

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

Jacob Zabara and
Zabara Family 2012 Irrevocable Trust UAD
12/27/12 Jacob Zabara TTEE

Case Number: 15-00304

vs.

Respondent

FMSBonds, Inc.

Hearing Site: Boca Raton, Florida

vs.

Third-Party Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Nature of the Dispute: Customers vs. Member vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Jacob Zabara (“Zabara”) and Zabara Family 2012 Irrevocable Trust UAD 12/27/12 Jacob Zabara TTEE (the “Zabara Trust”), hereinafter collectively referred to as “Claimants”: Ryon M. McCabe, Esq., McCabe Rabin, P.A., West Palm Beach, Florida, and Theodore L. Blumberg, Esq., The Blumberg Firm, New York, New York.

For Respondent FMSBonds, Inc. (“FMS”): Dennis Richard, Esq. and Sydney A. Marks, Esq., Richard and Richard, P.A., Miami, Florida.

For Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. (“MLPFS”): Joel M. Everest, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: February 9, 2015.

Jacob Zabara signed the Submission Agreement: February 3, 2015.

The Zabara Trust signed the Submission Agreement: February 3, 2015.

Statement of Answer and Third-Party Claim filed by Respondent FMS on or about: May 14, 2015.

FMS signed the Submission Agreement: May 13, 2015.

Answer to Respondent FMS’s Third-Party Claim filed by Third-Party Respondent MLPFS on or about: July 7, 2015.

MLPFS signed the Submission Agreement: June 2, 2015.

Motion for More Definite Claim filed by Third-Party Respondent MLPFS on or about: July 7, 2015.

Response to Motion for More Definite Claim filed by Respondent FMS on or about: July 10, 2015.

Motion to Sever filed by Third-Party Respondent MLPFS on or about: July 7, 2015.

Response to Motion to Sever filed by Respondent FMS on or about: July 24, 2015.

Reply in Support of Motion to Sever filed by Third-Party Respondent MLPFS on or about: July 31, 2015.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty; negligence; negligent supervision; negligent misrepresentations and omissions; mismarking of order tickets; and breach of contract. The causes of action relate to the purchase and margin trading of Puerto Rico municipal bonds in Claimants' accounts.

Unless specifically admitted in its Statement of Answer and Third-Party Claim, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In its Third-Party Claim, Respondent FMS asserted the cause of action of indemnification against Third-Party Respondent MLPFS. The cause of action relates to the selling of Claimants' Puerto Rico municipal bonds after the transfer of Claimants' accounts from Respondent FMS to Third-Party Respondent MLPFS.

Unless specifically admitted in its Statement of Answer to Respondent FMS's Third-Party Claim, Third-Party Respondent MLPFS denied the allegations made in the Third-Party Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested damages between \$1,700,000.00 and \$2,500,000.00, including: compensatory damages and pre-judgment interest at the statutory rate; costs; and such other relief as the Panel deemed appropriate.

At the close of the hearing, Claimants requested compensatory damages in the amount of \$1,054,679.00.

In the Statement of Answer and Third-Party Claim, Respondent FMS requested the denial of Claimants' claims, attorneys' fees and costs. In its Third-Party Claim, Respondent FMS requested that any liability determined against it shall be borne in whole or in part by Third-Party Respondent MLPFS.

In its Answer to Third-Party Claim, Third-Party Respondent MLPFS requested the denial of Respondent FMS's Third-Party Claim.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On or about July 7, 2015, Third-Party Respondent MLPFS filed its Motion for More Definite Claim in which it asserted, among other things, that Respondent FMS had failed to specify relevant facts and remedies requested in violation of Rule 12302(a) of the Code of Arbitration Procedure (the "Code"). Claimants advised that they would not file a response to the Motion. In its Response, Respondent FMS argued that such motions were disfavored in arbitration and that the allegations in the Third-Party Claim were sufficient.

On or about July 7, 2015, Third-Party Respondent MLPFS filed its Motion to Sever, in which it asserted, among other things, that Respondent FMS's claim did not comply with the requirement for joinder under Rule 12312 of the Code as they were entirely separate from, and unique to, the questions of law and fact in the underlying arbitration between Claimants and Respondent FMS. Third-Party Respondent MLPFS added that litigating both claims could create confusion and that having to defend against Respondent FMS's claim for indemnification would be prejudicial as it would have to expend unnecessary time and resources although there may never be a finding of liability against Respondent FMS. Claimants advised that they would not file a response to the Motion. In its Response, Respondent FMS argued that both claims contained common questions of law and fact and that the claim for indemnification was related to the underlying arbitration as Third-Party Respondent MLPFS had recommended the sale of the Puerto Rico municipal bonds at a loss, including securities still rated investment-grade and insured for their full face value. Third-Party Respondent MLPFS replied, among other things, that Claimants had never made allegations regarding the sale of the Puerto Rico municipal bonds and that Claimants' claims were solely related to the recommendation of the investments by Respondent FMS.

