

Amended Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Michael DePaolo (Claimant) vs. West America Securities Corp., Correspondent Services Corporation, and Robert Kay, (Respondents)

Case Number: 99-01431

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Michael DePaolo ("DePaolo"), hereinafter referred to as "Claimant": Robert E. Murphy, Esq., Upper Saddle River, NJ.

Respondents, West America Securities Corp. ("West America") and Robert Kay ("Kay"): H. Thomas Fehn, Esq., Fields, Fehn & Sherwin, Los Angeles, CA, and David E. Robbins, Esq., Kaufmann, Feiner, Yamin, Gildin & Robbins, New York, NY. Previously represented by: James A. Bush, Esq., Law Offices of James A. Bush, PC, Cardiff By The Sea, CA.

Respondent, Correspondent Services Corporation ("CSC"): Martin D. Edel, Esq., Miller & Wrubel, PC, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: March 22, 1999.

Claimant signed the Uniform Submission Agreement: March 17, 1999.

Claimant's Reply to Respondent West America's Counterclaim filed on or about: January 24, 2000.

Statement of Answer filed by Respondents West America and Kay on or about: January 11, 2000.

Counterclaim filed by Respondent West America filed on: January 11, 2000.

Respondents West America and Kay signed Uniform Submission Agreements: November 9, 1999.

Hearing Brief filed by Respondents West America and Kay on or about: June 3, 2002.

Statement of Answer, counterclaim and cross-claim filed by CSC on or about: January 10, 2000.

Respondent CSC signed the Uniform Submission Agreement: November 8, 1999.

CASE SUMMARY

Claimant asserted the following causes of action: solicitation and execution of transaction in Carl Mangino's ("Mangino") account by persons on Respondent West America's premises who were not licensed to conduct business in Colorado, the state of Carl Mangino's residence; rescission; fraudulent misrepresentation and inducement; conspiracy; tortious interference with contractual relationships; breach of contract; failure to supervise; fraud; and respondeat superior; defamation; libel; libel per se; impersonation and misrepresentation to defraud; slander; slander per se; failure to properly register Claimant; and detrimental reliance.

Unless specifically admitted in its Answer, Respondents West America and Kay denied the allegations made in the Statement of Claim and asserted the following defenses: there is no factual basis to Claimant's alleged causes of action; Respondents West America and Kay reported fairly and truthfully on Claimant's amended U-5 the reasonable and logical inference from their investigation; Claimant failed to mitigate damages; Claimant has not suffered any actual damages; immunity and privilege with respect to statements made in Claimant's amended U-5, alleged statements made to Mangino in the course of Respondent America West's investigation, and alleged statements made to Respondent America West's bonding company; West America properly registered Claimant and he has not suffered any damages as a result of his own failure to register in other jurisdictions; Respondents America West and Kay did not fraudulently park accounts in Claimant's account executive number and Claimant profited from whatever accounts were reassigned to him; Respondents West America and Kay did not fraudulently display Claimant's name on any customer records and Claimant has not and cannot allege damages as a result of the circumstances of which he complains; Respondents West America and Kay did not destroy documents that would have exculpated Claimant; Respondents West America and Kay deny liability for any damages per se; punitive damages are not warranted; whatever damages Claimant may have suffered are due to his own misconduct; unclean hands; and *in pari delicto*.

In its Counterclaim against Claimant, Respondent West America asserted the following causes of action: reimbursement for monies expended by Respondent West America to resolve Mangino's claims that he had been fraudulently duped; and conspiracy.

In its Reply to Respondent West America's Counterclaim, Claimant denied the allegations made and asserted no defenses.

Unless specifically admitted in its Answer, Respondent CSC denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief may be granted; Claimant's claims are barred by the applicable statute of limitations; estoppel; waiver; ratification; and agency.

In its counterclaim against Claimant, Respondent CSC asserted the following causes of action: Claimant's claim against Respondent CSC is frivolous.

