
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 99-01062

Margaret M. LaManna, on her own behalf,
and on behalf of her Individual Retirement
Accounts and Margaret M. LaManna Keogh
Money Purchase Pension Plan

Names of the Respondents

Hearing Site: Boca Raton, Florida

DiMedio Kirchhoff & Co., Inc., The Kirchhoff
Organization, Ltd., Van Carll Kirchhoff, Rhett
Howard Kirchhoff, Silvio John DiMedio, U.S.
Clearing, a division of Fleet Securities, Inc., and
CIBC Oppenheimer Corp.

Nature of the Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

For Margaret M. LaManna, on her own behalf, and on behalf of her Individual Retirement Accounts and Margaret M. LaManna Keogh Money Purchase Pension Plan, hereinafter referred to as "Claimant": Lawrence L. Klayman, Esq., Klayman & Toskes, P.A., Boca Raton, Florida.

For Respondent U.S. Clearing, a division of Fleet Securities, Inc., hereinafter referred to as "USC": Bennett Falk, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

For Respondents Silvio John DiMedio ("DiMedio") and DiMedio Kirchhoff & Co., Inc. ("DK"): Laurent W. Metzler, Esq., Law Offices of Laurent W. Metzler, Moorestown, New Jersey.

For Respondent CIBC Oppenheimer Corp., hereinafter referred to as ("CIBC"): Joseph J. Sullivan, Esq., Sheindlin & Sullivan, LLP, New York, New York.

Respondents The Kirchhoff Organization, Ltd. ("TKO"), Van Carll Kirchhoff ("Van") and Rhett Howard Kirchhoff ("Rhett") did not appear.

CASE INFORMATION

Statement of Claim filed on or about: March 8, 1999.

Claimant signed the Uniform Submission Agreement: March 2, 1999.

Statement of Answer, Affirmative Defenses, "Counterclaim" and Crossclaim filed by
Respondents DiMedio and DK on or about: June 30, 1999.

Respondents DiMedio and DK signed the Uniform Submission Agreement: June 30, 1999.

Answer of Claimant to "Counterclaim" of Respondents DiMedio and DK filed on or about: July

22, 1999.

Statement of Answer and Motion to Dismiss filed by Respondent USC on or about: June 30, 1999.

Respondent USC signed the Uniform Submission Agreement: June 29, 1999.

Answer and Motion to Dismiss filed by Respondent CIBC on or about: June 30, 1999.

Respondent CIBC signed, but did not date, the Uniform Submission Agreement.

Motion to Bar Respondent TKO From Presenting any Matter, Arguments or Defenses filed by Claimant on or about: September 8, 1999.

Motion to Bar Respondent Van From Presenting any Matter, Arguments or Defenses filed by Claimant on or about: September 8, 1999.

Motion to Bar Respondent Rhett From Presenting any Matter, Arguments or Defenses filed by Claimant on or about: September 8, 1999.

Response to Respondent CIBC's Motion to Dismiss filed by Claimant on or about: July 28, 1999.

Reply to Claimant's Response to Respondent CIBC's Motion to Dismiss filed by Respondent CIBC on or about: August 19, 1999.

Motion to Bar Respondent DK From Presenting any Matter, Arguments or Defenses or, in the Alternative, Compelling Production of Documents From Said Respondent filed by Claimant on or about: February 24, 2000.

Motion to Bar Respondent DiMedio From Presenting any Matter, Arguments or Defenses or, in the Alternative, Compelling Production of Documents From Said Respondent filed by Claimant on or about: February 24, 2000.

Response to Motions to Bar Respondents DiMedio and DK From Presenting any Matter, Arguments or Defenses or, in the Alternative, Compelling Production of Documents From Said Respondents filed by Respondents DiMedio and DK on or about: March 3, 2000.

Motion to Bar Respondent CIBC From Presenting any Matter, Arguments or Defenses or, in the Alternative, to Secure Enforcement of the April 3, 2000 Order Compelling it to Produce its Compliance Manuals and Bulletins filed by Claimant on or about: September 14, 2000.

Motion in Limine to Bar Respondents DiMedio and DK From Testifying as to any Documentary Evidence at the Time of Trial filed by Claimant on or about: September 19, 2000.

