

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Seshagiri Rao Mallampati, (Claimant) vs. George M. Faherty, (Respondent) vs. Landmark International Equities and Howard B. Berger, (Third Party Respondents)

Case Number: 98-00018

Hearing Site: Boston, Massachusetts

REPRESENTATION OF PARTIES

Claimant, Seshagiri Rao Mallampati, hereinafter referred to as "Claimants" appeared pro se.

Respondent, George M. Faherty ("Faherty"), hereinafter referred to as "Respondent": John E. Lawlor, Esq., Mineola, New York.

Third Party Respondent, Landmark International Equities ("Landmark"), hereinafter referred to as "Third Party Respondent" did not enter an appearance in this matter.

Third Party Respondent, Howard B. Berger ("Berger"), hereinafter referred to as "Third Party Respondent": Roger J. Schwartz, Esq., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: December 26, 1997.

Claimant signed the Uniform Submission Agreement: December 3, 1997.

Reply to Respondent's Statement of Answer: April 6, 1998.

Statement of Answer, Counterclaim, and Third Party Claims filed by Faherty on or about: February 16, 1998.

Faherty signed the Uniform Submission Agreement: February 16, 1998.

Statement of Answer to the Third Party Claim filed by Berger on or about: March 23, 1998
Berger did not file a Uniform Submission Agreement.

Landmark did not file a Statement of Answer to the Third Party Claim nor did it file a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: fraudulent misrepresentation; suitability of investment; fraudulent inducement; omission of material facts; and, breach of fiduciary duty.

Unless specifically admitted in its Answer, Faherty denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant failed to state a claim upon which relief can be granted; Claimant failed to dispute each transaction within ten days of receiving trade confirmation, as per customer agreement; Claimant's claims are barred by the statute of limitations; he executed Claimant's instructions in good faith; Claimant's claims are barred by principles of waiver, estoppel, and ratification; Claimant assumed the risk of his investment; he did not breach a fiduciary duty; he was not negligent; he followed employee procedure; Claimant's loss was as a result of the behavior of others; Claimant's alleged losses are speculative; Claimant did not describe a basis for punitive damages with particularity; Claimant's losses are not recoverable under applicable law governing arbitration; and, Claimant failed to mitigate damages.

In his Counterclaim, Flaherty alleged the following causes of action: slander; defamation; harassment; intentional infliction of emotional distress; damage to his professional reputation; and, damage to his business and income.

In his Third Party Claim, Flaherty alleged the following: failure to execute Claimant's sell orders; failure to inform claimant of the impending shut down of Landmark; failure to inform him of impending shut down; and, material misrepresentations and omissions with respect to any written material sent to Claimant.

Unless specifically admitted in his Third Party Answer, Berger denied the allegations made in the Statement of Answer, Counterclaim and Third Party Claims and asserted the following defenses: Respondent failed to state a claim upon which relief can be granted; Berger did not have a duty to supervise the activities of Faherty; claim for indemnification or contribution is premature; and, Faherty acted outside of the scope of his employment.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$248,918.00
Punitive Damages	\$248,918.00

Respondent requested from Claimant:

Compensatory Damages	\$400,000.00
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Respondent requested from Third Party Respondents:

Compensatory Damages \$500,000.00

Respondent also requested attorneys' fees and costs associated with the proceedings.

Third Party Respondent, Berger, requested costs, damages, and counsel fees in an amount not less than \$10,000.00.

OTHER ISSUES CONSIDERED AND 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.

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Third Party Respondent Landmark has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Third Party Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Third Party Respondent Landmark International Equities did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

Third Party Respondent Howard B. Berger did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the Third Party Claim, is bound by the determination of the Panel on all issues submitted.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims against Faherty are denied in their entirety.
2. All claims against Berger are denied in their entirety.
3. Upon confirmation of this Award by a court of competent jurisdiction, NASD Regulation, Inc. shall expunge all references to this arbitration from the permanent

CRD records of Respondent Flaherty.

4. Each party shall bear their own costs, including attorneys' fees.
5. All other requests for relief are hereby 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	= \$ 200.00
Counterclaim filing fee	= \$ 500.00

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, Landmark International Equities is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

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:

One (1) Pre-hearing session with Panel x \$750.00	= \$ 750.00
Pre-hearing conference: June 23, 1999	1 session
Four (4) Hearing sessions x \$750.00	= \$3,000.00
Hearing Dates: October 26, 1999	2 sessions
October 27, 1999	2 sessions
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Total Forum Fees	= \$3,750.00

1. The Panel has assessed \$ 937.50 of the forum fees against Claimant.
2. The Panel has assessed \$ 937.50 of the forum fees against Respondent Flaherty.
3. The Panel has assessed \$1875.00 of the forum fees jointly and severally against the Third Party Respondents.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 200.00
<u>Forum Fees</u>	<u>= \$ 937.50</u>
Total Fees	= \$1,137.50
<u>Less payments</u>	<u>= \$ 950.00</u>
Balance Due NASD Regulation, Inc.	= \$ 187.50

2. Respondent Flaherty be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
<u>Forum Fees</u>	<u>= \$ 937.50</u>
Total Fees	= \$1,437.50
<u>Less payments</u>	<u>= \$1,500.00</u>
Refund Due Respondent Flaherty	= \$ 62.50

3. Third Party Respondent Landmark be and hereby is solely liable for:

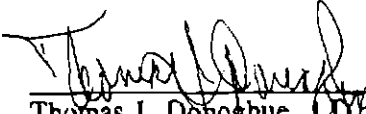
Member Fees	= \$4,600.00
Total Fees	= \$4,600.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Regulation, Inc.	= \$4,600.00

4. Third Party Respondents, Landmark and Berger, be and hereby are jointly and severally liable for:

Forum Fees	= \$1,875.00
Balance Due NASD Regulation, Inc.	= \$1,875.00

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

Concurring Arbitrators' Signatures



Thomas J. Donoghue, J.D.
Public Arbitrator, Presiding Chair

Signature Date

John D. Hughes, Esq.
Public Arbitrator

Signature Date

William J. Driscoll
Industry Arbitrator


Signature Date

December 29, 1999
Date of Service (For NASD office use only)

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Thomas J. Donoghue, J.D.
Public Arbitrator, Presiding Chair

Signature Date



John D. Hughes, Esq.
Public Arbitrator

12/23/99

Signature Date

William J. Driscoll
Industry Arbitrator

Signature Date

December 29, 1999

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