

N.A.S.D. AWARD**NASD Regulation, Inc. Office of Dispute Resolution**

In the Matter of the Arbitration Between**Name of Claimant****Sara Bas Chapero****Case #96-00436****Names of Respondents****RD Capital Group, Inc.
Ramon L. Dominguez**

REPRESENTATION**For Claimant Sara Bas Chapero ("Bas"): Harold D. Vicente, Esq. of Vicente de Cuebas, Hato Rey, Puerto Rico.****For Respondents R.D. Capital Group, Inc. ("RD Capital") and Ramon L. Dominguez ("Dominguez"): Amanda Acevedo Rhodes, Esq. of Luz Ivette Rivera & Associates, Hato Rey, Puerto Rico.****CASE INFORMATION****Statement of Claim filed: January 26, 1996.****Claimant's Submission Agreement signed: January 26, 1996.****Joint Statement of Answer, Third Party Claim and Counterclaim filed by Respondents: August 9, 1996.****Submission Agreement signed by Respondent Dominguez: March 21, 1996.****Respondent R.D. Capital's Submission Agreement signed: March 21, 1996 by Carolina Martinez on behalf of the firm.****Response to the Third-Party Claim and Counterclaim filed by the Claimant: January 31, 1997.****HEARING INFORMATION****The evidentiary hearings were held on October 8, 1997 and January 14, 15 and 16, 1998 in Fort Lauderdale, Florida. Additionally, on March 6, 7, and 8, 1998 six (6) hearing sessions were conducted in San Juan, Puerto Rico for a total of thirteen (13) sessions. The entire panel was in attendance at all thirteen (13) sessions.**

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CASE SUMMARY

Claimant alleged that on or about May 30, 1995 she opened an account with RD Capital and deposited 14,400 shares of common stock of Mylan Laboratories, Inc. ("Mylan"); that said shares had been purchased by Claimant through her Merrill Lynch Account; that the aggregate value of securities and cash deposited by Claimant in her account totaled \$329,401.08; that Claimant subsequently withdrew \$15,000.00 from her account.

Claimant next alleged that when she opened the account she informed Respondent Dominguez that she was not a sophisticated or knowledgeable investor; that she was not interested in short-term trading and that she was happy with her investment in Mylan and that she was not interested in selling her Mylan stock. Claimant further maintained that her primary investment objective was to maintain a portfolio of first class equity securities with long-term growth potential.

Claimant next asserted that Dominguez violated her instructions and sold the Mylan stock; that Dominguez conducted unauthorized, excessive, highly speculative and unsuitable short-term trades in her account, partially financed with the unauthorized use of excessive and speculative margin loans; that the unauthorized transactions made by Dominguez included investments, such as bonds and notes, which were specifically forbidden by the Claimant; and, that said unauthorized trading activities and margin loans resulted in monetary losses to her and Claimant asserted that her son, David Machin ("Machin") tried to restrain Dominguez and gave him instructions to stop the unauthorized trading activities but that Dominguez ignored her son's instructions and continued trading in her account and that in late November or early December, 1995, Claimant instructed RD Capital and Dominguez to transfer all positions held in her account to Merrill Lynch.

Claimant maintained that Respondents committed a gross violation of Section 10(b) of the Securities Exchange Act, Rule 10(b)-5 of the Securities Exchange Commission, the rules of the NASD, and the securities laws of Puerto Rico. Claimant further alleged that her account was churned and had an exorbitant annual turnover rate and that as a result of this activity she incurred a loss in the her account in the approximate amount of \$267,032.06.

Claimant further maintained that RD Capital failed to adequately train and supervise Dominguez; that RD Capital failed to identify and prevent unsuitable investments and/or excessive trading in Claimant's account; and, that Respondents RD Capital and Dominguez breached their contractual obligations to her.

Respondents denied the allegations of wrongdoing contained in the Statement of Claim and alleged that Claimant is not a sophisticated investor or an expert in securities or in the financial market but that upon opening an account at Merrill Lynch, which was later transferred to RD Capital, Claimant gave her son, David Machin, full written power and authority to handle her account and to make investment decisions therein. Respondents further alleged that Claimant relied on Machin in every aspect of her financial affairs; that Machin is a sophisticated investor possessing years of experience in accounting, finance, mergers and acquisitions, and taxation; that Machin is also a seasoned businessman and entrepreneur, having worked, among others, in a supervisory position at a big-6 CPA firm as C.E.O., as C.F.O. of a multi-million dollar marketing corporation, as head of his own businesses, and as a business and tax consultant. Respondents next alleged that Machin also planned to become a broker at RD Capital and was studying for the series 7 exam; that both RD Capital and Ramon Dominguez are serious and capable professionals, well recognized in the Puerto Rico brokerage and business communities.

