

COPY

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Harry C. Zaban Jr. IRA Rollover US Clearing Custodian and Harry C. Zaban & Jayne G. Zaban Family Trust DTD 10/22/90 Harry C. Zaban & Jayne G. Zaban TTEES, Claimants v. McLaughlin, Piven, Vogel Securities, Inc., James C. McLaughlin, Allan M. Vogel, Kevin Anders and Ira A. Cohen, Respondents

Case Number: 06-01673

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimants:

Scott L. Silver, Esq.
Blum & Silver, LLP
Coral Springs, Florida

For Respondents:

Joseph D'Elia, Esq.
Law Offices of Joseph D'Elia
Huntington, New York

CASE INFORMATION

Statement of Claim filed: March 27, 2006

Claimants' Response to Respondents' Motion to Dismiss filed: July 7, 2006

Claimants' Uniform Submission Agreement signed: February 28, 2006

Motion to Dismiss and Answer to Statement of Claim filed by Respondents McLaughlin, Piven, Vogel Securities, Inc. ("MPV"), James C. McLaughlin, Allan M. Vogel, Kevin Anders and Ira A. Cohen: June 21, 2006

Respondents' Reply in Support of Motion to Dismiss filed: August 9, 2006

Respondent MPV's Uniform Submission Agreement signed: June 19, 2006

Respondent James C. McLaughlin's Uniform Submission Agreement signed: June 20, 2006

Respondent Allan M. Vogel's Uniform Submission Agreement signed: June 19, 2006

Respondent Kevin Anders' Uniform Submission Agreement signed: June 19, 2006

Respondent Ira A. Cohen's Uniform Submission Agreement signed: June 19, 2006

CASE SUMMARY

Claimants alleged that they suffered damages because of Respondents' negligent investment advice and recommendations. Claimants also alleged that Respondents violated industry rules, including but not limited to the NYSE's "Know your customer" standard (Rule 405) and the NASD's customer suitability standard (Rule 2310). Claimants also alleged breach of contract, breach of fiduciary duty, common law fraud, negligence and negligent supervision. Claimants' dispute involved investments in various mutual funds, including but not limited to the Munder Net Net Fund.

Respondents denied Claimants' allegations of wrongdoing and denied any liability to Claimants. Respondents also asserted affirmative defenses.

RELIEF REQUESTED

Claimants requested:

1. Compensatory damages of between \$100,000.00 and \$500,000.00;
2. Interest at the legal rate from the date of purchase or reasonable market return;
3. Rescission;
4. Punitive damages;
5. Costs; and
6. Such other relief as is just and proper.

Respondents alleged that all of Claimants' claims are barred by statutes of limitations and requested that the Panel grant Respondents' Motion to Dismiss. Alternatively, Respondents requested that the Panel grant the Respondents' other Motions, that the Panel find in favor of the Respondents and dismiss all claims against them in their entirety, make a finding of no wrongdoing on the part of Respondents James C. McLaughlin, Allan M. Vogel, Kevin Anders and Ira A. Cohen and order that this matter be expunged from their CRD records, and require that the Claimants pay all applicable costs and fees.

OTHER ISSUES CONSIDERED AND DECIDED

The Panel 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, and positions of the parties relative to Respondents' Motion to Dismiss, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents' Motion to Dismiss is granted. Accordingly, all claims by Claimants, including the claim for punitive damages, are dismissed.
- 2) a. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents James C. McLaughlin, Allan M. Vogel, Kevin Anders and Ira A. Cohen's registration records maintained by Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondents James C. McLaughlin, Allan M. Vogel, Kevin Anders and Ira A. Cohen must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

b. Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

c. Pursuant to Rule 2130, the Panel has made the following affirmative findings of fact: The Motions to Dismiss submitted by Respondents in this case were granted by the Panel before any hearings were held because the claims brought by the Claimants against Respondents are barred by various statutes of limitations. Accordingly, no evidence was heard and the Panel cannot take a position as to the involvement of the Respondents in the alleged transgressions.
- 3) Each party shall bear its own costs, including attorney's fees.
- 4) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$300.00
--------------------------	------------

