006. On or about May 2, 2006, Respondents, William David Leven, LM Investment Capital, LP, LM Capital Management, LP, and LM Capital Management, LLC, jointly filed their First Supplemental Answer. On or about July 21, 2006, Respondents, William David Leven, LM Investment Capital, LP, LM Capital Management, LP, and LM Capital Management, LLC, filed a Motion to Dismiss Based on Lack of Subject Matter Jurisdiction and Expiration of the Statute of Limitations. On or about August 31, 2006, Respondents, LM Investment Capital, LP, LM Capital Management, LP, and LM Capital Management, LLC, filed a Reply Brief in Support of their Motion to Dismiss.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; breach of fiduciary duty; failure to supervise; gross negligence; violation of Texas law; violation of state securities law; fraud; violation of NASD Conduct Rules; control person liability; respondeat superior; and negligence. The causes of action related to the private investment fund, LM Investment, formed by Respondents, Leven and Mark, while they were employees of Goldman Sachs. Claimant alleged that Goldman Sachs took no steps to advise Claimant's limited partners about the suitability of LM Investment. Claimant further alleged Goldman Sachs entered into separate consulting agreements with Leven and Mark whereby they agreed not to solicit Goldman Sachs' clients with accounts over \$5,000,000.00 nor did Goldman Sachs advise Claimant's limited partners about its agreements with Leven and Mark. Claimant alleged that Respondents did not at any time disclose to the limited partners the percentage concentration of the fund in equity long positions as opposed to option trading, other than to highlight certain select positions in some of the monthly newsletters. Also, Claimant asserted that it never received account statements detailing how its money was being invested. Finally, Claimant asserted that as a result of Goldman Sachs' failure to supervise Respondents, Leven and Mark, its negligent conduct in giving Respondents, Leven and Mark, a platform from which to solicit investments in the LM

Investment caused Claimant to incur significant damages.

Unless specifically admitted in its Answer, Respondent Goldman Sachs denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: because Claimant was a stranger to Goldman Sachs, Goldman Sachs owed it no duty and cannot be held liable; Respondents, Levin and Mark, were not Goldman Sachs' agents, that is they had no authority to act on Goldman Sachs' behalf, with respect to any discussions they had with prospective investors in the Hedge Fund; Claimant's claims are barred by the applicable statute of limitations; Claimant's claims for violation of NASD rules are barred because no private cause of action exists for alleged violations of NASD or industry rules; Claimant's claims are barred by the assumption of risk; Claimant's claims are barred by the doctrines of waiver and estoppel; and Claimant's claims are barred because Goldman Sachs had no knowledge or reason to know of the alleged actions complained of in this arbitration.

Unless specifically admitted in his Answer, Respondent Mark denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: NASD and the Panel lack jurisdiction over the claims of BBPPS against Respondent Mark because BBPPS was never a "customer" as defined in the NASD Code of Arbitration Procedure, Mark was never a "member" or "associated person" at any time that BBPPS existed, and there is no separate agreement to arbitrate between BBPPS and Mark; Claimant failed to state a claim upon which relief may be granted under state law, federal law, or under NASD Conduct Rules; Claimant failed to state its claims for fraud with the required particularity; Claimant's claim for common law fraud is barred by the four-year statute of limitations applicable to such claims; Claimant's claims are barred by the doctrines of waiver and estoppel; and Claimant's claims are barred by the doctrine of assumption of risk.

Unless specifically admitted in their Answer, Respondents, William David Leven, LM Investment Capital, LP, LM Capital Management, LP, and LM Capital Management, LLC, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: NASD and the Panel lack jurisdiction over the claims of BBPPS against Respondents, William David Leven, LM Investment Capital, LP, LM Capital Management, LP, and LM Capital Management, LLC; BBPPS failed to state a claim upon which relief can be granted under state law, federal law, and NASD Conduct Rules; BBPPS's claim for state securities law violations are barred by the three-year statute of limitations applicable to such claims; BBPPS's claim for common law fraud is barred by the four-year statute of limitations applicable to such claims; BBPPS's claims of respondeat superior is barred by the applicable statute of limitations on the underlying tort; and BBPPS's claim of breach of contract is barred by the four-year statute of limitations applicable to such claims.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$ 1,000,000.00
Exemplary/Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondent Goldman Sachs requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

Respondent Mark requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees.