In its cross claim against Respondent West America, Respondent CSC asserted the following causes of action: pursuant to the Clearing Agreement between Respondent West America and Respondent CSC, Respondent West America must indemnify Respondent CSC for any damages or liabilities assessed against it in these proceedings, and for all costs and expenses incurred in connection with these proceedings.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$1,000,000.00; punitive damages in an amount to be determined by the Panel; an order requiring deletion of Claimant's name from all future client documentation and that Respondent West America file an amended U-5 closing any investigation and exonerating Claimant, and joint indemnification by all Respondents against all claims arising from any "parked" accounts; a separate order of expungement of all references to this arbitration from Claimant's CRD records; reimbursement for all legal fees, costs and expenses of these proceedings; that the Panel, in its Award, specify a damage component which is supported by the evidence and is attributable to fraud, so that Claimant will be able to collect the Award; and referral of the matter for disciplinary investigation. On Respondent America West's counterclaim, Claimant requested dismissal of the counterclaim in its entirety; and reimbursement for all costs, fees and expenses, including attorneys' fees, expended in defending the counterclaim.

Respondents West America and Kay requested Claimant's claims be dismissed in their entirety, with prejudice; compensatory damages on the counterclaim in the amount of \$27,673.98, plus costs and attorneys' fees Respondent America West incurred in resolving Mangino's claims and any further damages it may incur as a result of the conspiracy in which Claimant participated; reimbursement for all costs, fees and expenses of these proceedings, including attorneys' fees; and such other relief as the Panel deems just and proper.

Respondent CSC requested Claimant claims be dismissed in their entirety; reimbursement for all costs, fees and expenses of these proceedings, including attorneys' fees, by Claimant or Respondent West America; indemnification of all liabilities by Respondent America West; and such other relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On March 6, 2002, Claimant Mangino settled his claim with Respondents West America and Kay, and was withdrawn as a party in this case.

On May 20, 2002, prior to the hearings in this matter, Claimant DePaolo and Respondent CSC entered into a Stipulation dismissing claims and counterclaims against each other. Accordingly, the NASD removed Respondent CSC as an active party in the case.

At the hearing, Claimant moved to have Respondent America West's counterclaim dismissed. Panel reserved its decision until the conclusion of the hearings.

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

1. Respondents West America and Kay be and hereby are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$50,000.00 without interest.
2. Respondent West America's counterclaim is denied.
3. The Panel recommends the expungement of the "yes" answers to item #13B(1)(b) and item #15 on Claimant's Form U-5 dated July 24, 1998, to be replaced with "no" answers, and expungement of the Disclosure Reporting Pages relating to item #13B(1)(b) and item #15 of said Form U-5, as well as expungement of the same information on any subsequent filings (U-4 or U-5) that also reported the same events either with the same details or updated details regarding the matter, based on the defamatory nature of the information, and the expungement of all reference to the above-captioned arbitration from Claimant's registration records maintained by the NASD Central Registration Depository ("CRD").

4. The Panel also recommends the expungement of the above-captioned arbitration and all adverse references to Claimant from all records of Securities Divisions in states in which Claimant is now, or may in the future be or seek to be registered, with the understanding that Claimant may have to obtain confirmation from a court of competent jurisdiction before the state Securities Divisions will consider the expungement directive.
5. Respondents West America and Kay be and hereby are liable for and shall reimburse Claimant for the \$375.00 filing fee previously paid to NASD Dispute Resolution.
6. All other requests for relief 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	= \$ 375.00
Counter claim filing fee	= \$ 1,000.00
Counter claim/cross-claim filing fee	= \$ 1,250.00

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 West America and CSC are member firms.

Member surcharge	= \$ 2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 3,500.00

Adjournment Fees

Adjournments requested during these proceedings:

January 7 - 11, 2002, adjournment by Claimant	= \$ 1,200.00
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The Panel has assessed the adjournment fee jointly and severally against West America and Kay.

