

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Maria Elena Garcia
Juan L. Puerto
John Lastra
John Lastra, Jr.

95-05456

Name of Respondents

Sovereign Equity Management Corporation
Lawrence Cacciatore

REPRESENTATION

For Claimants: Scott C. Ilgenfritz, Esq. of the law firm of Johnson, Blakely, Pope, Bokor, Ruppel & Burns, P.A., Tampa, FL.

For Respondents: Burton W. Wiand, Esq. of the law firm of Fowler, White, Gillen, Boggs, Villareal and Banker, P.A., Clearwater, FL.

CASE INFORMATION

Statement of Claim filed: November 17, 1995.

Claimants Maria Elena Garcia ("Garcia") and Juan L. Puerto's ("Puerto") Submission Agreements signed on: November 15, 1995.

Claimants John Lastra ("Lastra") and John Lastra, Jr's ("Lastra Jr") Submission Agreements executed on: November 16, 1995.

Respondents' Response to Statement of Claim of Maria Elena Garcia filed on February 2, 1996.

Respondents' Response to Statement of Claim of Juan L. Puerto filed on February 2, 1996.

Respondents' Response to Statement of Claim of John Lastra filed on February 2, 1996.

Respondents' Response to Statement of Claim of John Lastra, Jr. filed on February 2, 1996.

The Respondents did not execute Submission Agreements as required pursuant to Section 10314 of the Code of Arbitration Procedure.

HEARING INFORMATION

One pre-hearing conference was conducted with the panel on July 1, 1996 and one pre-hearing conference was conducted with the Chairperson on January 14, 1997. In addition, hearings lasting twelve sessions were conducted on February 10, 11 and 12, 1997; March 24 and 25, 1997; and, May 7 and 8, 1997, in Tampa, Florida.

CASE SUMMARY

Claimants alleged that the Respondents made misrepresentations and omissions of material information, breached the fiduciary duty owed to the Claimants, acted in a negligent manner and invested their funds in unsuitable investments. Claimants further alleged that in soliciting the Claimants to become clients of the Respondents, Respondent Lawrence Cacciatore ("Cacciatore") told all of the Claimants words to the effect: (a) "I guarantee that I will make you money"; and, (b) "Don't worry, you can trust me" and all of the Claimants made it clear to the Respondents from the outset that they wanted their funds invested in safe, secure investment programs, in conservative investments that would produce income and growth without placing the principal funds at significant risk. Claimants next alleged that despite Cacciatore's assurances and his knowledge of the investment goals of the Claimants, Cacciatore embarked on a program of trading in very risky stocks, for the majority of which Sovereign Equity Management Corporation ("Sovereign") was the market maker and Sovereign was also a principal in most of the stock sales to the Claimants and marked up the stocks before selling them to the Claimants. In addition, Claimants alleged that Cacciatore opened margin accounts for both Garcia and Puerto without ever explaining what a margin account was, causing Garcia and Puerto to incur margin interest and margin calls. Claimants further alleged that the Respondent Sovereign failed to properly supervise its brokers.

Respondents maintained that at all times relevant they satisfied all of their obligations to the Claimants and met industry standards regarding the treatment of the subject accounts. Further, Sovereign maintained that they properly supervised Cacciatore in the conduct of all of his activities, including the handling of customer accounts.

Respondents maintained in response to the allegations raised by Claimant Lastra that all transactions were done with his full knowledge and consent and each was consistent with his investment objectives as stated on his new account form which was mailed to him by Sovereign for his review and signature. Respondents next maintained that at no time did they make any guaranties or assurances regarding any of Lastra's investments.

With regard to the allegations made by Claimant Lastra, Jr., Respondents maintained that on his new account form he indicated that his investment objective was "speculation-high degree of risk and/or activity" and they did not make any guaranties or assurances to Lastra, Jr. concerning the stock market or any particular investments. Respondents next maintained that a total of four trades were made in Lastra Jr's account, each with his express approval and as a result of Lastra

Jr's stated investment objective, financial status and investment experience, each of those trades was appropriate and the stocks selected entirely suitable.