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, MPV is a party and the following fees are assessed:

Member Surcharge	= \$1,700.00
<u>Pre-Hearing Process Fee</u>	= \$ 750.00
Total Member Fees	= \$2,450.00

Forum Fees and Assessments

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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:

(1) Pre-hearing conference session with the Panel	
@ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: September 28, 2006	1 session

Total Forum Fees	= \$1,125.00
-------------------------	---------------------

The Panel assessed \$562.50 in forum fees jointly and severally to Claimants Harry C. Zaban Jr. IRA Rollover US Clearing Custodian and Harry C. Zaban & Jayne G. Zaban Family Trust DTD 10/22/90 Harry C. Zaban & Jayne G. Zaban TTEES.

The Panel assessed \$562.50 in forum fees jointly and severally to Respondents MPV, James C. McLaughlin, Allan M. Vogel, Kevin Anders and Ira A. Cohen.

Fee Summary

1. Claimants Harry C. Zaban Jr. IRA Rollover US Clearing Custodian and Harry C. Zaban & Jayne G. Zaban Family Trust DTD 10/22/90 Harry C. Zaban & Jayne G. Zaban TTEES are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 862.50
<u>Less Payments</u>	= \$(1,425.00)
Refund Due Claimants	= \$(562.50)

2. Respondent MPV is charged with the following fees and costs:

Member Fees	= \$ 2,450.00
Less Payments	= \$(2,450.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents MPV, James C. McLaughlin, Allan M. Vogel, Kevin Anders and Ira A. Cohen are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 562.50
Less Payments	= \$(0.00)
Balance Due NASD Dispute Resolution	= \$ 562.50

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

ARBITRATION PANEL

Ferdinand Schoch	-	Public Arbitrator, Presiding Chair
James H. Schilt	-	Public Arbitrator
Jerold F. Babin	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Ferdinand Schoch
Chair, Public Arbitrator

10/3/06
Signature Date

James H. Schilt
Public Arbitrator

Signature Date

Jerold R. Babin
Non-Public Arbitrator

Signature Date

10/4/06
Date of Service

2. Respondent MPV is charged with the following fees and costs:

Member Fees	= \$ 2,450.00
Less Payments	= \$(2,450.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents MPV, James C. McLaughlin, Allan M. Vogel, Kevin Anders and Ira A. Cohen are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 562.50
Less Payments	= \$(0.00)
Balance Due NASD Dispute Resolution	= \$ 562.50

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

ARBITRATION PANEL

Ferdinand Schoch	-	Public Arbitrator, Presiding Chair
James H. Schilt	-	Public Arbitrator
Jerold R. Babin	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Ferdinand Schoch
Chair, Public Arbitrator

Signature Date

James H. Schilt
James H. Schilt
Public Arbitrator

3 October 06
Signature Date

Jerold R. Babin
Non-Public Arbitrator

Signature Date

10/4/06
Date of Service

2. Respondent MPV is charged with the following fees and costs:

Member Fees	= \$ 2,450.00
<u>Less Payments</u>	= \$(2,450.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents MPV, James C. McLaughlin, Allan M. Vogel, Kevin Anders and Ira A. Cohen are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 562.50
<u>Less Payments</u>	= \$(0.00)
Balance Due NASD Dispute Resolution	= \$ 562.50

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

ARBITRATION PANEL

Ferdinand Schoch	-	Public Arbitrator, Presiding Chair
James H. Schilt	-	Public Arbitrator
Jerold R. Babin	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Ferdinand Schoch
Chair, Public Arbitrator

Signature Date

James H. Schilt
Public Arbitrator

Signature Date


Jerold R. Babin
Non-Public Arbitrator

10/4/06
Signature Date

10/4/06
Date of Service