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Respondents further alleged the following: that Claimant's stated investment objective was trading profits; that RD Capital, through Dominguez, attempted to diversify Claimant's portfolio to maximize investment profits with bonds and stocks but that in an extremely short time the investment strategy clashed with Machin's objective to use the account to promote his personal interests; that Machin went against the broker's recommendations ignoring the overwhelming financial literature and advice provided to him; that Machin used and managed the money from Claimant's account as he pleased, constantly representing to RD Capital and its employees, including the account's registered representatives, Dominguez and Ms. Mercedes Jenouri, that the money in the account belonged to him; that Machin turned out to be a reckless investor and, because of his conduct, the value of the account decreased.

Respondents maintained that Claimant's account was managed properly and prudently; that, in fact, over and above the industry standards, all transactions were explained to and authorized by Machin; that the majority of the transactions in the account were unsolicited; that no churning, unauthorized transactions or fraud occurred during the management of the account at RD Capital; that both RD Capital and Dominguez have been personally hurt by Claimant's vicious and unfounded accusations, both at the P.R. Securities Commissioner's Office and before the NASD; that since Claimant entered into an agreement to indemnify RD Capital for all actions and decisions taken by Machin in the account, and since the pursuit of the claim with the filing of the complaint in this case constitutes an abuse of the process, Respondents, therefore, asserted a third-party claim and a counterclaim and maintained that Claimant is liable to make them whole for her agent's actions as well as by her own actions as a tortfeasor.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$267,032.06; interest at the rate of 7% per annum from January 10, 1996 until full payment is made by Respondents, jointly and severally; \$400,000.00 for mental anguish, \$500,000.00 in punitive damages, plus reasonable attorneys' fees, costs, expenses, and filing and consulting fees.

Respondents requested that the claims asserted against them be dismissed; that they be awarded relief on their counterclaim in an amount exceeding \$20,000.00; costs, fees and damages; and, that alternatively Mr. David Machin be notified of the third-party claim filed against him so that he may be responsible to the Claimant for his actions regarding her account.

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 originals remain on file with NASD Regulation, Inc.

Respondents filed a third party claim to include David Machin as a party to this action. Mr. Machin is not and was not at the time the controversy arose, an associated person with a member of NASD Regulation, Inc. Therefore, this arbitration panel made no determination regarding the liability of David Machin.

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AWARD

After considering the pleadings, the testimony and the evidence presented at the hearings, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents RD Capital, Inc. and Ramon L. Dominguez are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimant's requests for interest, compensation for mental anguish, punitive damages, attorney's fees, costs, expenses, filing and consulting fees are denied.
3. Respondents' requests for costs, fees, damages and relief with respect to the third-party claim against David Machin are denied.
4. Respondents' counterclaim is hereby denied.

OTHER COSTS

Pursuant to the agreement of the parties to bear all costs incurred by the arbitration panel with respect to the hearing sessions conducted in Puerto Rico, the arbitration panel has determined the following:

1. Claimant shall pay to NASD Regulation, Inc. the sum of \$665.05 which represents one half of the cost of the air fare plus miscellaneous charges incurred by the arbitration panel which were paid by NASD Regulation, Inc.
2. Respondent RD Capital, Inc. shall pay to NASD Regulation, Inc. the sum of \$665.05 which represents one half of the cost of the air fare plus miscellaneous charges incurred by the arbitration panel which were paid by NASD Regulation, Inc.
3. Apart from the forum fees outlined below, the parties shall each bear their own costs and expenses incurred in connection with this proceeding.

FORUM FEES

Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure ("Code"), a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four hours or less.

Pursuant to Rule 10332(c) of the Code, the panel has assessed forum fees in the amount of \$13,000.00 (13 hearing sessions x \$1,000.00 per session).

1. The Claimant is assessed forum fees in the amount of \$6,500.00 for which NASD Regulation, Inc. shall retain the \$1,000.00 previously deposited by Claimant in partial satisfaction thereof, leaving a balance due to NASD Regulation, Inc. of \$5,500.00.
2. Respondents are assessed forum fees, jointly and severally, in the amount of \$6,500.00 payable directly to NASD Regulation, Inc.

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3. NASD Regulation, Inc. shall retain the claim filing fee of \$250.00 paid by the Claimant.
4. NASD Regulation, Inc. shall retain the claim filing fee of \$500.00 paid by the Respondents for the third-party claim.
5. NASD Regulation, Inc. shall retain the claim filing fee of \$500.00 paid by the Respondents for the counterclaim.
6. Respondent RD Capital shall pay to NASD Regulation, Inc. the member surcharge of \$500.00 pursuant to Rule 10333 of the Code.

Fees are payable to NASD Regulation, Inc.

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/
Stephen K. Halpert

Public/Chairperson

/s/
Nicholas A. Natale

Industry/Panelist

/s/
Sterling F. Tremayne

Public/Panelist

Date of Decision: April 15, 1998