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 a single arbitrator x \$450.00 = \$ 900.00

Pre-hearing conferences: October 11, 2001 1 session
 October 15, 2001 1 session

Three (3) Pre-hearing sessions with Panel x \$1,200.00 = \$ 3,600.00

Pre-hearing conferences: June 18, 2001 1 session
 March 4, 2002 1 session
 March 8, 2002 1 session

Nine (9) Hearing sessions x \$1,200.00 = \$ 10,800.00

Hearing Dates: June 10, 2002 2 sessions
 June 11, 2002 2 sessions
 June 12, 2002 2 sessions
 June 13, 2002 2 sessions
 June 14, 2002 1 session
 August 12, 2002 2 sessions
 August 13, 2002 2 sessions

Total Forum Fees = \$ 15,300.00

1. The Panel has assessed the entire amount of the forum fees jointly and severally against Respondents America West and Kay.

Fee Summary

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 375.00
<u>Total Fees</u>	= \$ 375.00
<u>Less payments</u>	= \$ 1,575.00
Refund Due Claimant	= \$ 1,200.00

As stated in the "Award" section above, Respondents West America and Kay are jointly and severally liable and shall reimburse Claimant for the \$375.00 filing fee.

2. Respondent West America be and hereby is solely liable for:

Counter claim Filing Fee	= \$ 1,000.00
<u>Member Fees</u>	<u>= \$ 6,100.00</u>
Total Fees	= \$ 7,100.00
<u>Less payments</u>	<u>= \$ 4,270.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,830.00

3. Respondents West America and Kay be and hereby are jointly and severally liable for:

Adjournment Fee	= \$ 1,200.00
<u>Forum Fee</u>	<u>= \$15,300.00</u>
Total Fees	= \$16,500.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$16,500.00

4. Respondent CSC be and hereby is solely liable for:

Counter claim/Cross-claim Filing Fee	= \$ 1,250.00
<u>Member Fees</u>	<u>= \$ 6,100.00</u>
Total Fees	= \$ 7,350.00
<u>Less payments</u>	<u>= \$ 8,550.00</u>
Refund Due Respondent CSC	= \$ 1,200.00

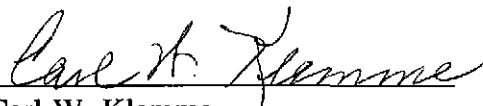
All balances are due and payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

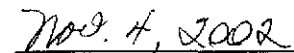
Carl W. Klemme	-	Public Arbitrator, Presiding Chair
Judith Joseph, Esq.	-	Public Arbitrator
Buanita M. Greer	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Carl W. Klemme
Public Arbitrator, Presiding Chair



Signature Date

Judith Joseph, Esq.
Public Arbitrator

Signature Date

Buanita M. Greer
Non-Public Arbitrator

Signature Date

December 11, 2002
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Carl W. Klemme
Judith Joseph, Esq.
Buanita M. Greer

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

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Carl W. Klemme
Public Arbitrator, Presiding Chair

Signature Date



Judith Joseph, Esq.
Public Arbitrator

10/24/02

Signature Date

Buanita M. Greer
Non-Public Arbitrator

Signature Date

December 11, 2002

Date of Service (For NASD Dispute Resolution use only)

ARBITRATOR PANEL

Carl W. Klemme
Judith Joseph, Esq.
Buanita M. Greer

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

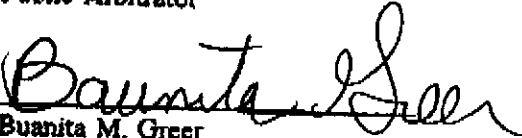
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Carl W. Klemme
Public Arbitrator, Presiding Chair

Signature Date

Judith Joseph, Esq.
Public Arbitrator

Signature Date


Buanita M. Greer
Non-Public Arbitrator

10/31/02
Signature Date

December 11, 2002

Date of Service (For NASD Dispute Resolution use only)