Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Konstantine Yankopolus

Case Number: 02-07833

Names of the Respondents
Sands Brothers & Co., Ltd.
Robert Bonaventura
Michael Caska
William Iommi, Sr.
Maria Minguez
Michael Salviolo, Jr.
Martin Sands
Steven Sands
Alex Shtaynberger
Christopher Silver

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

For Konstantine Yankopolus, hereinafter referred to as "Claimant": Darren Blum, Esq. and Wayne Schwartz, Esq., Blum, Silver and Schwartz, LLP, Plantation, Florida.

For Sands Brothers & Co., Ltd. ("SBC"), Robert Bonaventura, Michael Caska, William Iommi, Sr., Maria Minguez, Michael Salviolo, Jr., Martin Sands, Steven Sands, Alex Shtaynberger, and Christopher Silver, hereinafter collectively referred to as "Respondents": Richard Roth, Esq., The Roth Law Firm, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: December 26, 2002.
Claimant signed the Uniform Submission Agreement: December 12, 2002.
Respondents did not file Statements of Answer or executed Uniform Submission Agreements.
Motion to Bar Response filed by Claimant on or about: March 6, 2003.
Memorandum of Law in Support of Respondents' Motion to Dismiss the "Amended" Statement of Claim, for Sanctions, and in Opposition to Claimant's Motion to Bar, filed by Respondents on or about: March 18, 2003.
Response to Respondents' Motion to Dismiss and Request for Sanctions filed by Claimant on or about: April 7, 2003.
Motion to Reargue filed by Respondents on or about: October 3, 2003.
Response to Respondents' Motion to Reargue filed by Claimant on or about October 8, 2003.
Reply to Claimant's Response to Respondents' Motion to Reargue filed by Respondents on or about: October 13, 2003.

CASE SUMMARY

Claimant asserted the following causes of action against Respondents: violation of industry rules and Florida Statutes (specifically Section 517.301); breach of contract; breach of fiduciary duties; common law fraud; and negligence. Claimant further asserted that Respondent SBC was negligent in its supervision, hiring and retention of its employees. The causes of action relate to the investment of funds from Claimant's account into an unspecified hedge fund.

In their Motion to Dismiss, Respondents asserted, among other things, that this matter had previously been settled.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of $175,000.00, plus interest at the legal rate from the date of purchase or reasonable market return, rescission, reasonable attorneys' fees (to be determined by a court of competent jurisdiction), punitive damages, costs of this proceeding, and for such other relief as is just and proper.

Respondents requested that the "Amended" Statement of Claim be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents did not file with NASD Dispute Resolution Answers to the Statement of Claim or properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and are bound by the determinations of the Panel on all issues submitted.

NASD Dispute Resolution attempted service of the Statement of Claim upon Craig Statler ("Statler"), a named respondent in the Statement of Claim. The United States Post Office returned Statler's claim service package to NASD Dispute Resolution and marked it as "undeliverable." Thereafter, NASD Dispute Resolution was first notified that Statler filed for bankruptcy protection under the United States Bankruptcy Code. In accordance with the automatic stay under the United States Bankruptcy Code, all matters pertaining to Statler were stayed.

In Respondents' Motion to Dismiss, Respondents asserted that Claimant filed the identical Statement of Claim in NASD Dispute Resolution Case Number 01-04541 and that the parties had reached a settlement pursuant to an executed Agreement of Settlement and Compromise, and a General Release (collectively referred to herein as the "Settlement Agreement"). Under the terms of the Settlement Agreement, Respondents asserted that: 1) the parties agreed for Claimant to be paid the sum of $30,000.00, of which Respondent SBC was solely liable to Claimant for $15,000.00 and Statler was solely liable to Claimant for $15,000.00; 2) Respondent SBC tendered payment of $15,000.00 to Claimant as full satisfaction of its obligation to Claimant under the Settlement Agreement; and 3) any action against Statler is stayed pursuant to his bankruptcy filing. In Claimant's response to Respondents' Motion to Dismiss, Claimant asserted that Rule 10305 of the Code does not provide grounds for the Panel to dismiss Claimant's claim and that Claimant is entitled to a hearing on the merits. On or about September 15, 2003, the Panel issued an Order denying Respondents' Motion to Dismiss.

In Respondents' Motion to Reargue their Motion to Dismiss, Respondents reargued that the claim filed in NASD Dispute Resolution Case Number 02-07833 had already been settled in NASD Dispute Resolution Case Number 01-04541 and that Respondent SBC had tendered payment to Claimant. In Claimant's response, Claimant stated that Claimant returned Respondent SBC's $15,000.00 payment to Respondent SBC's counsel and that the case had not been previously settled. In Respondents' reply, Respondents stated that Claimant did not return the check until after Claimant received the executed Settlement Agreement. On or about October 27, 2003, the Panel issued an Order denying Respondents' renewed argument on Respondents' Motion to Dismiss.

