

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Georgia Capital Partners, Inc.
d/b/a Traders Advantage

Case No. 99-02945

Name of Respondent

Francis J. McMahon, Jr.

REPRESENTATION OF PARTIES

For Claimant Georgia Capital Partners, Inc. d/b/a Traders Advantage ("Traders") hereinafter referred to as "Claimant": Jeffrey W. Willis, Esq. of the law firm of Rogers & Hardin LLP, Atlanta, Georgia.

For Respondent Francis J. McMahon, Jr. ("McMahon") hereinafter referred to as "Respondent": H. Edward Marks, Jr., Esq., Loganville, Georgia.

CASE INFORMATION

Statement of Claim filed on or about: June 23, 1999.

Claimant's Response to Counterclaim filed on or about: September 13, 1999.

Claimant signed the Uniform Submission Agreement: June 9, 1999.

Statement of Answer and Counterclaim filed by Respondent on or about: September 3, 1999.

Respondent signed the Uniform Submission Agreement: September 3, 1999.

CASE SUMMARY

Claimant alleged the following: This is an action by Claimant against Respondent to recover a debit balance in Respondent's account pursuant to the Customer Account Agreement and a Customer Margin and Short Account Agreement executed by Respondent.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following: With respect to the transaction which is the subject of Claimant's claim, the transaction is void and unenforceable because it was made in violation of applicable law and in violation of NASD Rule 3370. As the subject transaction was an illegal short sale, entered into unknowingly by Respondent, Respondent is entitled to

rescind the subject transaction and receive the full amount of his account with Claimant prior to the subject transaction in the sum of \$10,466.10.

Respondent asserted a counterclaim which alleged the following causes of action: rescission; breach of contract; misleading and deceptive marketing; state securities law violations; and, recommendation of unsuitable securities. Further, Respondent asserted that the actions of Claimant justify an award of punitive damages to Respondent.

In response to the counterclaim, Claimant asserted the following: Respondent's counterclaim is without merit. Respondent's alleged losses are not attributable to any violation of applicable laws, rules, or regulations by Claimant. Respondent made all investment selections and decisions in his account. It was Respondent's sole responsibility to select securities that were consistent with his investment objectives and wishes. Further, under the facts of this case and applicable law, there is no basis for an award of punitive damages or attorneys' fees to Respondent.

RELIEF REQUESTED

Claimant requested damages in the sum of \$25,417.00 plus interest, attorney's fees and costs and that all forum fees be assessed against Respondent. Further, Claimant requested a dismissal of Respondent's counterclaim.

Respondent requested a dismissal of Claimant's claims in their entirety. Further, Respondent requested damages on its counterclaim in the amount of \$54,000.00, rescission of the subject transaction plus reimbursement in the sum of \$10,466.10, reasonable attorneys' fees and costs, punitive or exemplary damages in the amount of \$300,000.00 or such other amount as the panel deemed sufficient.

OTHER ISSUES CONSIDERED AND DECIDED

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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is liable and shall pay to Claimant damages in the sum of \$25,417.00, pre-judgment interest specifically excluded.

Respondent is liable and shall pay to Claimant the sum of \$8,472.33 in attorneys' fees pursuant to the contract executed by Respondent.

Respondent's counterclaim is dismissed in all respects.

Respondent's request for punitive damages is denied.

All other requests for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$1000.00
Counter claim filing fee	= \$300.00
	waived

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the *member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute.* In this matter, the member firm is a party.

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

Adjournment Fees

Adjournments requested during these proceedings:

No adjournments were requested during these proceedings.

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 Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: January 25, 2000	1 session
Seven Hearing sessions x \$1,125.00	= \$7,875.00
Hearing Dates: April 24, 2000	2 sessions
April 25, 2000	1 session
July 18, 2000	2 sessions
July 19, 2000	2 sessions
Total Forum Fees	= \$9,000.00

The Panel has assessed \$4,500.00 of the forum fees to Claimant.

The Panel has assessed \$4,500.00 of the forum fees to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives,

interpreters, and security.

Claimant requested copies of documents from the file at a cost of \$2.75.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$3,700.00
Forum Fees	= \$4,500.00
<u>Administrative Costs</u>	= \$2.75
Total Fees	= \$9,202.75
<u>Less payments</u>	= \$2652.75
Balance Due NASD Dispute Resolution, Inc.	= \$6,550.00

Respondent be and hereby is solely liable for:

Forum Fees	= \$4,500.00
Total Fees	= \$4,500.00
<u>Less payments</u>	= \$0.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,500.00

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

Concurring Arbitrators' Signatures

_____/s/_____
Hugh J. Moore, Jr., Esq.
Public Arbitrator, Presiding Chair

Signature Date

_____/s/_____
W. William Harness, Esq.
Public Arbitrator

Signature Date

_____/s/_____
David T. Maddux
Industry Arbitrator

Signature Date

August 16, 2000

Date of Service (For NASD Dispute Resolution, Inc. office use only)

interpreters, and security.

Claimant requested copies of documents from the file at a cost of \$2.75.

Fee Summary

Claimant be and hereby is solely liable for:

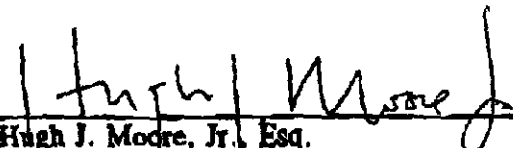
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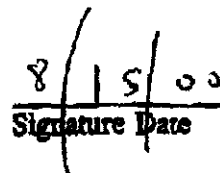
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Public Arbitrator, Presiding Chair


Signature Date

W. William Harness, Esq.
Public Arbitrator

Signature Date

David T. Maddux
Industry Arbitrator

Signature Date

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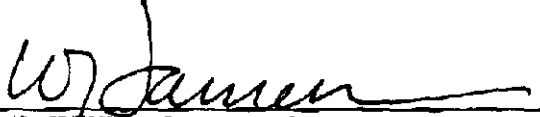
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Concurring Arbitrators' Signatures

Hugh J. Moore, Jr., Esq.
Public Arbitrator, Presiding Chair

Signature Date



W. William Harness, Esq.
Public Arbitrator

August 1, 2000

Signature Date

David T. Maddux
Industry Arbitrator

Signature Date

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Concurring Arbitrators' Signatures

Hugh J. Moore, Jr., Esq.
Public Arbitrator, Presiding Chair

Signature Date

W. William Harness, Esq.
Public Arbitrator

Signature Date



David T. Maddux
Industry Arbitrator

8/1/00

Signature Date

Date of Service (For NASD Dispute Resolution, Inc. office use only)