

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Jerry Deruelle and Carol Deruelle, (Claimants) vs. Everen Securities, Inc. and Samuel Paul, (Respondents)

Case Number: 99-02242

Hearing Site: Cleveland, Ohio

REPRESENTATION OF PARTIES

Claimants, Jerry Deruelle ("J. Deruelle") and Carol Deruelle ("C. Deruelle"), hereinafter collectively referred to as "Claimants": James B. Davis, Esq., Attorney at Law, Newbury, OH. Previously represented by: Douglas A. King, Esq., Attorney at Law, Chagrin Falls, OH and Laura J. Avery, Esq., Reminger & Reminger Co., L.P.A., Cleveland, OH, respectively.

Respondent, Everen Securities, Inc. ("Everen"): Michael A. Gross, Esq., Ulmer & Berne LLP, Cleveland, OH.

Respondent, Samuel Paul ("Paul"), appeared *pro se*.

CASE INFORMATION

Statement of Claim filed on or about: May 5, 1999.

J. Deruelle signed the Uniform Submission Agreement: April 10, 1999.

C. Deruelle signed the Uniform Submission Agreement: April 10, 1999.

Statement of Answer filed by Everen on or about: December 28, 1999.

Everen signed the Uniform Submission Agreement: November 1, 1999.

Statement of Answer filed by Paul on or about: August 23, 1999.

Paul signed the Uniform Submission Agreement: August 20, 1999.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitability; excessive trading; fraud; violations of the Securities Exchange Act of 1934 and the Securities Act of 1933; violations of Ohio securities statutes; breach of fiduciary duty; misrepresentations and omissions; unauthorized trades; failure to properly supervise; and negligent investment advice. Claimants' claim involved unspecified financial products.

Unless specifically admitted in its Answer, Everen denied the allegations made in the Statement of Claim and asserted the following defenses: many of Claimants' claims are not eligible for arbitration pursuant to the NASD Code of Arbitration Procedure, as more than six years have elapsed since said claims arose; Claimants' claims are barred by the equitable principles of laches, waiver, estoppel, and ratification; Claimants' claims are barred by the statute of limitations under Ohio law; Claimants ratified and accepted each of the transactions complained of in their Statement of Claim; Claimants made their own deliberate and informed decisions to engage in an aggressive investment approach and to accept the risk of doing so; the type of investments made in Claimants' account were suitable for their chosen trading strategy; any recommendations made to Claimants were made in good faith and in response to the specific requests of Claimants; the frequency of trading in Claimants' account and the amount of commissions which resulted from this frequent trading were consistent with Claimants' chosen trading strategy; Claimants' fraud and breach of fiduciary duty claims fail for lack of reliance and intent; and there is no basis for a claim of negligence.

Unless specifically admitted in his Answer, Paul denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants controlled their own account; Claimants determined what was suitable for them and what was not; Claimants traded stocks with Paul for years, and at no time did they submit a complaint about Paul's handling of the account; and Claimants were sophisticated investors with several years of studying and trading in the stock market.

RELIEF REQUESTED

Claimants requested compensatory and punitive damages totaling \$1,000,000.00, plus interest, costs, and attorneys' fees.

Everen requested that an Award be rendered in its favor:

- a. Dismissing all of Claimants' claims;
- b. Awarding Everen their attorneys' fees and costs incurred in defending this arbitration; and
- c. Assessing all forum costs against Claimants.

Paul requested that judgement be rendered in his favor and against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

On the morning of June 20, 2002, the third day of hearings in this matter, the Panel was advised that Claimant had entered into a settlement agreement with Respondent Everen. Therefore, the remainder of the hearing proceeded against Respondent Paul only.

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. Claimant's claims against Paul are hereby dismissed in their entirety.
2. All other requests for relief are hereby 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

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, Everen Securities, Inc. is a party.

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

Adjournment Fees

Adjournments requested during these proceedings:

May 9, 10 & 11, 2000, adjournment by Claimant	= WAIVED
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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 Panel x \$1,200.00		= \$2,400.00
Pre-hearing conferences:	January 10, 2000	1 session
	January 22, 2002	1 session
Six (6) Hearing sessions x \$1,200.00		= \$7,200.00
Hearing Dates:	June 18, 2002	2 sessions
	June 19, 2002	2 sessions
	June 20, 2002	2 sessions
<hr/> Total Forum Fees		= \$9,600.00

The Panel has assessed all of the forum fees against Everen.

Fee Summary

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

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

2. Everen be and hereby is solely liable for:


<u>Member Fees</u>	= \$ 6,100.00
<u>Forum Fees</u>	= \$ 9,600.00
<u>Total Fees</u>	= \$15,700.00
<u>Less payments</u>	= \$ 6,700.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 9,000.00

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

ARBITRATION PANEL

Elmer G. Cowan, Esq.	-	Public Arbitrator, Presiding Chair
Peter F. von Meister, Esq.	-	Public Arbitrator
Bertha A. Richardson	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Elmer G. Cowan, Esq.
Public Arbitrator, Presiding Chair

JUL 17 2002

Signature Date

Peter F. von Meister, Esq.
Public Arbitrator

Signature Date

Bertha A. Richardson
Non-Public Arbitrator

Signature Date

August 1, 2002

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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Peter F. von Meister, Esq.	-	Public Arbitrator
Bertha A. Richardson	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Elmer G. Cowan, Esq.
Public Arbitrator, Presiding Chair



Peter F. von Meister, Esq.
Public Arbitrator

Signature Date

07/31/02
Signature Date

Bertha A. Richardson
Non-Public Arbitrator

Signature Date

August 1, 2002

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Concurring Arbitrators' Signatures

Elmer G. Cowan, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Peter F. von Meister, Esq.
Public Arbitrator

Signature Date


Bertha A. Richardson
Non-Public Arbitrator

7-19-02
Signature Date

August 1, 2002

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