

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant:

Auldgate Investments, Ltd.

Case No. 96-04402

Names of Respondents

Nigel A. Ramsay
William Rodgers
Saperston Financial, Inc.
Justus Russell Sackett, Jr.
Conrad Hugh Lantz
Willard B. Saperston
Mark Barbera
John D. Morgan
Ernest M. Bush
Ramsay, Rodgers & Lantz, Inc.

REPRESENTATION OF PARTIES

For Claimant Auldgate Investments, Ltd. ("Auldgate"): Eugene Michael Kennedy, Esq., Fort Lauderdale, Florida.

For Respondent Nigel A. Ramsay ("Ramsay"): Howard A. Tescher, Esq. of Kippis Tescher Lippman & Valinsky, Fort Lauderdale, Florida.

For Respondents Saperston Financial, Inc. ("Saperston Financial"), Justus Russell Sackett, Jr. ("Sackett"), Willard B. Saperston ("Saperston") and Mark Barbera ("Barbera"): Patrick G. Finegan, Jr., Esq., Washington, DC.

For Respondent Ramsay, Rodgers & Lantz, Inc. ("RRL, Inc."): William Rodgers, Compliance Officer.

Respondents William Rodgers ("Rodgers"), Conrad Lantz ("Lantz") John D. Morgan ("Morgan") and Ernest M. Bush ("Bush") appeared pro se. ("Other Issues").

CASE INFORMATION

Statement of Claim filed on: October 2, 1996.

Amended Statement of Claim filed on: January 27, 1997.

Second Amended Statement of Claim filed on: February 10, 1998.

Claimant's Submission Agreement signed on: January 9, 1997 by Yves Bruderlein, Director,

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on behalf of the firm.

Statement of Answer filed by Respondent Ramsay on: December 30, 1996.

Respondent Ramsay signed the Uniform Submission Agreement on: December 30, 1996.

Respondent Ramsay's Response to the Amended Statement of Claim filed on: February 6, 1997.

Respondent Ramsay's Response to the Second Amended Statement of Claim filed on: February 18, 1998.

Statement of Answer filed by Respondent Rodgers on: December 31, 1996.

Respondent Rodgers' Response to Claimant's Second Amended Statement of Claim filed on: April 4, 1998.

Respondent Rodgers signed the Uniform Submission Agreement on: December 31, 1996.

Respondents Saperston and Sackett filed a joint Statement of Answer on: March 6, 1998.

Respondent Saperston signed the Uniform Submission Agreement on: March 6, 1998.

Respondent Sackett signed the Uniform Submission Agreement on: March 6, 1998.

Statement of Answer of Respondent Saperston Financial filed on: December 24, 1996.

Respondent Saperston Financial's Uniform Submission Agreement signed on: December 24, 1996 by J. Russell Sackett, Jr., V.P., Chief Compliance Officer, on behalf of the firm.

First Amended Answer of Respondent Saperston Financial filed on: January 31, 1997.

Respondents Rodgers, Lantz, Morgan, Bush, and RRI, Inc. did not file Statements of Answer or Uniform Submission Agreements.

CASE SUMMARY

Claimant alleged the following: The Statement of Claim, as amended, was filed with NASD Regulation, Inc. as the result of extensive losses amounting to more than 89% of Claimant's \$329,000.00 account at the Palm Harbor, Florida office of Respondent Saperston Financial in a period of approximately eight months. During the short lifetime of the account, the Respondents churned the account with an annualized turnover ratio of more than 45.5 times with wholly unauthorized, frequent trading transactions completely unsuitable to the objectives clearly stated by the Claimant's agent, Mr. Beverly Oates, ("Oates") to the Respondents at the time the account was opened. The Respondents, in addition to churning the account, repeatedly misrepresented the condition of the account to the extent of providing false "statements" to the Claimant's United States agent who had sole authority over the account, and failed entirely to prevent the illicit, damaging activities in the account effected by the registered representative, Respondent Ramsay. There was, essentially, no meaningful compliance by these Respondents with applicable rules and regulations, or even with the mandates of their own procedures manual, put in place to protect public customers from the misconduct and omissions presented in this arbitration proceeding.