On or about August 10, 2015, the Panel held a telephonic pre-hearing conference so the parties could present oral argument on Third-Party Respondent MLPFS's Motions for More Definite Claim and to Sever. Thereafter, the Panel issued an Order that granted the Motion to Sever Third-Party Respondent MLPFS from this proceeding and deemed the Motion for More Definite Claim moot.

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. Respondent FMS is liable for negligent supervision, breach of fiduciary duty and breach of contract and shall pay to Claimant Zabara compensatory damages in the amount of \$218,600.00.

2. Each party shall bear their own costs.
3. Any and all claims for relief not specifically addressed herein, including Respondent FMS's request for attorneys' fees, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Office of Dispute Resolution assessed a filing fee* for each claim:

Initial Claim Filing Fee	=\$ 2,000.00
Third-Party Filing Fee	=\$ 3,400.00

*The filing fee is made up of a non-refundable and a refundable portion.

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, as parties, Respondent FMS and Third-Party Respondent MLPFS are assessed the following:

For Respondent FMS:

Member Surcharge	=\$ 3,025.00
Member Process Fee	=\$ 6,175.00

For Third-Party Respondent MLPFS:

Member Surcharge	=\$ 3,025.00
Member Process Fee	=\$ 6,175.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

June 14-17, 2016, adjournment by Respondent FMS =\$ 1,400.00

Total Adjournment Fee =\$ 1,400.00

The Panel has assessed the total adjournment fee of \$1,400.00 to Respondent FMS.

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

Three (3) Decisions on discovery-related motions on the papers with one (1) arbitrator @ \$200.00 per discovery-related motion =\$ 600.00

Respondent FMS submitted three (3) discovery-related motions

Total Discovery-Related Motion Fees = \$ 600.00

The Panel has assessed \$300.00 of the discovery-related motion fees to Claimant Zabara.

The Panel has assessed \$300.00 of the discovery-related motion fees to Respondent FMS.

Hearing Session Fees and Assessments

The Panel has assessed hearing session 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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00/session = \$ 900.00
Pre-hearing conferences: May 23, 2016 1 session
May 27, 2016 1 session

Two (2) Pre-hearing sessions with the Panel @ \$1,400.00/session = \$ 2,800.00
Pre-hearing conferences: July 8, 2015 1 session
August 10, 2015 1 session

Nine (9) Hearing sessions with the Panel @ \$1,400.00/session = \$12,600.00
Hearing Dates: August 10, 2016 2 sessions
August 11, 2016 3 sessions
August 12, 2016 2 sessions
August 13, 2016 2 sessions

Total Hearing Session Fees = \$16,300.00

The Panel has assessed \$8,150.00 of the hearing session fees to Claimant Zabara.

The Panel has assessed \$8,150.00 of the hearing session fees to Respondent FMS.

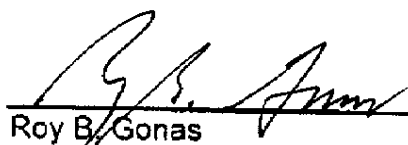
All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

Roy B. Gonas	-	Public Arbitrator, Presiding Chairperson
Diane M. Perry	-	Public Arbitrator
Edward R. Niederriter	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures



Roy B. Gonas
Public Arbitrator, Presiding Chairperson



Signature Date

Diane M. Perry
Public Arbitrator

Signature Date

Edward R. Niederriter
Public Arbitrator

Signature Date

AUGUST 19, 2016

Date of Service (For FINRA Office of Dispute Resolution office use only)

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Public Arbitrator

Signature Date

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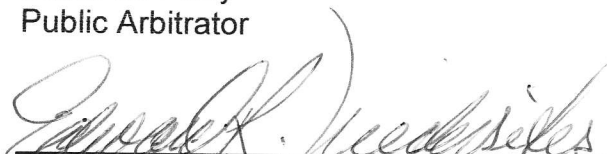
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