

**Award**  
**NASD Regulation, Inc.**

In the Matter of the Arbitration Between

Names of Claimants

Edward and Aida Reyes

Case No. 99-01317

Names of Respondents

Investors Street, Inc.

Javier Saenz

**REPRESENTATION OF PARTIES**

Claimants Edward and Aida Reyes, hereinafter referred to as "Claimants" appeared pro se. For Respondents Investors Street, Inc. ("Investors Street") and Javier Saenz ("Saenz"): Jonathan E. Perlman, Esq. of Genovese Lichtman Joblove & Battista P.A., Miami, Florida.

**CASE INFORMATION**

Statement of Claim filed on: January 25, 1999.

Claimants signed the Uniform Submission Agreement on: February 16, 1999.

Respondents joint Motion to Dismiss Statement of Claim, Answer and Counterclaim filed on: May 26, 1999.

Respondent Investors Streets' Uniform Submission Agreement signed on: May 24, 1999 by Javier Saenz on behalf of the firm.

Respondent Saenz signed the Uniform Submission Agreement on: May 24, 1999.

Claimants' Response to Respondents Motion to Dismiss Statement of Claim, Answer and Counterclaim filed on: February 2, 1999.

**CASE SUMMARY**

Claimants alleged that Respondents Investors Street and Saenz liquidated their securities account after Claimants exceeded their borrowing limits, without giving Claimants the required notice. Claimants maintained that they suffered significant financial losses as a result of Respondents' wrongdoing.

Respondents denied the allegations of wrongdoing contained in the Statement of Claim and alleged the following: (1) the contract governing the parties' relationship provided that the account could be liquidated without notice; (2) liquidation was executed by the clearing firm, not Respondents, and accordingly, Respondents are not proper parties to this action; and, (3) Respondents, though not obligated, timely notified Claimants of the margin call issued by the clearing firm. Additionally, Respondents asserted that Saenz is not a proper party to this proceeding because he was not accused of personally committing any misconduct in the Statement of Claim. Finally, Respondents asserted that Claimants have suffered no damages given the fact that the equity in their account was negative at the time their account was liquidated.

Respondent Investors Street asserted a counterclaim against Claimants which alleged that when the clearing firm liquidated Claimants' account, not only were Claimants in violation of

SEC rules, but the account had a negative equity position. Accordingly, even after liquidation, Claimants owed the clearing firm the additional sum of \$3,197.95, which the clearing firm then debited from Investors Street's house account. Accordingly, Investors Street sought this amount against Claimants, plus pre and post judgement interest, attorneys' fees and costs, under theories of indemnity, subrogation, and unjust enrichment.

In their response to the counterclaim Claimants denied the allegations contained therein and reiterated Claimants' position that they have suffered substantial financial damages by the gross negligence of Respondents.

### **RELIEF REQUESTED**

Claimants requested compensatory damages of approximately \$100,000.00 and dismissal of the counterclaim.

Respondents requested dismissal of the claim, relief on the counterclaim in the amount of \$3,197.95 plus attorneys' fees and interest. Respondents further requested that Claimants be ordered to pay all forum fees and costs associated with this proceeding, that the claims asserted against them be expunged from their Central Registration Depository ("CRD") records maintained by the NASD and such other relief deemed appropriate by the Panel.

### **OTHER ISSUES CONSIDERED AND DECIDED**

At the commencement of the hearing Claimants and Respondents reached an agreement to withdraw all claims against Respondent Saenz, with prejudice.

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.

### **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. Respondent Investors Street is found not liable and, therefore, all claims against it are hereby denied.
2. Claimants are found liable on the counterclaim and shall pay to Respondent Investors Street the sum of \$3,187.93 plus pre-judgment interest in the amount of \$457.62.
3. Respondents' requests for expungements of their CRD records are hereby denied.
4. All other requests 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 | = \$150.00 |
| 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 person at the time of the events giving rise to the dispute. In this matter, the member firm, Investors Street, is a party.

|                         |              |
|-------------------------|--------------|
| Member surcharge        | = \$1,000.00 |
| Pre-hearing process fee | = \$ 600.00  |
| Hearing process fee     | = \$1,500.00 |

### **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:

|  |              |
|--|--------------|
| Two (2) Pre-hearing sessions with the Panel x \$500.00 | = \$1,000.00 |
| Pre-hearing dates: January 19, 2000                    | 1 session    |
| February 9, 2000                                       | 1 session    |

|                                     |              |
|-------------------------------------|--------------|
| Two (2) Hearing sessions x \$500.00 | = \$1,000.00 |
| Hearing date: March 9, 2000         | 2 sessions   |

|                  |              |
|------------------|--------------|
| Total Forum Fees | = \$2,000.00 |
|------------------|--------------|

The Panel has assessed \$1,000.00 of the forum fees jointly and severally to Claimants.  
The Panel has assessed \$1,000.00 of the forum fees to Respondent Investors Street.

### **Fee Summary**

Claimants be and hereby are jointly and severally liable for:

|                                   |              |
|-----------------------------------|--------------|
| Initial Filing Fee                | = \$ 150.00  |
| Forum Fees                        | = \$1,000.00 |
| Total Fees                        | = \$1,150.00 |
| Less payments                     | = \$ 650.00  |
| Balance Due NASD Regulation, Inc. | = \$ 500.00  |

Respondent Investors Street be and hereby is solely liable for:

|                                   |                     |
|-----------------------------------|---------------------|
| Counterclaim Filing Fee           | = \$ 500.00         |
| Member Fees                       | = \$3,100.00        |
| Forum Fees                        | = \$1,000.00        |
| Total Fees                        | = \$4,600.00        |
| <u>Less payments</u>              | <u>= \$3,625.00</u> |
| Balance Due NASD Regulation, Inc. | = \$ 975.00         |

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

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Howard A. Rose, Esq.  
(Public, Presiding Chairperson)

\_\_\_\_\_  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Jonathan H. Parker, Esq.  
(Industry Arbitrator)

\_\_\_\_\_  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Sheldon N. Reibman, Esq.  
(Public Arbitrator)

\_\_\_\_\_  
Signature Date

April 20, 2000  
Date of Service

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

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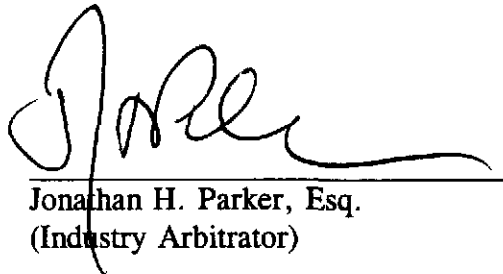
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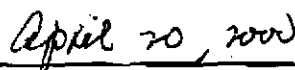
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