

**AWARD
FINRA Dispute Resolution**

In the Matter of the Arbitration Between:

Names of Claimants

Richard L. Lackey and Diane Lackey,
Individually and as Trustees of
The Lackey Family Trust

vs.

Case Number: 05-02643
Hearing Site: Dallas, Texas

Names of Respondents

National Financial Services, LLC,
Casimir Capital, L.P. and
James Ahern

NATURE OF THE DISPUTE

Customers vs. Members and Associated Person

REPRESENTATION OF PARTIES

Richard L. Lackey ("R. Lackey") and Diane Lackey ("D. Lackey"), Individually and as Trustees of The Lackey Family Trust, hereinafter collectively referred to as "Claimants," appeared pro se.

National Financial Services, LLC ("NFS") was represented by Michael G. Shannon, Esq., Thelen Reid Brown Rayman & Steiner, LLP, New York, New York.

Casimir Capital, L.P. ("Casimir") and James Ahern ("Ahern"), hereinafter collectively referred to as "Respondents," were represented by Michael H. Ference, Esq., Sichenzia Ross Friedman Ference LLP, New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about May 16, 2005. The Submission Agreement of Claimants was signed on or about May 16, 2005. The Motion to Preclude the Answer of Respondent National was filed by Claimants on or about October 18, 2005. The Response to NFS's Motion to Dismiss was filed by Claimants on or about April 10, 2007.

The Statement of Answer and Motion to Dismiss was filed by Respondent NFS on or about March 7, 2007.

The Statement of Answer was filed by Respondents Casimir and Ahern on or about August 10, 2005. The Submission Agreement of Respondent Casimir was signed on or about December 28, 2006. The Submission Agreement of Respondent Ahern was signed on or about December 28, 2006. The Pre-Hearing Brief of Casimir and Ahern was filed on or about August 22, 2007.

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract; failure to train and supervise; breach of fiduciary duty; violation of duty to deal fairly and in good faith; actual and constrictive fraud; and violation of the Texas Securities Act. The causes of action related to the trading of securities using margin debt as a means of stock speculation. Claimants alleged that They opened three accounts with Casimir from August through November, 2004--a trust account, a joint account, and an IRA for R. Lackey. They opened the accounts in response to telephonic solicitations by Casimir representatives. The registered representative primarily responsible for servicing the accounts was Ahern. The Claimants' risk tolerance for each of these accounts was "conservative," and their investment objective was "capital appreciation," as reflected on the new account opening documents for each of the accounts signed by the Claimants, Ahern, and a Casimir supervisor. Claimants never changed this risk tolerance and investment objective.

The Claimants further alleged that they transferred a total of \$97,925 in cash and securities into these three accounts. Almost all of this value was transferred into the accounts in October and November of 2005. The account value was reduced to approximately \$28,611 by the beginning of February, 2005, at which point Claimants gave instructions for all activity to cease. The decline in account value was due entirely to transactional costs, i.e., commissions of \$73,662 and margin costs of \$1,308. The securities positions themselves, without allowing for transactional costs, were in fact profitable. Claimants contended that all recommendations for purchases and sales came from the Respondents and that R. Lackey followed all of them except for about three pertaining to shipping stocks, which he didn't like.

The Claimants, through their expert witness, further contended that the annualized turnover ratio for the accounts (taken as a group) was approximately 124, and the annualized cost to equity ratio for the accounts (taken as a group), was approximately 428%.

Unless specifically admitted in its Answer, Respondent NFS denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Claim failed to set forth a basis for recovery; the claims are barred because, as the clearing broker, NFS owed no fiduciary, supervisory or other duties to Claimants; all of Claimants' alleged losses arise solely from the alleged wrongful activity of others as to which NFS had no responsibility; Claimants' alleged losses were proximately caused, in whole or in part, by their own conduct and/or negligence in relation to their account; NFS did not violate any applicable regulations or rules and no private right of action lies for the breach of them; at

all times NFS did not know of Ahern's alleged misdeeds and, in the exercise of reasonable diligence, could not have known; and there is no basis for an award of punitive damages or attorneys' fees.

Unless specifically admitted in their Answer, Respondents, Casimir and Ahern, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Claims were barred because Claimants were aware of all material risks concerning their investments and assumed the risk of losses alleged; the claims are barred by the doctrine of ratification; Claimants failed to state a claim upon which relief can be granted; Claimants were aware of the nature of their investments and the investments were consistent with their articulated instructions, investment objectives, risk profile, experience, sophistication, and financial circumstances; Claimants were provided with full and fair disclosure of all material risks and facts concerning each transaction executed in their accounts and freely consented to each trade; Claimants' losses, if any, are wholly attributable to market conditions and price fluctuations outside the Respondents' control; Casimir had in place a supervisory system designed to ensure compliance with the State and Federal securities laws, and did not, directly or indirectly, induce any registered person to violate any State or Federal securities laws; Respondents did not owe Claimants a fiduciary duty; and there is no private right of action, and therefore no basis for recovery, based on NASD Rules.