Response to Claimant's Motion in Limine to Bar Respondents DiMedio and DK From Testifying as to any Documentary Evidence at the Time of Trial filed by Respondents DiMedio and DK on or about: November 8, 2000.

Respondent USC's Memorandum of Law Supporting its Motion to Dismiss filed on or about: July 27, 2001.

Emergency Motion to Strike Certain Exhibits Listed by Claimant and Preclude Introduction of Those Exhibits at the Final Hearing filed by Respondent USC on or about: July 31, 2001.

Respondents Van, Rhett and TKO did not file Statements of Answer or executed Uniform Submission Agreements.

CASE SUMMARY

Claimant asserted the following causes of action: negligence; breach of fiduciary duty; fraud in the inducement; illegal loan transactions; excessive activity (churning); personal securities

transaction violations; unlicensed securities and investment advisory activities; fraud; violation of Section 10-b of the Securities Exchange Act of 1934; violation of Section 12 of the Securities Act of 1933; violation of the NASD Rules of Fair Practice; violation of the Investment Advisors Act of 1940; violation of the Uniform Securities Act of 1956; violation of the New Jersey Consumer Fraud Act; federal statutory fraud; failure to supervise; and, violation of the Employee Retirement Income Security Act of 1974 ("ERISA"). The causes of action relate to the purchase and sale of shares of Phoenix Information Systems Corp. and TeleServices International Group, Inc. in Claimant's accounts.

Unless specifically admitted in its Answer, Respondent USC denied the allegations made in the Statement of Claim and asserted various defenses. In addition, Respondent USC asserted a motion to dismiss the Statement of Claim on the basis that, as a clearing firm, Respondent USC did not have any duties, obligations or responsibilities and could not be held liable for failure to supervise the conduct of the broker dealers, or their employees, for whom Respondent USC cleared trades.

Unless specifically admitted in their Answer, Respondents DiMedio and DK denied the allegations made in the Statement of Claim and asserted various defenses. In addition, Respondents DiMedio and DK asserted the cause of action of indemnification in their crossclaim against Respondents Van, Rhett and TKO.

Unless specifically admitted in its Answer, Respondent CIBC denied the allegations made in the Statement of Claim and asserted various defenses. In addition, Respondent CIBC asserted a motion to dismiss the Statement of Claim on the following bases: pursuant to the Clearing Agreement entered into between Respondents CIBC and DK on February 8, 1995, Respondent CIBC had no obligation or duty to supervise the activities of Respondent DK or its registered representatives and employees; and, Claimant did not specify any facts to support the conclusory allegations against Respondent CIBC.

In response to Respondent CIBC's motion to dismiss, Claimant denied the assertions therein.

RELIEF REQUESTED

Claimant requested compensatory damages in excess of \$1,500,000.00, plus punitive damages in excess of \$1,500,000.00, attorney's fees, costs, pre- and post-judgment interest and any other relief deemed just and proper.

Respondent USC requested that the Statement of Claim be dismissed, that the costs of this proceeding be assessed against Claimant and any other relief deemed just and proper.

Respondents DiMedio and DK requested that the Panel dismiss Claimant's claims and award them their costs, attorney's fees and any other relief deemed just and proper. In addition, Respondents DiMedio and DK requested indemnification as asserted in their crossclaim against Respondents Van, Rhett and TKO.

Respondent CIBC requested that the Statement of Claim be dismissed in its entirety and that Claimant be required to pay all fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Van, Rhett and TKO did not appear at the evidentiary hearing in this matter. Upon review of the file and the representations made by Claimant, the Panel determined that Respondents Van, Rhett and TKO have 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 Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents Van, Rhett and TKO did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and are bound by the determinations of the Panel on all issues submitted.

On or about November 23, 1999, the Panel issued an order which granted Claimant's Motions to Bar Respondents Van, Rhett and TKO From Presenting any Matter, Arguments or Defenses. Furthermore, the order deferred ruling on Respondent CIBC's Motion to Dismiss until the evidentiary hearing.

