

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Vincenzo Mure, (Claimant) vs. Continental Broker-Dealer Corp., Gregory Hasho, Gaspare Bongiorno, Preston Langley Asset Management, Inc., and Alan M. Berkun, (Respondents)

Case Number: 99-01901

Hearing Site: Boston, Massachusetts

REPRESENTATION OF PARTIES

Claimant, Vincenzo Mure, hereinafter referred to as "Claimant": Howard M. Rosenfield, Esq., a sole practitioner, Avon, CT.

Respondents, Continental Broker-Dealer Corp. ("Continental"), Gregory Hasho ("Hasho"), and Gaspare Bongiorno ("Bongiorno"), did not appear at the hearing in this matter. Previously represented by: Diane M. Lundin, Esq., The Vincent A. DeIorio Law Firm, Purchase, NY.

Respondent, Preston Langley Asset Management, Inc. ("Preston"): John E. MacDonald, Esq., Stark & Stark, Princeton, NJ.

Respondent, Alan M. Berkun ("Berkun"), did not appear at the hearing in this matter. Previously represented by: John E. MacDonald, Esq., Stark & Stark, Princeton, NJ.

CASE INFORMATION

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

Claimant signed the Uniform Submission Agreement: February 24, 1999.

Statement of Answer filed by Continental, Hasho, and Bongiorno on or about: August 18, 1999.

Continental signed the Uniform Submission Agreement: September 22, 1999.

Hasho signed the Uniform Submission Agreement: August 16, 1999.

Bongiorno signed the Uniform Submission Agreement: August 16, 1999.

Statement of Answer filed by Preston on or about: November 9, 1999.

Preston signed the Uniform Submission Agreement: November 10, 1999.

Statement of Answer filed by Berkun on or about: May 12, 2000.

Berkun did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: violations of NASD and New York Stock Exchange Rules; breach of fiduciary duties; unsuitability; failure to supervise; agency and control person liability; excessive trading; breach of contract; negligence and gross negligence; common law fraud; and violation of securities laws. Claimant's claim involved the securities of Zoom Telephones, U.S. Bridge and Fun Tyme Concepts, as well as other unspecified securities.

Unless specifically admitted in their Answer, Continental, Hasho, and Bongiorno denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim does not state a cause of action upon which relief may be granted; the relief requested is barred by the doctrines of estoppel, release, waiver, laches, ratification, accord and satisfaction; Claimant failed to mitigate his damages; the relief requested is barred by Claimant's assumption of the risks inherent in all securities transactions; the damages allegedly suffered by Claimant were caused, in whole or in part, by the culpable conduct or negligent acts of said Claimant, and/or Claimant's own failure to act in good faith; the relief requested is barred by Article III, Section 27 of the NASD Rules of Fair Practice in that a system was established and maintained to supervise the activities of registered representatives which was reasonably designed to achieve compliance with applicable securities laws and regulations; the relief requested is barred by the applicable statute of limitations, by the statute of frauds, and by the parol evidence rule; the relief requested is barred by Claimant's unclean hands and by Claimant's violation of the NASD Code of Arbitration Procedure; Respondents acted in good faith, with ordinary care and prudence, and did not violate any contractual agreements or laws; the relief requested is barred in whole or in part by Claimant's consent to, acquiescence in, authorization of, approval of, and satisfaction with the investments made on Claimant's behalf, and by Respondents' timely disclosure of investments completed on Claimant's behalf; the relief requested is barred in whole or in part by the terms of the customer agreement and/or by Claimant's breach thereof; the relief requested is barred to the extent that any damages were proximately caused by acts or omissions of Claimant or by intervening or superseding conditions or events beyond the control of Respondents; Claimant has failed to state a claim for recovery of punitive damages; and recovery of interest and/or attorneys' fees upon the claim has no basis in law or in fact.

Unless specifically admitted in its Answer, Preston denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief may be granted; Claimant directed, approved, and authorized each and every transaction in his account; Claimant ratified each and every transaction in his account; Claimant, by his conduct, and under all the circumstances of this case, is estopped from asserting any claims with respect to the transactions made in his account; Claimant

failed to mitigate any alleged damages; any alleged damages which may have occurred were the direct result of market conditions and other factors beyond the control of Preston; all transactions recommended to and made for or on behalf of Claimant were suitable for and in accordance with his investment objectives and financial condition; there was no fiduciary duty owed to Claimant by Preston as a matter of law, or under the circumstances of this case; any duties owed by Preston to Claimant were fully and faithfully carried out; Claimant is barred from recovery because he directly instructed, directed, authorized, and consented to the transactions in question; the investments in Claimant's account were suitable; Respondents did not act with any intent to defraud Claimant or with reckless disregard of his interests; there were no misrepresentations or omissions of material fact upon which Claimant relied to his detriment; Claimant waived the claims asserted herein; Claimant is barred, in whole or in part, from raising the claims asserted herein by the doctrines of ratification and affirmance or acquiescence in the conduct alleged; Claimant's account was not "churned" as a matter of law or as a matter of fact; Claimant's claims are barred, in whole or in part, by the applicable statutes of limitation; Claimant knew and was aware of the risks associated with his investments and voluntarily chose to assume those risks; Claimant is estopped from seeking recovery on the basis of allegations that are inconsistent with the representations and warranties made by Claimant; the Doctrine of Laches bars Claimant's claims; Claimant did not reasonably rely on any matters, statements, or omissions attributable to Preston; any claims Claimant might have against Preston are barred because Claimant had full access and an ability to inquire: (1) and failed to exercise due diligence or reasonable care, (2) knew, or in the exercise of the required degree of care and due diligence, should have known, of the existence of those matters alleged to constitute violations of law that formed his claims, (3) acted in willful and reckless disregard of those facts and matters alleged to constitute violations or causes of action by having taken benefits under the agreements and contracts complained of, (4) ratified or acquiesced in some or all of the matters alleged to constitute violations or claims, (5) unjustifiably relied on any alleged misrepresentations, and (6) failed to mitigate damages; Preston is not liable to Claimant because it had no duty, contractual or otherwise, to disclose or inform Claimant of any facts other than those which were disclosed, nor did Preston breach any duty owed to Claimant, if such a duty existed; the actions of Preston are not the proximate cause of Claimant's alleged damages; Claimant's claims are barred by the doctrine of in pari delicto and unclean hands; the claims are barred by the principles of waiver, estoppel, and ratification; Preston discharged its responsibilities in a professional and ethical manner and all of its actions were well within the parameters of accepted brokerage procedures and all exchange and governmental regulations; any losses in Claimant's account were the result of unforeseen