In response to the allegations made by Claimant Garcia, the Respondents maintained that Garcia agreed to invest in Kemper Investments Government Portfolio; however, four months after investing in this fund Garcia insisted that Respondents liquidate that investment and as a result, Garcia was asked to complete a suitability questionnaire which forced her to confirm that she fully understood the risks associated with speculative investments and acknowledge that she understood that she could lose her entire investment. Respondents further maintained the liquidation triggered a review and inquiry by Sovereign's compliance department and Cacciatore was required to document the reason for the liquidation and the intended use of the proceeds and it also required Cacciatore to confirm that he had discussed the original purpose of the investment with Ms. Garcia and that it had been intended as a long term investment. Respondents further maintained that Sovereign's branch manager spoke to Garcia to insure that she was satisfied with the handling of her account and that it was being handled in a manner consistent with her objectives.

In response to the allegations raised by Claimant Puerto, the Respondents maintained that despite the long term plan proposed by Cacciatore, Puerto became impatient with his investment in the Kemper fund which had been previously explained to him by Cacciatore and his desire for immediate returns and what eventually became a continuing need for cash were clearly inconsistent with any long term investment plan. Therefore, four months after making the original Kemper investment, Respondents alleged Puerto instructed Cacciatore to liquidate the investment and invest in stocks with greater potential return which Cacciatore advised against; nonetheless, Puerto went forward with the liquidation. Respondents next maintained thereafter, Puerto consulted regularly with Cacciatore, continually changing his investment strategy to gain profits from slight moves in the market and also to withdraw cash and almost all of the trades were unsolicited, and most were precipitated by Puerto's continuously changing cash needs. Respondents next maintained that during the entire time of the relationship, Puerto communicated almost daily with Cacciatore, received monthly statements and confirmations and did not express dissatisfaction with the account or with the activity in it because he was at all times in full control.

RELIEF REQUESTED

The compensatory damages sought to be recovered by the Claimants are as follows:

Maria Garcia	\$54,919.79
Juan L. Puerto	\$31,804.73
John Lastra	\$19,495.23
John Lastra, Jr.	\$4,895.81

In addition, Claimants requested punitive damages, a finding by the arbitrators that Respondent Sovereign committed a violation of Chapter 517 of the Florida Statutes plus an award of arbitration costs and forum fees incurred by the Claimants with respect to the arbitration proceeding.

Respondents requested that the claims against them be dismissed and that they be awarded their costs incurred in defending this action.

OTHER ISSUES CONSIDERED & DECIDED

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. In either case, the parties have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD.

On March 24, 1997 counsel for the parties informed the arbitration panel that the Claimants had entered into a settlement agreement with Respondent Lawrence Caccciatore.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Respondent Sovereign be and hereby is liable and shall pay to the Claimant Maria Elena Garcia the sum of \$36,000.00, inclusive of pre-judgment interest.
2. The Respondent Sovereign be and hereby is liable and shall pay to the Claimant Juan L. Puerto the sum of \$3,500.00, inclusive of pre-judgment interest.
3. The Respondent Sovereign be and hereby is liable and shall pay to the Claimant John Lastra, Sr. the sum of \$1,500.00, inclusive of pre-judgment interest.
4. The Respondent Sovereign be and hereby is liable and shall pay to the Claimant John Lastra, Jr. the sum of \$3,500.00, inclusive of pre-judgment interest.
5. The Claimants' requests for punitive damages are denied.
6. The Respondent Sovereign be and hereby is liable and shall pay to the Claimants their attorneys' fees as determined by a court of competent jurisdiction pursuant to Florida Statute, Section 517.211 (6).
7. Respondent Sovereign committed a violation of Chapter 517 of the Florida Statutes.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, the arbitration panel has assessed forum fees in the sum of \$10,050.00 (one pre-hearing conference-panel \$750.00 plus one pre-hearing conference-Chairperson \$300.00 plus twelve sessions x \$750.00) as follows:

Respondent Sovereign is assessed the sum of \$10,050.00 for which NASD Regulation, Inc. shall

retain the \$750.00 previously deposited by the Claimants in partial satisfaction thereof leaving a balance due in the sum of \$9,300.00.

In addition, the Respondent Sovereign shall pay to NASD Regulation, Inc. the sum of \$350.00 representing the member surcharge pursuant to Rule 10333 of the Code.

Fees are payable to the National Association of Securities Dealers Regulation, Inc.

Concurring Arbitrators' Signatures

Name	Public/Industry
<u>/S/</u>	
<u>Floyd A. Hillstrom, Esq.</u>	Public
<u>/S/</u>	
<u>Harlan Pomeroy, Esq.</u>	Public
<u>/S/</u>	
<u>James A. DeRiso</u>	Industry

Date of Decision: May 29, 1997