

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Gary Niedert and Johanna Niedert, Claimants vs. Madison Capital Markets Corp., Vincent Napolitano and Michael Metter, Respondents.

Case Number: 99-01947 Hearing Site: Milwaukee, Wisconsin

REPRESENTATION OF PARTIES

Claimants, Gary Niedert and Johanna Niedert (Niedert) (hereinafter referred to as "Claimants"), were represented by Michael H. Schaalman, Esquire of Quarles & Brady, LLP, Milwaukee, Wisconsin.

Respondents, Madison Capital Markets Corp. ("Madison Capital"), Vincent Napolitano ("Napolitano"), and Michael Metter ("Metter") (collectively referred to as "Respondents") were not represented by counsel and did not appear at the hearing.

CASE INFORMATION

Claimants' Joint Statement of Claim against Respondents Madison Capital and Napolitano was filed on or about April 27, 1999.

Claimants' Submission Agreement was signed on April 26, 1999.

Respondent Madison Capital's Statement of Answer, Counterclaim, Cross-claim (against Respondent Napolitano) and Third-party Claim (against Respondent Metter) was filed on or about August 12, 1999.

Lawrence Zelin, Chief Operating Officer for Respondent Madison Capital, signed the Uniform Submission Agreement on August 13, 1999.

Claimants filed an Amended Statement of Claim, in which they added Respondent Metter, on or about September 21, 1999.

Respondent Metter's Answer to Madison Capital's Third-party Claim and Claimants' Amended Statement of Claim was filed on or about November 8, 1999.

Respondent Metter did not sign the Uniform Submission Agreement.

Respondent Napolitano did not file an Answer, nor did he sign the Uniform Submission Agreement.

CASE SUMMARY

Claimants made the following allegations in their Joint Statement of Claim and in their Amended Statement of Claim: failure to supervise, as well as fraud and unauthorized trading in violation of NASD Rules and Wisconsin state law. The allegations were related to transactions in the following securities: Southern Pacific Funding Corp.; Open Market, Inc.; Macrochem Corp.; Zapata Corp.; Novell, Inc. and Microsoft Corp.

Respondent Madison Capital denied all liability to Claimants and asserted various affirmative defenses, including failure to state a claim and failure to mitigate. Respondent Madison Capital also asserted claims against Claimants, alleging the following: breach of contract. Respondent Madison Capital also asserted a right to indemnification from Respondents Napolitano and Metter should liability be assessed against it.

Respondent Metter denied all liability to Claimants and asserted various affirmative defenses, including failure to state a claim; ratification; estoppel; waiver; laches; unclean hands and contributory negligence.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$269,753.31
Attorney's Fees	unspecified

Claimants also requested rescission of certain transactions and specific performance (the return of certain securities).

Respondent Madison Capital requested in its Counterclaim:

Compensatory Damages	\$ 22,056.29
Attorney's Fees	unspecified
Interest	unspecified

Respondent Madison Capital also requested that Claimants' Statement of Claim be dismissed in its entirety and that it be awarded its costs in connection with the matter.

Respondent Metter requested that Claimants' claims, as well as Madison Capital's Third-party Claim for indemnification, be dismissed in their entirety and that he be awarded his costs in connection with the matter.

OTHER ISSUES CONSIDERED AND DECIDED

On or about October 13, 2000, Claimants settled with Respondent Napolitano and dismissed their claims against him with prejudice.

Respondent Madison Capital did not sign the Uniform Submission Agreement, nor did anyone appear on its behalf at the hearing. However, Madison Capital filed an Answer and made its own claims, and is bound by the Panel's ruling on all claims submitted for decision pursuant to the Code of Arbitration Procedure.

Respondent Metter did not sign the Uniform Submission Agreement, nor did anyone appear on his behalf at the hearing. However, Metter filed an Answer and is bound by the Panel's ruling on all claims submitted for decision pursuant to the Code of Arbitration Procedure.

