

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Sal A. Farinacci and Domenica Farinacci,
Claimants

Vs.

Case Number: 99-05001
Hearing Site: Cleveland, Ohio

Bennett Mullaney & Co., Inc., and
Michael Verbitsky,
Respondents.

REPRESENTATION OF PARTIES

Lou D'Amico, Esquire, of Argie, D'Amico & Vitantonio, Mayfield Village, Ohio, represented Claimants Sal A. Farinacci and Domenica Farinacci ("Farinacci"), hereinafter referred to as Claimants.

David W. Kenna, Esquire, of Mound, Cotton & Wollan, New York, New York, represented Respondent Bennett Mullaney & Co., Inc. ("Bennett Mullaney").

Respondent Michael Levine, also known as Michael Verbitsky ("Verbitsky"), was initially represented by Michael F. Bachner, Esquire, New York, New York. However, Verbitsky was not represented by counsel at the hearing, nor did he appear at the hearing in his own defense.

CASE INFORMATION

The Statement of Claim was filed on or about November 5, 1999.

Both Claimants signed the Uniform Submission Agreement on September 28, 1999.

Respondent Bennett Mullaney & Co., Inc. filed its Statement of Answer on or about February 23, 2000.

Mark Bennett signed the Uniform Submission Agreement on behalf of Respondent Bennett Mullaney on January 18, 2000.

Respondent Michael Verbitsky filed his Statement of Answer on or about March 22, 2000.

Respondent Verbitsky did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimants alleged the following in their Statement of Claim: false and misleading statements, unauthorized trading and unsuitability. Claimants alleged that certain funds, which Respondents represented were to be placed into an IRA account, were in fact unsuitably traded without Claimants' authorization.

Respondent Bennett Mullaney denied the allegations asserted by Claimants in the Statement of Claim and asserted the following affirmative defenses: failure to state a claim upon which relief may be granted, assumption of the risk, estoppel, waiver, laches, consent, contributory negligence and failure to mitigate.

Respondent Verbitsky denied the allegations asserted by Claimants in the Statement of Claim and asserted the following affirmative defenses: failure to state a claim upon which relief may be granted, assumption of the risk, estoppel, waiver, ratification, laches, contributory negligence and failure to mitigate.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$ 77,318.64
Interest	unspecified
Other Costs	unspecified

Respondent Bennett Mullaney requested that the Statement of Claim be dismissed in its entirety and that it be awarded costs and attorneys' fees.

Respondent Verbitsky requested that the Statement of Claim be dismissed in its entirety and that all references to this arbitration be expunged from his record in the NASD Central Registration Depository ("CRD"), as well as any other relief the Panel should deem appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, Claimants settled their claims against Respondent Bennett Mullaney & Co., Inc. Respondent Bennett Mullaney was not, therefore, represented at the hearing.

Upon review of the file and the representations made by/on behalf of the Claimants, the undersigned Panel determined that Respondent Michael Verbitsky was 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 Code of Arbitration Procedure (the "Code").

Respondent Verbitsky 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 filed and Answer and having asserted affirmative defenses therein, is bound by the determination of the Panel on all issues submitted.

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 their determination as follows:

1. Respondent Michael Levine, also known as Michael Verbitsky, is solely liable for, and shall pay to Claimants, Sal A. Farinacci and Domenica Farinacci, Compensatory Damages in the amount of \$64,033.49 (Sixty-four Thousand Thirty-three Dollars and Forty-nine Cents), less the amount received by Claimants from Bennett Mullaney & Co., Inc. pursuant to the settlement between those parties.
2. Respondent Michael Levine, also known as Michael Verbitsky, is solely liable for, and shall pay to Claimants, Sal A. Farinacci and Domenica Farinacci, \$13,285.15 (Thirteen Thousand Two Hundred Eighty-five Dollars and Fifteen Cents), as reimbursement of commissions and charges to their account.
3. All claims against Respondent Bennett Mullaney & Co., Inc. are hereby dismissed.
5. Except as specified otherwise herein, each party shall bear its own costs and attorneys' fees.

Any and all relief not specifically addressed herein 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 = \$ 225

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 Bennett Mullaney & Co., Inc.

Member surcharge	= \$1,000
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$1,500

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:

Two (2) Pre-hearing conferences with Panel x \$750	= \$1,500.00
Pre-hearing conferences: July 27, 2000	1 session
October 31, 2000	1 session
One (1) Hearing session x \$750	= \$ 750.00
Hearing Date: January 29, 2001	1 session
Total Forum Fees	= \$2,250.00

The Panel has assessed the entire \$2,250 in Forum Fees solely to Respondent Michael Verbitsky.

Fee Summary

1. Claimants, Sal A. Farinacci and Domenica Farinacci, be and hereby are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 225.00
<u>Total Fees</u>	= \$ 225.00
<u>Less payments</u>	= \$ 975.00
Balance Due NASD Dispute Resolution, Inc.	= \$ (750.00)

NASD Dispute Resolution, Inc. will refund this \$750 to Claimants.

2. Respondent Bennett Mullaney & Co., Inc. be and hereby is solely liable for:

<u>Member Fees</u>	= \$3,100.00
<u>Total Fees</u>	= \$3,100.00
<u>Less payments</u>	= \$1,236.93
Balance Due NASD Dispute Resolution, Inc.	= \$1,863.07

NASD-DR Award

Sal A. Farinacci and Domenica Farinacci vs. Bennett Mullaney & Co., Inc. and Michael Verbitsky

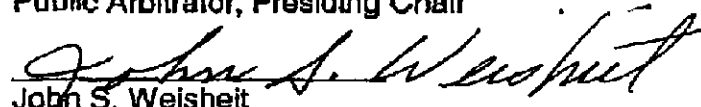
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3. Respondent Michael Verbitsky be and hereby is solely liable for:

<u>Forum Fees</u>	= \$2,250.00
<u>Total Fees</u>	= \$2,250.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$2,250.00

All balances are due to NASD Dispute Resolution, Inc.

Concurring Arbitrators' SignaturesMurray S. Marsh
Public Arbitrator, Presiding ChairSignature Date
John S. Weisheit
Public Arbitrator4-6-01
Signature DateTruman M. Hogan
Non-Public ArbitratorSignature DateDate of Service (For NASD office use only)

4-15-01

NASD REGULATION

007

NASD DR Award

Salvatore Farinacci and Domenica Farinacci vs. Bennett Mullane & Co., Inc. and Michael Verbitsky
Arbitration # 99-05001

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3. Respondent Michael Verbitsky be and hereby is solely liable for:

Forum Fees	= \$2,250.00
Total Fees	= \$2,250.00
Less Payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,250.00

All balances are due to NASD Dispute Resolution, Inc.

Consenting Arbitrators' Signatures
Murray S. Marsh
Public Arbitrator, Presiding Chair4-5-01
Signature Date
John E. Westcott
Public Arbitrator

Signature Date


Thomas M. Hogan
Non Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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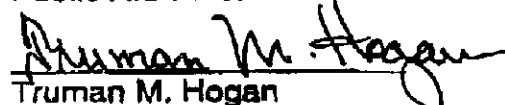
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Murray S. Marsh
Public Arbitrator, Presiding Chair

Signature Date

John S. Welsheit
Public Arbitrator

Signature Date


Truman M. Hogan
Non Public Arbitrator

4/5/01
Signature Date

Date of Service (For NASD office use only)