Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Susan Ungar (Claimant) v. McLaughlin Piven, Vogel Securities, Inc., Sean Davis, James Joseph McLaughlin, Sr., James Cecil McLaughlin, James Michael Kennedy and Edward Thomas Brienza (Respondents)

Case Number: 01-03194 Hearing Site: New York, New York

Nature of the Dispute: Customer v. Member and Associated Persons

REPRESENTATION OF PARTIES

Claimant Susan Ungar, hereinafter referred to as "Claimant": Darren C. Blum Esq., Law Office of Blum and Silver, Plantation, FL.

Respondents McLaughlin Piven, Vogel Securities, Inc., ("McLaughlin Piven"), Sean Davis ("Davis"), James Joseph McLaughlin, Sr., ("McLaughlin Sr."), James Cecil McLaughlin, ("J. McLaughlin") James Michael Kennedy ("Kennedy") and Edward Thomas Brienza ("Brienza") hereinafter collectively referred to as "Respondents": Deborah A. Kelly, Esq. and Joseph D'Elia, Law Offices of Joseph D'Elia, Huntington, NY.

CASE INFORMATION

Statement of Claim filed on or about: June 13, 2001.
Amended Statement of Claim filed on or about: September 10, 2004.
Claimant signed the Uniform Submission Agreement: May 21, 2001.

Statement of Answer filed by Respondents on or about: August 16, 2001.
Response to Amended Statement of Calim filed on or about: November 17, 2004.
Respondent McLaughlin Piven signed the Uniform Submission Agreement: August 15, 2001.
Respondent Davis did not submit a signed Uniform Submission Agreement.
Respondent James Joseph McLaughlin, Sr., did not submit a signed Uniform Submission Agreement.
Respondent James Cecil McLaughlin did not submit a signed Uniform Submission Agreement.
Respondent James Michael Kennedy did not submit a signed Uniform Submission Agreement.
Respondent Edward Thomas Brienza did not submit a signed Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, negligence, failure to supervise, and breach of fiduciary duty. The causes of action relate to speculative technology

based mutual funds, including Future Technology Fund, Family Technology Fund, Munder Net Net Funds, Pinacle Family of Trust Technology Funds, Davis New York Venture Fund, Alliance Select Technology Portfolio, and Flag Investors Communications Fund.

In its Amended Statement of Claim, Claimant dismissed with prejudice Respondent Sean Davis and added the following Respondents: James Joseph McLaughlin, Sr., James Cecil McLaughlin, James Michael Kennedy and Edward Thomas Brienza.

Unless specifically admitted in their Answer, Respondents McLaughlin Piven and Davis denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in their Answer to the Amended Statement of Claim, Respondents McLaughlin Piven, James Joseph McLaughlin, Sr., James Cecil McLaughlin, James Michael Kennedy and Edward Thomas Brienza denied the allegations made in the Amended Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested: compensatory damages in the amount of $750,000.00, interest at the legal rate from the date of purchase or reasonable market return, rescission, attorney's fees, punitive damages, costs, and for such other relief as is just and proper.

In the Amended Statement of Claim, Claimant requested: compensatory damages in the amount of $575,000.00, interest at the legal rate from the date of purchase or reasonable market return, rescission, punitive damages, costs, and for such other relief as is just and proper. Additionally, in the amended Statement of Claim, Claimant dismissed with prejudice Respondent Sean Davis and added the following Respondents: Joseph McLaughlin, Sr., James Cecil McLaughlin, James Michael Kennedy and Edward Thomas Brienza.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Sean Davis, James Joseph McLaughlin, Sr., James Cecil McLaughlin, James Michael Kennedy and Edward Thomas Brienza did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but are required to submit to arbitration pursuant to the Code are bound by the determination of the Panel on all issues submitted.

Claimant withdrew its case against Respondent Sean Davis with prejudice.

By consent of all parties, Respondent James Joseph McLaughlin Sr. was dismissed from the arbitration.

At the hearings, Respondents' made a Motion to Recuse Arbitrator Tama Traberman. After due deliberation, Arbitrator Tama Traberman denied the Motion.

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. Respondents McLaughlin Piven, J. McLaughlin, Kennedy, and Brienza are liable for and shall pay Claimant compensatory damages in the amount of $448,415.00, plus interest at the rate of nine percent from June 31, 2001, to the date that payment of the award.

2. Respondent McLaughlin Piven, J. McLaughlin, Kennedy, and Brienza are liable for and shall pay Claimant attorneys' fees, in the amount of $9,600.00 pursuant to the Federal Arbitration Act.

3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent James Joseph McLaughlin Sr.'s registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent James Joseph McLaughlin Sr. must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

4. Any and all relief not specifically addressed herein, including punitive damages, is 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. Accordingly, McLaughlin Piven is a party.

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

Adjournment Fees
Adjournments granted during these proceedings for which fees were assessed:

January 29 -31 2003, adjournment by Respondents	= $ 1,200.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 a single arbitrator @ $450.00			= $ 900.00
Pre-hearing conferences:	December 11, 2002	1 session	
	July 28, 2005	1 session	
Six (6) Pre-hearing sessions with Panel @ $1,200.00			= $ 7,200.00
Pre-hearing conferences:	August 19, 2002	1 session	
	February 24, 2003	1 session	
	January 12, 2004	1 session	
	August 9, 2004	1 session	
	November 17, 2004	1 session	
	June 6, 2005	1 session	
Eight (8) Hearing sessions @ $1,200.00			= $ 9,600.00
Hearing Dates:	August 1, 2005	2 sessions	
	August 2, 2005	2 sessions	
	August 3, 2005	2 sessions	
	August 4, 2005	2 sessions	
Total Forum Fees			= $ 17,700.00

1. The Panel has assessed $4,312.50 of the forum fees to Claimant.
2. The Panel has assessed $13,387.50 of the forum fees jointly and severally to Respondents McLaughlin Piven, J. McLaughlin, Kennedy, and Brienza.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= $ 375.00
Administrative Fee	= $ 45.00
Forum Fees	= $ 4,312.50
Total Fees	= $ 4,732.50
Less payments	= $ 1,575.00
Balance Due NASD Dispute Resolution	= $ 3.157.50

2. Respondent McLaughlin Piven is solely liable for:

Member Fees	= $ 6,100.00
Total Fees	= $ 6,100.00
Less payments	= $ 6,100.00
Balance Due NASD Dispute Resolution	= $ 0.00

3. Respondents McLaughlin Piven and Davis are jointly and severally liable for:

Administrative Fee	= $ 180.00
Adjournment Fees	= $ 1,380.00
Total Fees	= $ 1,380.00
Less payments	= $ .00
Balance Due NASD Dispute Resolution	= $ 1,380.00

4. Respondents McLaughlin Piven, J. McLaughlin, Kennedy, and Brienza are jointly and severally liable for:

Forum Fees	= $ 13,387.50
Total Fees	= $ 13,387.50
Less payments	= $ .00
Balance Due NASD Dispute Resolution	= $ 13,387.50

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

ARBITRATION PANEL

Robert L. Nisely	-	Public Arbitrator, Presiding Chairperson
Aubrey Lees	-	Public Arbitrator
Tara Traberman	-	Non-Public Arbitrator

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.

Aubrey Lees
Public Arbitrator

8/23/05
Signature Date

Tara Traberman
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

Robert L. Nisely
Public Arbitrator, Presiding Chairperson

Signature Date

August 25, 2005
Date of Service (For NASD Dispute Resolution use only)

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