AWARD

After considering the pleadings and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants shall receive \$250,000 (Two Hundred Fifty Thousand Dollars). Included in this award are Compensatory Damages, Attorneys' Fees and Costs.
2. Interest at the legal rate shall be paid on the amount awarded in paragraph 1 above, and shall accrue from October 16, 1999 until the award is paid in full.
3. Respondents, Madison Capital Markets Corp. and Michael Metter, are jointly and severally liable for the entire amount awarded in paragraphs 1 and 2 above.
4. Respondent Madison Capital's Counterclaim, Cross-claim, and Third-party Claim are each dismissed with prejudice.

Any and all relief not specifically addressed herein, including punitive damages, is 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

Third-party claim filing fee = \$ 500

The Panel directs the reimbursement of Claimants' initial claim filing fee by Respondents, Madison Capital Markets Corp. and Michael Metter, jointly and severally.

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 Madison Capital Markets Corp.

Member surcharge = \$1,500

Pre-hearing process fee = \$ 600

Hearing process fee = \$2,500

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing conference with Panel x \$1,125 = \$ 1,125

Pre-hearing conference: March 20, 2000 1 session

One (1) Hearing session x \$1,125 = \$ 1,125

Hearing Date: October 16, 2000 1 session

Total Forum Fees = \$ 2,250

The Panel has assessed \$2,250 in Forum Fees to Respondents, Madison Capital Markets Corp. and Michael Metter, jointly and severally.

Fee Summary

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee = \$ 300

Total Fees = \$ 300

Less payments = \$ 1,425

Balance Due NASD Dispute Resolution, Inc. = \$ (1,125)

NASD Dispute Resolution, Inc. will refund this \$1,125 to Claimants. Additionally, Respondents, Madison Capital and Metter, will reimburse the initial filing fee directly to Claimants.

2. Respondent, Madison Capital, be and hereby is solely liable for:

Third-party Claim Filing Fee	= \$ 500
Member Fees	= \$ 1,500
Pre-Hearing Process Fees	= \$ 600
Hearing Process Fees	= \$ 2,500
Total Fees	= \$ 5,100
Less payments	= \$ 1,450
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,650

3. Respondents, Madison Capital and Metter, be and hereby are jointly and severally liable for:

Forum Fees	= \$ 2,250
Total Fees	= \$ 2,250
Less Payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,250

With the exception of the Initial Filing Fee reimbursement, payable directly to Claimants, all balances are due to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

Ben L. Chernov
Ben L. Chernov, Esq.
Public Arbitrator, Presiding Chair

December 20, 2000
Signature Date

Frances O. Beach
Frances O. Beach
Public Arbitrator

December 20, 2000
Signature Date

Ronald A. Lavery
Ronald A. Lavery
Non-Public Arbitrator

December 18, 2000
Signature Date

February 14, 2001
Date of Service (For NASD-DR office use only)

NASD-DR Award

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<u>Total Fees</u>	<u>= \$ 5,100</u>
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Balance Due NASD Dispute Resolution, Inc.	= \$ 3,650

3. Respondents, Madison Capital and Metter, be and hereby are jointly and severally liable for:

Forum Fees	= \$ 2,250
<u>Total Fees</u>	<u>= \$ 2,250</u>
<u>Less Payments</u>	<u>= \$ 0</u>
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Ben L. Chernov
Ben L. Chernov, Esq.
Public Arbitrator, Presiding Chair

12-20-00

Signature Date

Frances O. Beach
Frances O. Beach
Public Arbitrator

Signature Date

Ronald A. Lavery
Ronald A. Lavery
Non-Public Arbitrator

Signature Date

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Public Arbitrator, Presiding Chair

Signature Date

Frances O. Beach
Frances O. Beach
Public Arbitrator

Dec. 20 00
Signature Date

Ronald A. Lavery
Non-Public Arbitrator

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