

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Horace E. Walsh

Case No. 99-02977

Names of Respondents

Joseph Humberto Castro
The Golden Lender Financial Group, Inc.
Lee Matthew Solomon, Jr.
Roman Sakharovich
Kenneth Robert Lauher
Konstantin Tokar

REPRESENTATION OF PARTIES

For Horace E. Walsh ("Walsh"), hereinafter referred to as "Claimant": Joseph Bilotta, Esq., Vassallo and Bilotta, Palm Springs, Florida until a substitution of counsel occurred on April 13, 2000. Thereafter, the Claimant was represented by Marc S. Dobin, Esq., Dobin and Jenks, LLP, Jupiter, Florida.

Respondent Lee Matthew Solomon, Jr. ("Solomon") appeared pro se.

Respondent Joseph Humberto Castro ("Castro") did not appear.

For Respondent The Golden Lender Financial Group, Inc. ("Golden Lender"): Foster J. Gibbons, General Counsel, The Golden Lender Financial Group, Inc.

Respondent Roman Sakharovich ("Sakharovich") did not appear.

Respondent Kenneth Robert Lauher ("Lauher") appeared pro se.

Respondent Konstantin Tokar ("Tokar") did not appear.

CASE INFORMATION

Statement of Claim filed on or about: June 29, 1999.

Amended Statement of Claim filed on or about: November 10, 1999.

Claimant signed the Uniform Submission Agreement: June 14, 1999.

Statement of Answer filed by Respondent Golden Lender on or about: September 20, 1999.
Respondent Golden Lender signed the Uniform Submission Agreement: September 16, 1999.

Statement of Answer filed by Respondent Lauher on or about: May 25, 2000.

Respondent Lauher did not file an executed Uniform Submission Agreement.

Respondent Castro did not file a Statement of Answer.

Respondent Castro did not file an executed Uniform Submission Agreement.

Respondent Solomon did not file a Statement of Answer.

Respondent Solomon did not file an executed Uniform Submission Agreement.

Respondent Sakharovich did not file a Statement of Answer.

Respondent Sakharovich did not file an executed Uniform Submission Agreement.

Respondent Tokar did not file a Statement of Answer.

Respondent Tokar did not file an executed Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following: In September 1997, Respondent Castro cold-called Claimant to induce Claimant to invest with Respondent Golden Lender. Respondent Castro continuously called Claimant until Claimant acquiesced. Unbeknownst to Claimant, the initial page of the customer agreement form was filled in by Respondent Golden Lender. The form indicated that Claimant's investment objectives were "growth with risk" and "speculation." The form reflected that Claimant was retired at the time, was seventy-seven years old and that he had a net worth of approximately \$150,000.00. Based upon this information, Claimant should not have been placed in risky or speculative investments, nor should he have been placed in a margin account. However, Respondent Golden Lender did place Claimant in risky or speculative investments and traded Claimant's account on margin even after Claimant objected to same. Respondent placed Claimant's funds in a Cash Force Account and purchased Gruppo Mex Desarrollo adr (GMD), and LSI Logic Corporation (LSI) on behalf of Claimant. The securities traded in the margin accounts were, among others, The Walt Disney (Holding) Co. (DIS), Cabletron Sys Inc. (CS), Steelcase, Inc. (SCS), Clayton Homes Inc., General Cigar Holdings, Inc. (MPP), Bay Networks, Inc. (BAY), Cypress Semiconductor, Corp. (CY), Domtar, Inc., Donna Karan Intl. (DK), Inc., The Sports Authority, Inc., Nike, Inc. Class B (NKE), and Airgas, Inc. (ARG). The brokers on Claimant's account after Respondent Castro were Respondent Lauher, then Respondent Solomon, then Respondent Tokar and finally Respondent Sakharovich. The individual brokers placed Claimant in unsuitable trades and churned his account. Respondent Golden Lender failed to supervise its brokers. All Respondents have violated Florida Statutes and the NASD Rules of Fair Practice.

Unless specifically admitted in its Answer, Respondent Golden Lender denied the allegations made in the Statement of Claim and asserted the following: Claimant freely chose to engage in trading activity that carried appreciable risk. The subjects of the trading were uniformly high quality NYSE-listed securities. Claimant at all times maintained control over his account and expressly authorized all transactions posted to his account. Claimant executed a margin agreement. Claimant endorsed the use of margin in each circumstance that margin

was used and understood and accepted the risks of margin trading and of the trading strategy he was following. Any losses sustained by Claimant were attributable to market forces and price fluctuations wholly outside Respondents' abilities to have predicted or controlled. Respondent Golden Lender had a reasonable belief that its representatives at all times acted in conformity with the standards of conduct of the industry and with NASD rules.

Respondent Lauher asserted that he never transacted any business with Claimant and was not in a supervisory position. Respondent Lauher also asserted that he never participated in any commissions received.

RELIEF REQUESTED

Claimant requested compensatory damages of \$142,014.67, punitive damages of \$284,029.34 as well as attorney's fees and costs.

Respondent Golden Lender requested that all claims be dismissed in their entirety. Respondent Golden Lender also requested that it be awarded all costs, including attorneys' fees, assessments and forum fees incurred in defending this action.

Respondent Lauher requested that all claims be dismissed in their entirety.

At the evidentiary hearing, Respondent Solomon requested that all claims be dismissed in their entirety. Respondent Solomon further requested that all references to this matter be expunged from his Central Registration Depository ("CRD") record maintained with the NASD.