market fluctuations and were within the risks assumed; Claimant has failed to properly compute his alleged damages and, accordingly, seeks a windfall; the damages allegedly suffered by Claimant have no causal relationship with any act committed by or legally attributable to Preston; Preston, at all times, discharged its responsibilities properly and in good faith with respect to all investments made by Claimant; and there is no private right of action for any alleged violation of the rules of self-regulatory organizations.

Unless specifically admitted in his Answer, Berkun denied the allegations made in the Statement of Claim and asserted the following defenses: Berkun is no longer an "associated person" for purposes of NASD jurisdiction and Berkun is not a proper Respondent in this case.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages in the amount of \$181,899.00 from Continental and \$35,650.00 from Preston, pursuant to the revised Miley v. Oppenheimer Well-Managed Account calculation along with "make whole award" attorneys' fees of \$108,774.50, for a total of \$326,323.50;
2. Pre and post-award interest;
3. Punitive damages in such amount as the Panel deems appropriate to deter Respondents from future acts of misconduct such as those giving rise to this claim; and
4. Payment of all of Claimant's costs, expenses, and disbursements including reasonable attorneys' fees in pursuing this claim.

Continental, Hasho, and Bongiorno requested that the Statement of Claim be dismissed in its entirety with prejudice, and that they be awarded such other and further relief as the Panel deems appropriate under the circumstances presented.

Preston requested a judgement dismissing the Statement of Claim, with prejudice, together with an Award of all reasonable costs and expenses, including reasonable attorneys' fees, costs of suit, and such further relief as the Panel deems just and proper.

Berkun requested that he be dismissed from this matter.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Bongiorno and Berkun 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 Bongiorno and Berkun present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Berkun did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

Prior to the hearing in this matter, Continental and Hasho entered into a settlement agreement with Claimant.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Preston, Bongiorno, and Berkun be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$35,000.00 as compensatory damages.
2. Claimant's request for punitive damages is hereby denied.
3. All other requests for relief are hereby denied.

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 = \$ 300.00

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, Continental Broker-Dealer Corp. and Preston Langley Asset Management, Inc. are parties.

Continental Broker-Dealer Corp.

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

Preston Langley Asset Management, Inc.

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 \$1,125.00	= \$1,125.00
Pre-hearing conference: October 17, 2000 1 session	
Two (2) Hearing sessions x \$1,125.00	= \$2,250.00
<u>Hearing Date:</u> January 29, 2001 2 sessions	
Total Forum Fees	= \$3,375.00

The Panel has assessed all of the forum fees jointly and severally against Berkun, Bongiorno and Preston.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$1,425.00
Refund Due Claimant	= \$1,125.00

2. Continental be and hereby is solely liable for:

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

3. Preston be and hereby is solely liable for:

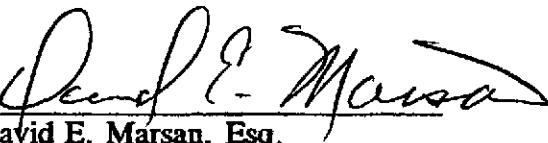
<u>Member Fees</u>	= \$4,600.00
Total Fees	= \$4,600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,600.00

4. Berkun, Bongiorno and Preston are jointly and severally liable for:

<u>Forum Fees</u>	= \$3,375.00
Total Fees	= \$3,375.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,375.00

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

Concurring Arbitrators' Signatures



David E. Marsan, Esq.
Public Arbitrator, Presiding Chair

3-22-01

Signature Date

Robert Titus
Public Arbitrator

Signature Date

Theodore R. Turner, Jr.
Industry Arbitrator

Signature Date

March 29, 2001

Date of Service (For NASD office use only)

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Concurring Arbitrators' Signatures

David E. Marsan, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Robert B. Titus
Robert Titus
Public Arbitrator

April 9, 2001
Signature Date

Theodore R. Turner, Jr.
Industry Arbitrator

Signature Date

April 12, 2001
Date of Service (For NASD office use only)

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Public Arbitrator, Presiding Chair

Signature Date

Robert Titus
Public Arbitrator

Signature Date



Theodore R. Turner, Jr.
Industry Arbitrator

3-22-01
Signature Date

March 29, 2001

Date of Service (For NASD office use only)