

N.A.S.D. REGULATION, INC. AWARD

Florida

NASD Regulation, Inc., Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Hoshedar Metha

96-05055

Names of Respondents

PCM Securities Ltd., n/k/a Royal Palm Investments, Ltd.
Ira Dicapua

REPRESENTATION

For Claimant: Russell L. Forkey, Esq. of the law firm of Russell L. Forkey, P.A., Fort Lauderdale, Florida.

For Respondent Ira Dicapua ("Dicapua"): Arnold Y. Steinberg, Esq. of the law firm of Arnold Y. Steinberg, P.C., Fort Lauderdale, Florida.

Respondent PCM Securities, Ltd. n/k/a Royal Palm Investments, Ltd. ("PCM") was represented by Arnold Y. Steinberg, Esq. until October 5, 1998. Thereafter, Respondent PCM appeared pro se.

CASE INFORMATION

Statement of Claim filed: November 4, 1996.

Claimant's Submission Agreement signed on: November 7, 1996.

Claimant's Amended Statement of Claim filed: October 16, 1998.

Joint Statement of Answer filed by Respondents PCM and Dicapua on: March 17, 1997.

Respondent PCM's Submission Agreement signed on: January 23, 1997 by Roland Greenspan on behalf of the firm.

Respondent Dicapua did not file a properly executed Submission Agreement.

HEARING INFORMATION

On June 23, 1997, the arbitration panel conducted a pre-hearing conference which lasted one (1) session.

On October 20, 1997, the arbitration panel conducted a hearing which lasted one (1) session in Boca Raton, Florida.

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CASE SUMMARY

Claimant alleged that Respondents committed fraud and deceit, breach of fiduciary duty, breach of contract, market manipulation, negligence, negligent supervision and violation of Florida Statute 517.301 in connection with the purchase and sale of securities.

Respondent PCM and Dicapua denied the allegations of wrongdoing contained in the Statement of Claim and alleged that Claimant's claims are barred by the Economic Loss Doctrine; that the Claimant was an experienced, highly sophisticated investor; that the Claimant made unsolicited trades and is, therefore, responsible for any losses caused by his own actions; that if the Respondents are found to be negligent in any manner, the Claimant's own negligence is equal to that of the Respondents; that the Claimant received confirmations and monthly statements evidencing each transaction made in his account; that at no time did the Claimant object to or question a trade; and, accordingly, Claimant has ratified each and every trade made in his account.

RELIEF REQUESTED

Claimant requested an award of compensatory damages in the amount of \$100,000.00 plus the amount that his account would have been worth had it been managed properly, punitive damages of \$50,000.00 and interest.

Respondents requested entry of an award in their favor and against the Claimant together with costs and such other and further relief as deemed appropriate by the arbitration panel.

OTHER ISSUES CONSIDERED & DECIDED

1. Due to illness, arbitrator Philip B. Norman did not attend the hearing. However, by agreement of the attending parties and the remaining arbitrators, the hearing proceeded with two arbitrators.
2. On October 16, 1998, the Claimant advised NASD Regulation, Inc. that he had dismissed all claims, with prejudice, against Respondent Dicapua.
3. At the commencement of the hearing on October 20, 1998, Claimant's attorney submitted to the panel for approval, a Consent to Arbitration Award agreed to by the Claimant and Respondent Dicapua. Further, Claimant's attorney advised the arbitration panel of the following: that Respondent PCM filed its Broker Dealer Withdrawal Form ("BDW") on July 22, 1998; that PCM had apparently gone out of business with no assets on July 20, 1998, and left no forwarding address or agent or employee to further conclude its business; and, that PCM's counsel filed his Notice of Withdrawal on October 5, 1998.
4. During the hearing the Claimant withdrew his requests for punitive damages and attorney's fees.
5. Respondent PCM did not attend the hearing. However, upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators determined that Respondent PCM was properly served with the Statement of Claim pursuant to Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators also determined that Respondent PCM received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

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6. Respondent Dicapua did not file with the NASD Regulation, Inc., Office of Dispute Resolution a properly executed Submission Agreement but is required to submit to arbitration pursuant to Rule 10301 of the Code of Arbitration Procedure and having answered the claim is bound by the determination of the arbitration panel.

AWARD

After considering the pleadings, the Consent to Arbitration Award, the testimony, 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 panel finds that Respondent PCM has violated Florida Statute 517.301 and awards damages in favor of the Claimant against PCM in the amount of \$100,000.00 inclusive of interest.
2. Respondent PCM's request for costs is hereby denied.

FORUM FEES

Pursuant to Rule 10332(b) of the 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 arbitration panel has assessed forum fees in the amount of \$1,500.00 (one (1) pre-hearing conference (panel) x \$750.00 + one (1) hearing session x \$750.00).

1. By agreement of the parties, the Claimant is assessed forum fees in the amount of \$1,500.00 for which NASD Regulation, Inc. shall retain the \$750.00 previously deposited by the Claimant in partial satisfaction thereof leaving a balance due to NASD Regulation, Inc. by the Claimant of \$750.00.

OTHER FEES

1. Pursuant to Rule 10332 of the Code, the Claimant has paid to NASD Regulation, Inc. the claim filing fee of \$200.00.
2. Pursuant to Rule 10333 of the Code, Respondent PCM has paid to NASD Regulation, Inc. the member surcharge of \$350.00.
3. Pursuant to Rule 10319(b) of the Code, Respondent PCM shall pay to NASD Regulation, Inc. the sum of \$750.00 representing payment of the previously invoiced adjournment fee for the hearings scheduled for December 11 and 12, 1997.

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Fees are payable to the NASD Regulation, Inc., Office of Dispute Resolution.

ARBITRATION PANEL

Concurring Arbitrators' Signatures

_____/s/_____
Bernard J. Kune

Public/Chairperson

_____/s/_____
Perry Winer

Public/Panellist

Date of Decision: November 27, 1998