On or about December 15, 2000, the Panel issued an order which granted Claimant's Motion in Limine to Bar Respondents DiMedio and DK From Testifying as to any Documentary Evidence at the Time of Trial and Claimant's Motions to Bar Respondents DiMedio and DK From Presenting any Matter, Arguments or Defenses or, in the Alternative, Compelling Production of Documents From Said Respondents as to Respondent DK only. The order denied both motions with respect to Respondent DiMedio.

On or about May 31, 2001, the Panel issued an order which denied Claimant's Motion to Bar Respondent CIBC From Presenting any Matter, Arguments or Defenses or, in the Alternative, to Secure Enforcement of the April 3, 2000 Order Compelling it to Produce its Compliance Manuals and Bulletins.

On or about September 7, 2001, the Panel issued an order which deferred ruling on Respondent USC's Motion to Dismiss until the evidentiary hearing. In addition, the order stated that Respondent USC's Emergency Motion to Strike Certain Exhibits Listed by Claimants and Preclude Introduction of Those Exhibits at the Final Hearing was moot based upon the parties' representation during the August 3, 2001 pre-hearing conference that they had resolved all matters with respect to the motion.

During the evidentiary hearing on February 17, 2004, Claimant notified the Panel that she had settled with Respondents CIBC, USC, DiMedio and DK. In addition, Claimant made an ore tenus motion for default judgment with respect to Respondents Van, Rhett and TKO. The Panel granted the motion for default judgment.

On or about February 17, 2004, the Panel directed Claimant to submit, not later than March 8, 2004, the case law or statutory authority which would allow for an award of punitive damages. On or about March 8, 2004, Claimant filed a Memorandum of Law in Support of an Award of Punitive Damages.

The party present at the hearing agreed that the Award in this matter may be executed in counterpart copies.

AWARD

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

Respondents Van, Rhett and TKO are jointly and severally liable on the following claims: breach of fiduciary duty; excessive activity (churning); unlicensed securities and investment advisory activities; fraud; failure to supervise; and, ERISA violations. As such, Respondents jointly and severally are liable and shall pay to Claimant compensatory damages in the amount of \$873,823.78, plus interest at the rate of 1% per annum which shall accrue from February 17, 2004 until the date of payment of the Award.

Respondents Van, Rhett and TKO are jointly and severally liable and shall pay to Claimant punitive damages in the amount of \$250,000.00 pursuant to Sections 768.73 and 517.214(3) of the Florida Statutes and *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 115 S.Ct. 1212(1995). According to the Florida Statutes, this Panel awards punitive damages because of the unlicensed securities and investment advisory activities, fraud, churning and breach of fiduciary duty by Respondents Van, Rhett and TKO. This was evidenced by the Respondents' fraudulent use of a New Jersey address in order to evade compliance with Florida law. The evidence clearly showed that Claimant was a Florida resident per the new account documents but yet the statements were diverted to a New Jersey address. This evidence was uncontroverted by Respondents Van, Rhett and TKO at the hearing and the clear intent was to evade compliance with Florida law.

Respondents Van, Rhett and TKO are jointly and severally liable and shall pay to Claimant the sum of \$250.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Respondents DiMedio and DK's "counterclaim" is dismissed, with prejudice.

Respondents DiMedio and DK's crossclaim against Respondents Van, Rhett and TKO is dismissed, without prejudice.

The Panel finds that the unlicensed activity of Respondent Rhett may warrant investigation by the State of New Jersey Insurance Regulators.

Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 250.00
Crossclaim 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 firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firms are parties.

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$4,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

May 22-25, 2001, first adjournment requested by Claimant = \$ 1,000.00

November 21-22, 2002, second adjournment requested by Claimant = \$ 1,500.00 waived by the Panel.

February 9-13, 2004, third adjournment requested by Claimant = \$ 1,500.00 waived by the Panel.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$ 900.00
Pre-hearing conferences:	
August 3, 2001	1 session
September 13, 2002	1 session

Two (2) Pre-hearing sessions with the Panel @ \$1,000.00		= \$2,000.00
Pre-hearing conferences:		
May 1, 2000	1 session	
May 7, 2003	1 session	
Two (2) Hearing sessions @ \$1,000.00		= \$2,000.00
Hearing Dates:		
November 20, 2002	1 session	
February 17, 2004	1 session	
Total Forum Fees		= \$4,900.00

The Panel has assessed \$1,450.00 of the forum fees to Respondent CIBC.

