

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:

Maryam Khansari, ("Claimant") vs. Continental Broker-Dealer Corp. and Allen Surendran, ("Respondents")

Case Number: 99-03052

Hearing Site: New York, NY

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**REPRESENTATION OF PARTIES**

Claimant Maryam Khansari, hereinafter referred to as "Claimant": Ralph A. Gant, Esq., a sole practitioner, New York, NY.

Respondents Continental Broker-Dealer Corp. ("Continental") and Allen Surendran ("Surendran"), hereinafter collectively referred to as "Respondents": Donna Lee, Esq., Wyrick Robbins Yates & Ponton, LLP, Raleigh, NC.

**CASE INFORMATION**

Statement of Claim filed on or about: June 24, 1999.

Claimant signed the Uniform Submission Agreement: June 27, 1999.

Joint Statement of Answer filed by Respondents on or about: January 24, 2000.

Continental signed the Uniform Submission Agreement: July 20, 1999.

Surendran signed the Uniform Submission Agreement: July 20, 1999.

**CASE SUMMARY**

Claimant asserted the following causes of action: suitability; failure to supervise; and, the doctrine of *respondeat superior*.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the statute of limitations; the principles of laches and estoppel; the doctrine of waiver; Claimant failed to mitigate her damages; the doctrine of ratification; Respondents made no misrepresentations of any material fact upon which Claimant detrimentally relied; the transactions attributable to Claimant's account were not unsuitable; Claimant failed to state the proper standard of supervision required by Continental and the proper standard is not supported by the evidence; the doctrine of *respondeat superior* is inappropriate; Respondents were not fiduciaries therefore, they did not breach a fiduciary duty; applicable law does not allow the recovery of attorneys' fees; and Claimant is not entitled to recover damages.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$59,171.00
Interest	at 9% per annum accruing from June 1, 1996
Attorneys' Fees	unspecified
Other Costs	unspecified

Respondents requested an award dismissing the Statement of Claim in its entirety plus costs and attorneys' fees.

### **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.

Prior to the first hearing session, Respondents made a Motion to Compel the Claimant to produce certain documents. This Motion was disposed of by the panel, at the first hearing session, by ordering the parties to discuss with each other the items in dispute.

During the hearing conducted on March 9, 2000, Respondents made a Motion to Dismiss the unsuitability count due to the lack of opportunity for Respondents to prepare a defense thereto as a result of Claimant's failure to produce certain documents. The panel found Claimant to be in default with respect to the production and reserved its decision with respect to this Motion and directed the parties to discuss the production requested in detail, the time within which to produce the required documents and the scheduling of further hearings. The panel, subsequently, informed the parties that if any of the documents required to be furnished were not furnished, the panel might take such inferences regarding the non-produced documents and matters related thereto as the panel should deem to be appropriate. After due deliberation, the panel, subsequently, determined to deny this Motion.

During the hearing conducted on March 9, 2000, Claimant moved to amend the Statement of Claim to add a count charging that excessive commissions were charged by Respondents to Claimant. The panel initially reserved its decision and, subsequently, after due deliberation, denied this Motion.

In addition, it is noted that the actual name of the individual Respondent is Elangovan Surendran, not "Allen" Surendran as indicated in the Claimant's Statement of Claim. Both Respondents and Claimant, at the hearings, agreed that the case records should be amended, where necessary, so as to show the correct name of the individual Respondent, namely

Elangovan Surendran.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Continental and Surendran be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$19,687.50 on the count of unsuitability.
2. Respondents Continental and Surendran be and hereby are jointly and severally liable for and shall pay to Claimant pre-judgment interest in the amount of \$6,300.00
3. Respondents Continental and Surendran will be jointly and severally liable for interest at the New York legal rate for unpaid judgments on any unpaid portion of the award which is not paid within thirty days from the date of service of this Award. Accrual of said interest shall commence from thirty days after the date of service of this Award until the award is paid in full.
4. All other requests are hereby 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	= \$ 225.00
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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 person at the time of the events giving rise to the dispute. In this matter, Continental Broker-Dealer Corp. is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

### **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 \$750.00 = \$ 750.00

Pre-hearing conference: January 27, 2000 1 session

Nine (9) Hearing sessions x \$750.00 = \$6,750.00

Hearing Dates: February 29, 2000 2 sessions

March 1, 2000 2 sessions

March 9, 2000 2 sessions

March 10, 2000 3 sessions

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Total Forum Fees = \$7,500.00

1. The Panel has assessed \$4,875.00 of the forum fees against Claimant.
2. The Arbitrator has assessed \$2,625.00 of the forum fees jointly and severally against Respondents Continental and Surendran.

### **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.

Continental, requested copies of four hearing session tapes, \$60.00.

### **Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee = \$ 225.00

Forum Fees = \$4,875.00

Total Fees = \$5,100.00

Less payments = \$ 975.00

Balance Due NASD Regulation, Inc. = \$4,125.00

2. Respondent Continental be and hereby is solely liable for:

Member Fees = \$3,100.00

Administrative Costs = \$ 60.00

Total Fees = \$3,160.00

<u>Less payments</u>	= \$1,600.00
Balance Due NASD Regulation, Inc.	= \$1,560.00

3. Respondents Continental and Surendran be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$2,625.00
Balance Due NASD Regulation, Inc.	= \$2,625.00

All balances are due and payable to NASD Regulation, Inc.

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

\_\_\_\_\_  
Blair Allen, Esq.  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Saverio J. Cina  
Public Arbitrator

  
\_\_\_\_\_  
Signature Date

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John M. Dasher, Esq.  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
May 8, 2000  
Date of Service (For NASD office use only)

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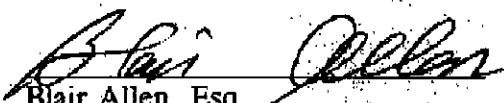
  
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John M. Dasher, Esq.  
Industry Arbitrator


5/8/00  
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