On March 24, 2004, the Panel conducted an in-person pre-hearing conference in order to determine whether NASD Dispute Resolution Case Number 01-04541 had previously been settled. Subsequent to the pre-hearing conference, Respondents filed a letter with the assertion that Claimant had notice of Statler's bankruptcy prior to execution of the Settlement Agreement and that Claimant knew Statler would not tender payment under the Settlement Agreement. Claimant responded and asserted that: 1) when the parties resolved NASD Dispute Resolution Case Number 01-04541, Claimant believed that Respondent SBC was going to pay the full $30,000.00 to Claimant, but when Statler filed for bankruptcy protection, Respondent orchestrated a ruse to use two sets of agreements in an attempt to dupe Claimant out of $15,000.00; and 2) Respondents violated bankruptcy rules when they entered into the Settlement Agreement without the permission of the U.S. Bankruptcy Trustee assigned to Statler's bankruptcy filing. On or about March 29, 2004, the Panel issued an Order which: 1) denied Claimant's Motion to Bar Response as moot; 2) denied Respondents' Motion for Sanctions; and 3) granted dismissal, with prejudice, of Claimant's Statement of Claim.

AWARD

After considering the pleadings and the record in this matter as well as the testimony of Claimant and the arguments of the parties presented at the March 24, 2004 pre-hearing conference, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. This Panel finds that NASD Dispute Resolution Case Number 01-04541 had settled for the sum of $30,000.00.
2. The settlement was structured so that Respondent SBC was to pay $15,000.00 to Claimant and Statler was to pay a separate $15,000.00 to Claimant. This Panel is enforcing the agreement between Respondent SBC and Claimant and directs that the $15,000.00 currently held in escrow be dispersed according to the terms of the settlement.
3. The agreement between Claimant and Statler is modified only to the extent that the Panel is directing that Respondent SBC forthwith pay the sum of $15,000.00 to Claimant (through his attorney) in payment of this portion of the settlement.
4. Accordingly, the Panel directs that the total payment to Claimant in full settlement of this matter is $30,000.00.
5. Each party shall pay their own costs and attorneys' fees.
6. Claimant's claims are dismissed with prejudice

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= $ 300.00

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. Accordingly, Respondent SBC is a member firm and a party.

Member surcharge	= $1,700.00
Pre-hearing process fee	= $ 750.00
Hearing process fee	= $2,750.00
Total Member Fees	= $5,200.00

Adjournment Fees

Adjournment fees were not assessed in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

Injunctive relief fees were not assessed in this matter.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

Three (3) Pre-hearing sessions with the Panel @ $1,1,25.00/session			= $3,375.00
Pre-hearing conferences:	August 8, 2003	1 session	
	September 8, 2003	1 session	
	March 24, 2004	1 session	
Total Forum Fees			= $3,375.00

The Panel has assessed forum fees of $1,687.50 to Claimant.
The Panel has assessed forum fees of $1,687.50 to Respondent SBC.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred in this matter.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= $ 300.00
Forum Fees	= $1,687.50
Total Fees	= $1,987.50
Less Payments	= $1,425.00
Balance Due NASD Dispute Resolution	= $ 562.50

Respondent SBC is solely liable for:

Member Fees	= $5,200.00
Forum Fees	= $1,687.50
Total Fees	= $6,887.50
Less Payments	= $5,200.00
Balance Due NASD Dispute Resolution	= $1,687.50

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

ARBITRATION PANEL

Gary M. Landau, Esq.	-	Public Arbitrator, Presiding Chairperson
Melvin Jarolem	-	Public Arbitrator
Jeffrey C. Thompson	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Gary M. Landau, Esq.
Public Arbitrator, Presiding Chairperson

March 30, 2004
Signature Date

/s/
Melvin Jarolem
Public Arbitrator

March 30, 2004
Signature Date

/s/
Jeffrey C. Thompson
Non-Public Arbitrator

March 30, 2004
Signature Date

March 30, 2004
Date of Service (For NASD Dispute Resolution office use only)

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Gary M. Landau, Esq.
Public Arbitrator, Presiding Chairperson

3/30/04
Signature Date

Melvin Jarolem
Public Arbitrator

Signature Date

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Gary M. Landau, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Melvin Jarolem
Public Arbitrator

3-30-04
Signature Date

NASD Dispute Resolution
Arbitration No. 02-07833
Award Page 6

Jeffrey C. Thompson
Non-Public Arbitrator

3/30/04
Signature Date

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