The Panel has assessed \$1,450.00 of the forum fees to Respondent USC.

The Panel has assessed \$1,000.00 of the forum fees jointly and severally to Respondents Van, Rhett and TKO.

The Panel has waived the forum fees of \$1,000.00 for the hearing session held on November 20, 2002.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to: additional copies of arbitrator awards; copies of audio transcripts; retrieval of documents from archives; interpreters; and, security.

No administrative costs were incurred in this matter.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 250.00
Adjournment Fee	= \$ 1,000.00
Total Fees	= \$ 1,250.00
Less payments	= \$ 1,250.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent DK is solely liable for:

Member Fees	= \$ 7,600.00
Total Fees	= \$ 7,600.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 7,600.00

Respondents DiMedio and DK are jointly and severally liable for:

Crossclaim Filing Fee	= \$ 500.00
Total Fees	= \$ 500.00
Less payments	= \$ 0.00

Balance Due NASD Dispute Resolution = \$ 500.00

Respondent CIBC is solely liable for:

Member Fees	= \$ 7,600.00
<u>Forum Fees</u>	<u>= \$ 1,450.00</u>
Total Fees	= \$ 9,050.00
<u>Less payments</u>	<u>= \$ 2,500.00</u>
Balance Due NASD Dispute Resolution	= \$ 6,550.00

Respondent TKO is solely liable for:

<u>Member Fees</u>	<u>= \$ 3,100.00</u>
Total Fees	= \$ 3,100.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,100.00

Respondent USC is solely liable for:

Member Fees	= \$ 7,600.00
<u>Forum Fees</u>	<u>= \$ 1,450.00</u>
Total Fees	= \$ 9,050.00
<u>Less payments</u>	<u>= \$ 600.00</u>
Balance Due NASD Dispute Resolution	= \$ 8,450.00

Respondents Van, Rhett and TKO are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$ 1,000.00</u>
Total Fees	= \$ 1,000.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,000.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Joseph G. Murasko, Esq.	-	Public Arbitrator, Presiding Chairperson
Richard E. Conner, Esq.	-	Public Arbitrator
Dione E. Pritchard	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/

04/15/04

Joseph G. Murasko, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

/s/

04/15/04

Richard E. Conner, Esq.
Public Arbitrator

Signature Date

/s/

04/15/04

~~Dione E. Pritchard~~
Non-Public Arbitrator

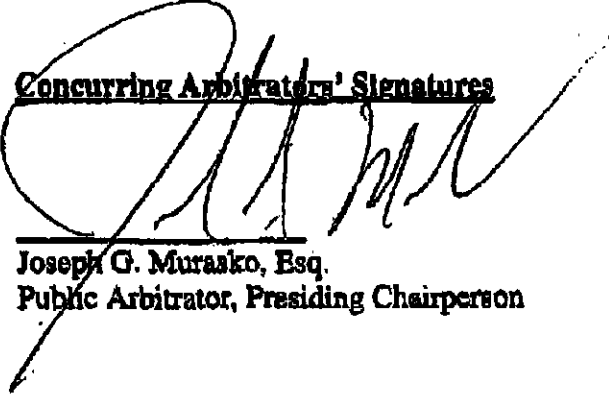
Signature Date

04/16/04

Date of Service (For NASD Dispute Resolution office use only)

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Concurring Arbitrators' Signatures


Joseph G. Muraako, Esq.
Public Arbitrator, Presiding Chairperson

4/15/04
Signature Date

Richard E. Conner, Esq.
Public Arbitrator

Signature Date

Dione E. Pritchard
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Joseph G. Murasko, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Richard E. Conner, Esq.
Public Arbitrator

Signature Date

Dione E. Fritchard

Dione E. Fritchard
Non-Public Arbitrator

April 15 2004
Signature Date

Date of Service (For NASD Dispute Resolution office use only)

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Concurring Arbitrators' Signatures

Joseph G. Murasko, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Richard E. Conner, Esq.
Public Arbitrator

4/15/2004

Signature Date

Dione E. Pritchard
Non-Public Arbitrator

Signature Date

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