

Stipulated Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Kim Mitchell

Case No. 99-01637

Name of Respondents

Barington Capital Group, L.P.
Brandon Ross

REPRESENTATION OF PARTIES

For Kim Mitchell ("Mitchell"), hereinafter also referred to as "Claimant": Richard A. Stephens, Esq., Boca Raton, Florida.

For Respondent Barington Capital Group, L.P. ("Barington"): Clifford Thau, Esq. of Squadron, Ellenoff, Plesent & Sheinfeld, LLP, New York, New York.

For Respondent Brandon Ross ("Ross"): Robert L. Herskovits, Esq. of the Law Office of Michael F. Bachner, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: March 30, 1999.

Claimant signed the Uniform Submission Agreement on: April 1, 1999.

Statement of Answer filed by Respondent Barington on or about: July 16, 1999.

Statement of Answer filed by Respondent Ross on or about: July 13, 1999.

Respondents Barington and Ross did not file with NASD Dispute Resolution, Inc. properly executed Uniform Submission Agreements.

CASE SUMMARY

Claimant alleged the following causes of action: fraud, Securities Exchange Act violations, SEC Rule violations; unsuitability; breach of fiduciary duty; breach of contract; negligence; and, negligent supervision.

Unless specifically admitted in its Statement of Answer, Respondent Barington denied the allegations of wrongdoing contained in the Statement of Claim and asserted the following: Claimant is an experienced and sophisticated businessman who opened an account at Barington seeking to invest in high-growth securities and to grow his portfolio. Claimant does not and cannot allege that he was not promptly advised of all the trades he made in his account by both confirmations and monthly account statements. Claimant ratified all trades under the terms of his Client Agreement.

Unless specifically admitted in his Statement of Answer, Respondent Ross denied the allegations of wrongdoing contained in the Statement of Claim and asserted the following: This claim is a classic use of perfect hindsight and empty hyperbole to manufacture a claim that the broker, rather than the investor himself, should be held responsible for losses incurred by his own informed investment decisions. *Claimant is not entitled to damages merely because his portfolio ultimately declined in value, any more than he would be required to give back trading profits generated from the same kind of investments about which he now complains. Claimant's claim is based solely upon market fluctuations and the unexpected reversal of the performance of the investments at issue.*

RELIEF REQUESTED

Claimant requested compensatory damages of \$344,985.69, punitive damages of at least 1,034,957.07, attorneys' fees, pre-judgment interest at the legal rate, costs of this action including filing fees, hearing session fees and expert witness fees.

Respondent Barington requested a dismissal of the claim, costs and expenses including reasonable attorneys' fees incurred in defense of this action, and such other relief deemed just and proper by the panel.

Respondent Ross requested a dismissal of the claim.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Barington and Ross did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

On May 4, 2000, Claimant advised NASD Dispute Resolution, Inc. that the parties had reached a settlement agreement and that Claimant wished to dismiss all claims against the Respondents, with prejudice. On May 5, 2000, the parties filed with NASD Dispute Resolution, Inc. a Stipulated Award signed by counsel for all parties requesting that the arbitration panel order the expungment of any and all references to this matter from the Central Registration Depository ("CRD") records of Respondent Ross.

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 and the Stipulated Award submitted by the parties the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The arbitration panel recommends the expungment of all references to the above-captioned arbitration from Respondent Ross' CRD records with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Ross must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungment directive.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim 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 is a party.

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

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 a single arbitrator x \$450.00 = \$450.00
Pre-hearing conference date: December 8, 1999 1 session

One (1) Pre-hearing session with the Panel x \$1,200.00 = \$1,200.00
Pre-hearing conference date: October 21, 1999 1 session

Total Forum Fees = \$1,650.00

The Panel has assessed \$825.00 of the forum fees to Claimant.

The Panel has assessed \$412.50 of the forum fees to Respondent Barington.

The Panel has assessed \$412.50 of the forum fees to Respondent Ross.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee = \$ 500.00
Forum Fees = \$ 825.00
Total Fees = \$1,325.00
Less payments = \$1,325.00
Balance Due NASD Dispute Resolution, Inc. = \$ 0.00

Respondent Barington be and hereby is solely liable for:

Member Fees	= \$7,600.00
Forum Fees	= \$ 412.50
Total Fees	= \$8,012.50
Less payments	= \$3,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,912.50

Respondent Ross is solely liable for:

Forum Fees	= \$412.50
Total Fees	= \$412.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$412.50

All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

_____/s/_____
Thomas M. Dachelet, Esq.
Public/Chairperson

Signature Date

_____/s/_____
Elizabeth P. Johnson, Esq.

Signature Date

_____/s/_____
Richard H. Schneider

Signature Date

September 19, 2000

Date of Service (For NASD-DR office use only)

Respondent Barington be and hereby is solely liable for:

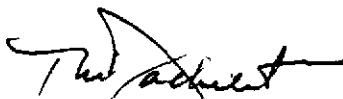
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Forum Fees	= \$ 412.50
Total Fees	= \$8,012.50
Less payments	= \$3,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,912.50

Respondent Ross is solely liable for:

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Less payments	= \$ 0.00
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Thomas M. Dachelet, Esq.
Public/Chairperson

9-19-00

Signature Date

Elizabeth P. Johnson, Esq.

Signature Date

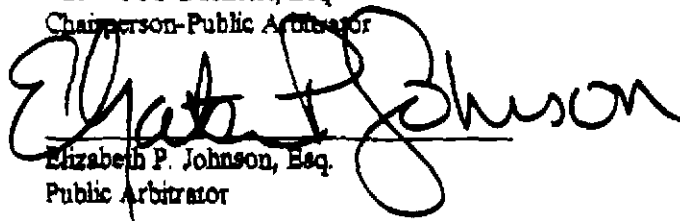
Richard H. Schneider

Signature Date

Date of Service (For NASD-DR office use only)

ARBITRATORS' SIGNATURE

Thomas M. Dachelet, Esq.
Chairperson-Public Arbitrator


Elizabeth P. Johnson, Esq.
Public Arbitrator

Richard H. Schneider
Industry Arbitrator

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Public/Chairperson

Signature Date

Elizabeth P. Johnson, Esq.

Signature Date



Richard H. Schneider



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