OTHER ISSUES CONSIDERED AND DECIDED

At the evidentiary hearing on October 4, 2000, Claimant informed the arbitration panel that he was dismissing, with prejudice, all claims against Respondent Solomon. In addition, Claimant requested an expungement of this matter from the Central Registration Depository ("CRD") record of Respondent Solomon. The arbitration panel granted said request.

Claimant advised the arbitration panel, on the record at the commencement of the evidentiary hearing on October 4, 2000, that he had dismissed, with prejudice, all claims against Respondent Tokar.

Respondents Castro, Golden Lender, Sakharovich and Lauher did not attend the evidentiary hearing in this matter. Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators determined that Respondents Golden Lender, Castro, Lauher and Sakharovich 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 said Respondents present, in accordance with the NASD-DR Code of Arbitration Procedure (the "Code").

Respondent Lauher 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.

Respondents Tokar, Castro, Solomon and Sakharovich did not file with NASD Dispute Resolution, Inc. properly executed submissions 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.

The parties present at the hearing 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:

Respondents Golden Lender and Castro are liable, jointly and severally, and shall pay to Claimant the sum of \$135,000.00 as compensatory damages.

Respondents Golden Lender, Lauher and Sakharovich are liable, jointly and severally, and shall pay to Claimant the sum of \$25,000.00 as compensatory damages.

Respondents Golden Lender and Castro are liable, jointly and severally, and shall pay to Claimant the sum of \$50,000.00 as punitive damages. Punitive damages are awarded pursuant to Florida Statutes Section 517.301.

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

Respondents Golden Lender, Castro, Lauher and Sakharovich are liable, jointly and severally, and shall pay to Claimant the sum of \$300.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution, Inc.

The Claimant's request for attorney's fees is denied on the basis that no authority was provided upon which the Panel could award attorney's fees.

All other requests for relief not specifically addressed herein are 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
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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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

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

Adjournment Fees

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 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 \$1,125.00	= \$2,250.00
Pre-hearing conferences:	
June 6, 2000	1 session
July 11, 2000	1 session
One (1) Hearing session x \$1,125.00	= <u>\$1,125.00</u>
Hearing Date: October 4, 2000	1 session
Total Forum Fees	= \$3,375.00

The Panel has assessed the total forum fees of \$3,375.00 jointly and severally to Respondents Golden Lender, Castro, Sakharovich and Lauher.

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.

No administrative costs were incurred during these proceedings.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$300.00
Total Fees	= \$300.00
<u>Less payments</u>	<u>= \$300.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

Respondent Golden Lender be and hereby is solely liable for:

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

Respondents Golden Lender, Castro, Lauher and Sakharovich be and hereby are jointly and severally liable for:

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

All fees are payable to NASD Dispute Resolution, Inc. and are due within thirty days of the Award's date of service.

Concurring Arbitrators' Signatures

_____/s/_____
Michael Lau
Public Arbitrator, Presiding Chair

November 13, 2000
Signature Date

_____/s/_____
Arthur L. Sirkin, Esq.
Public Arbitrator

November 20, 2000
Signature Date

/s/
David W. Newman
Industry Arbitrator

November 14, 2000
Signature Date

November 15, 2000
Date of Service (For NASD-DR office use only)

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Fee Summary

Claimant be and hereby is jointly liable for:

Filing Fee

= \$300.00

Total Fees

= \$300.00

~~Less Payments~~

= \$300.00

Balance Due NASD Dispute Resolution, Inc.

= \$0.00

Respondent Golden Lender be and hereby is jointly liable for:

Member Fees

= \$4,600.00

Total Fees

= \$4,600.00

~~Less Payments~~

= \$0.00

Balance Due NASD Dispute Resolution, Inc.

= \$4,600.00

Respondents Golden Lender, Castro, Lauher and Sakharovich be and hereby are jointly and severally liable for:

Filing Fees

= \$3,375.00

Total Fees

= \$3,375.00

~~Less Payments~~

= \$0.00

Balance Due NASD Dispute Resolution, Inc.

= \$3,375.00

All fees are payable to NASD Dispute Resolution, Inc. and are due within thirty days of the Award's date of service.

Concurring Arbitrators' Signatures

Michael Lau

Public Arbitrator, Presiding Chair

11/13/2000
Signature DateArthur L. Strick, Esq.
Public Arbitrator

Signature Date

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$300.00
Total Fees	= \$300.00
<u>Less payments</u>	<u>= \$300.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

Respondent Golden Lender be and hereby is solely liable for:

Member Fees	= \$4,600.00
Total Fees	= \$4,600.00
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Balance Due NASD Dispute Resolution, Inc.	= \$4,600.00

Respondents Golden Lender, Castro, Lauher and Sakharovich be and hereby are jointly and severally liable for:


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

All fees are payable to NASD Dispute Resolution, Inc. and are due within thirty days of the Award's date of service.

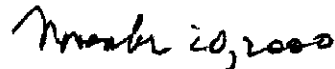
Concurring Arbitrators' Signatures

_____/s/
Michael Lau
Public Arbitrator, Presiding Chair

November 13, 2000
Signature Date



Arthur L. Sirkin, Esq.
Public Arbitrator



Signature Date

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MERRILL LYNCH

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Merrill Lynch, Inc.

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David W. Newman
Industry Arbitrator

11/14/00

Signature Date

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