Throughout the life of Claimant's account, Respondents had control of the account and knowingly concealed from Claimant's agent, Oates, the true status of the account through false oral and written statements. Until on or about July 25, 1996, Oates was without knowledge of Respondents' misconduct. Respondent Saperston Financial and the control person Respondents, Saperston, Sackett, Rodgers and Lantz, knew, or should have known that a multitude of the trades in the account were, in fact, unauthorized. Each of those

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control person Respondents, knew, or should have known that the Palm Harbor office of Saperston was not economically viable without massive commissions generated by the churning of the few client accounts the office did have.

The pattern and practices of Saperston Financial demonstrate a number of compliance failures in both public customer accounts and in the personal account of Respondent Ramsay. None of the control person Respondents took any meaningful steps whatsoever in the face of the ongoing, enormous losses in the account and, in the face of comparable losses in the accounts of clients of the Palm Harbor office, to ensure an absence of broker, principal or compliance misconduct by all of the Respondents. Over the approximately eight month life of Claimant's account, the account was turned over massively, without the prior knowledge and consent of the Claimant. Of the approximately \$289,000.00 lost in the process by the Respondents, approximately \$66,000.00 or 23% was taken by the Respondents as trade commissions.

All of the individual Respondents are jointly and severally liable for Claimant's damages for failing to implement, or ignoring the detection and prevention provisions of their own procedures manual and for failing to ensure that Claimant's account was not, in fact, being wrongfully churned with transactions unsuitable to Claimant's stated account objectives and for failing to prevent the concealment scheme implemented by Respondents to prevent Claimant's representative from knowing the extent of the damages inflicted upon Claimant's account during the eight or nine month period at issue.

Respondents Saperston Financial, Saperston, Sackert and Barbera alleged the following: Respondent Saperston Auldgate's Director, Yves Bruderlein ("Bruderlein"), is a lawyer with a fiduciary practice in Geneva, Switzerland and Claimant's alleged agent, Oates, has a PaineWebber, Inc. account and used margin and traded the same securities as in Claimant's account at Saperston Financial. Both Bruderlein and Oates maintained that they were ignorant of American markets in 1999, despite their obvious sophistication with diverse investments. Auldgate was really under the control of Oates who had brokers, lawyers and accountants in the United States and Europe and was indebted to a British bank. Oates was in daily contact with Respondent Ramsay and never complained to management until losses had occurred in Claimant's account. The inclusion of Respondents Saperston, Barbera and Sackert was a deliberate act of malice by Claimant knowing that the firm had gone out of operation. The inclusion of those individuals was not supported by any evidence.

Respondent Ramsay denied the material allegations of wrongdoing contained in the Statements of Claim and alleged that the entire arbitration proceeding was an attempt by Claimant and its agent, Oates, to consummate an extortion. Respondent Ramsay further maintained that the Claimant received a confirmation for each and every trade in the account as well as a monthly statement and that as a result, Claimant was fully informed of all activities in its account. As a result of threats of physical harm, Ramsay furnished Oates with inaccurate screen prints from Saperston Financial's computer showing incorrect account balances. Ramsay asserted the affirmative defenses of unclean hands, acquiescence, waiver and estoppel, ratification, comparative/contributory negligence and assumption of risk.

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RELIEF REQUESTED

Claimant requested compensatory damages of approximately \$457,245.00, treble damages, punitive damages, interest at the legal rate, attorneys' fees, costs and such other relief deemed appropriate by the panel.

Respondents Ramsay, Rodgers, Saperston, Sackett and Saperston Financial requested that all claims against them be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

1. Prior to the evidentiary hearing, the arbitration panel granted Respondent Morgan's Motion to Dismiss.
2. On April 16, 1998, Claimant filed with NASD Regulation, Inc. its Notice of Voluntary Dismissal of Respondent Ernest M. Bush, without prejudice.
3. Respondents Rodgers and Lantz did not attend the evidentiary hearing. Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators determined that Respondents Rodgers and Lantz were properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").
4. Respondents Rodgers, Lantz, Morgan, Bush and RRL, Inc. did not file Statements of Answer and did not file with the NASD Regulation, Inc. Office of Dispute Resolution properly executed Submission Agreements but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.
5. During the hearing on November 20, 1998, the arbitration panel granted Respondent Barbera's Motion to Dismiss and request that his Central Registration Depository ("CRD") record be expunged of all references to this matter.