Respondents, William David Leven, LM Investment Capital, LP, LM Capital Management, LP, and LM Capital Management, LLC, requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

On October 10, 2006, the parties presented the Panel with oral arguments regarding Respondents' Motions to Dismiss. After deliberations, the Panel granted Respondents' Motions 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 the evidence presented at the prehearings, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's claims, each and all, are hereby denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated, including punitive damages and

attorneys' fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial Claim filing fee	= \$ 375.00
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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. In this matter, the member firm is Goldman, Sachs and Company.

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

Forum Fees and Assessments

The Panel has assessed forum fees for each hearing session conducted or each decision rendered on a discovery-related motion on the papers. 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 x \$1,200.00	= \$ 2,400.00
Pre-hearing conferences: July 10, 2006	1 session
October 10, 2006	1 session
<hr/> Total Forum Fees	<hr/> = \$ 2,400.00

The Panel has assessed \$1,200.00 of the forum fees to BBPPS, LP.

The Panel has assessed \$1,200.00 of the forum fees jointly and severally to Goldman, Sachs and Company, Robert Joseph Mark, Jr., William David Leven, LM Investment Capital, LP, LM Capital Management, LP, and LM Capital Management, LLC.

FEE SUMMARY

Claimant, BBPPS, LP, is liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 1,200.00
Total Fees	= \$ 1,575.00
Less payments	= \$ 1,700.00
Refund Due Claimant	= \$ 125.00

Respondent, Goldman, Sachs and Company, is liable for:

Member Fees	= \$ 7,000.00
Total Fees	= \$ 7,000.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Goldman, Sachs and Company, Robert Joseph Mark, Jr., William David Leven, LM Investment Capital, LP, LM Capital Management, LP, and LM Capital Management, LLC, are jointly and severally liable for:

Forum Fees	= \$ 1,200.00
Total Fees	= \$ 1,200.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,200.00

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

ARBITRATION PANEL

Darren A. Miller, Esq. - Public Arbitrator, Presiding Chair
Randall W. Heinrich, Esq. - Public Arbitrator
Carol Frances Relihan, Esq. - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

/s/ Darren A. Miller, Esq.
Darren A. Miller, Esq.
Public Arbitrator, Presiding Chair

December 26, 2006
Signature Date

/s/ Randall W. Heinrich, Esq.
Randall W. Heinrich, Esq.
Public Arbitrator

December 22, 2006
Signature Date

/s/ Carol Frances Relihan, Esq.
Carol Frances Relihan, Esq.
Non-Public Arbitrator

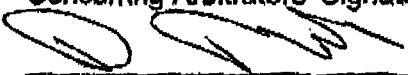
December 22, 2006
Signature Date

December 26, 2006
Date of Service (For NASD office use only)

ARBITRATION PANEL

Darren A. Miller, Esq. - Public Arbitrator, Presiding Chair
Randall W. Heinrich, Esq. - Public Arbitrator
Carol Frances Rellhan, Esq. - Non-Public Arbitrator

Concurring Arbitrators' Signatures:



Darren A. Miller, Esq.
Public Arbitrator, Presiding Chair

12/26/06

Signature Date

Randall W. Heinrich, Esq.
Public Arbitrator

Signature Date

Carol Frances Rellhan, Esq.
Non-Public Arbitrator

Signature Date

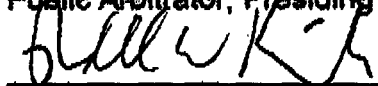
Date of Service (For NASD office use only)

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Concurring Arbitrators' Signatures:

Darren A. Miller, Esq.
Public Arbitrator, Presiding Chair



Randall W. Heinrich, Esq.
Public Arbitrator

Signature Date

12-22-2006

Signature Date

Carol Frances Relihan, Esq.
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Signature Date

Randall W. Heinrich, Esq.
Public Arbitrator

Signature Date


Carol Frances Relihan, Esq.
Non-Public Arbitrator

12-22-06
Signature Date

Date of Service (For NASD office use only)