The parties present at the hearing 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 evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Ramsay, Rodgers, Lantz and RRL, Inc. are found liable, jointly and

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severally, and shall pay to Claimant the sum of \$174,805.00.

2. Respondents Saperston Financial, Saperston, and Sackett are found liable, jointly and severally, and shall pay to Claimant the sum of \$19,423.00.
3. Claimant's requests for punitive damages, pre-judgment interest, attorneys' fees and costs are hereby denied.
4. The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Barbera's CRD records maintained by the NASD with the understanding that pursuant to NASP Notice to Members 99-09, Respondent Barbera must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
5. Any other claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim. Initial claim filing fee = \$250.00

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, Saperston Financial, is a party.

Member surcharge = \$500.00

Adjournment Fees

Adjournments requested during these proceedings:

February 9, 10, 11, 12 and 13, 1998, adjournment by Claimant \$1,000.00

March 8, 9, 10, 11, 12 and 13, 1999, adjournment by Claimant \$ 500.00

(Second adjournment fee reduced by panel).

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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:

Six (6) Pre-hearing sessions with Panel x \$1,000.00	= \$6,000.00
Pre-hearing conference dates: April 15, 1997	1 session
June 2, 1997	1 session

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April 3, 1998	1 session
July 21, 1998	1 session
October 5, 1998	1 session
November 5, 1999	1 session

Nineteen (19) Hearing sessions x \$1,000.00 = \$19,000.00

Hearing dates:	November 16, 1998	2 sessions
	November 17, 1998	2 sessions
	November 18, 1998	2 sessions
	November 19, 1998	2 sessions
	November 20, 1998	2 sessions
	November 15, 1999	2 sessions
	November 16, 1999	1 session
	January 17, 2000	2 sessions
	January 18, 2000	2 sessions
	January 19, 2000	2 sessions

Total Forum Fees = \$25,000.00

The Panel has assessed \$12,500.00 of the forum fees to Claimant.

The Panel has assessed \$12,500.00 of the forum fees jointly and severally to Respondents RRI, Inc., Ramsay, Rodgers, Lantz, Saperston Financial, Saperston and Sacken.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 250.00
Adjournment Fees	= \$ 1,500.00
Forum Fees	= \$12,500.00
Total Fees	= \$14,250.00
<u>Less payments</u>	<u>= \$ 7,550.00</u>
Balance Due NASD Regulation, Inc.	= \$ 6,700.00

Respondent Saperston Financial be and hereby is solely liable for:

Member Fees	= \$500.00
Total Fees	= \$500.00
<u>Less payments</u>	<u>= \$500.00</u>
Balance Due NASD Regulation, Inc.	= \$ 0.00

Respondents RRI, Inc., Ramsay, Rodgers, Lantz, Saperston Financial, Saperston and Sacken be and hereby are jointly and severally liable for:

Forum Fees	= \$12,500.00
Total Fees	= \$12,500.00
<u>Less Payments</u>	<u>= 4,850.00</u>
Balance Due NASD Regulation, Inc.	= \$ 7,650.00

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All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrator

/s/
Stan West
Public Arbitrator, Presiding Chair

Signature Date

/s/
Douglas Delaney, Jr.
Industry Arbitrator

Signature Date

/s/
Cornelius P. Mahon
Public Arbitrator

Signature Date

March 9, 2000
Date of Service

March 9, 2000

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All balances are due and payable to NASD Regulation, Inc.

Consenting Arbitrators' Signatures

Stan West

Stan West
Public Arbitrator, Presiding Chair

March 8, 2000
Signature Date

Douglas Delaney, Jr.
Industry Arbitrator

Signature Date

Cornelius P. Mahon
Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

Stan West
Public Arbitrator, Presiding Chair

Signature Date

Douglas Delaney, Jr.
Industry Arbitrator

2-9-00
Signature Date

Cornelius P. Mahon
Public Arbitrator

S / Date

Cornelius P. Mahon
Public Arbitrator

Date of Service (For NASD office use only)

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All balances are due and payable to NASD Regulation, Inc.

Concerning Arbitrators' Signatures

Stan Weil
Public Arbitrator, Presiding Chair

Signature Date

1.

Douglas Delaney, Jr.
Industry Representative

Signature Date

Cornelius P. Mahon

3/8/00

Cornelius P. Mahon
Public Arbitrator

Signature Date

Date of Service (For NASD office use only)