Respondents, Casimir and Ahern, contended that the Lackeys were highly intelligent, educated professionals with long experience in investing in securities. R. Lackey conveyed orally to Ahern and another registered representative with whom Ahern has partnered that R. Lackey's investment objective was in fact aggressive short-term trading. Casimir and Ahern specialize in aggressive, short-term trading, and the degree of activity in the Claimants' accounts was typical of Ahern's other accounts.

The Respondents further contended that they kept the Lackeys apprised of all activity in the account by paper and e-mail confirmations, monthly statements, and regular conversations between Ahern and R. Lackey. The Claimants did not complain about the account until after D. Lackey examined it in late January, 2005.

The Respondents further contended that their management of the accounts was appropriate based on the fact that the value in the accounts at Casimir was under 10% of the Claimants' total investments and their general understanding from discussions with R. Lackey that whatever other investments the Claimants maintained were conservative to some degree.

Based on these factual contentions, the Respondents contended that R. Lackey, and not they, controlled the account, that there was no churning, and that their recommendations were suitable.

RELIEF REQUESTED

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$63,000.00
Exemplary/Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

At hearing, Claimants revised their relief requests, requesting \$73,662.00 as refund of commissions, \$68,401.00 in unspecified actual damages (assumed by the Panel to be an alternative measure of actual damages) and \$6,234.00 representing the difference between the bid and ask prices on transactions in the account. In addition, Claimants requested treble punitive damages, attorneys' fees of \$14,832.32 (the Claimants were represented by counsel for a period of time in the arbitration and prior to the hearing) and costs of \$10,804.48.

Respondent NFS requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

Respondents, Casimir and Ahern, requested that the claims asserted against them be denied in their entirety and for such other and further relief as the Panel deemed just, equitable, and proper.

OTHER ISSUES CONSIDERED & DECIDED

Respondent NFS did not file with the FINRA Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

On or about November 15, 2005, Claimants advised that the parties had settled in principle pending the completion of documents. However, on or about July 18, 2006, the Claimants notified FINRA Dispute Resolution that the attempts to conclude the settlement documents had failed and that the case should continue to hearing.

On or about May 8, 2007, the Claimants filed a Stipulation to Dismiss with Prejudice the Claims against Respondent NFS. The claims proceeded against the remaining two Respondents.

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 the evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondents, Casimir Capital, L.P. and James Ahern, are jointly and severally liable for and shall pay to Claimants, Richard L. Lackey and Diane Lackey, Individually and as Trustees of The Lackey Family Trust, the sum of \$73,662.00 in compensatory damages;
- 2.) Respondents, Casimir Capital, L.P. and James Ahern, are jointly and severally liable for and shall pay to Claimants, Richard L. Lackey and Diane Lackey, Individually and as Trustees of The Lackey Family Trust, interest on the above-stated sum at the rate of 6% per annum from and including 30 days after service of this Award through and including the date the Award is paid in full;
- 3.) Respondents, Casimir Capital, L.P. and James Ahern, are jointly and severally liable for and shall pay to Claimants, Richard L. Lackey and Diane Lackey, Individually and as Trustees of The Lackey Family Trust, the sum of \$10,000.00 in costs;
- 4.) Respondents, Casimir Capital, L.P. and James Ahern, are jointly and severally liable for and shall pay to Claimants, Richard L. Lackey and Diane Lackey, Individually and as Trustees of The Lackey Family Trust, the sum of \$14,832.32 in attorneys' fees. In deciding to award attorneys' fees, the Panel considered the pleadings and arguments of the parties, as well as the statutory authority, and determined that authority existed for an award of attorneys' fees to the Claimants;
- 5.) Respondents, Casimir Capital, L.P. and James Ahern, are jointly and severally liable for and shall pay to Claimants, Richard L. Lackey and Diane Lackey, Individually and as Trustees of The Lackey Family Trust, the sum of \$225.00 in reimbursement of the claim filing fee;
- 6.) Pursuant to the parties' stipulation, the claims against Respondent National Financial Services, LLC, are dismissed with prejudice; and
- 7.) Any relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial Claim filing fee = \$ 225.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firms are National Financial Services, LLC and Casimir Capital, L.P.

Member surcharge = \$ 1,100.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$ 1,700.00

Adjournment Fees

Adjournments granted during these proceedings:

September 11-13, 2007, adjournment requested by Casimir and Ahren = \$ 750.00

Forum Fees and Assessments

The Panel has assessed forum fees for each hearing session conducted or each decision rendered on a discovery-related motion on the papers or a contested motion for the issuance of a subpoena. 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 x \$450.00 = \$ 900.00
Pre-hearing conferences: May 21, 2007 1 session
August 24, 2007 1 session

One (1) Pre-hearing session with Panel x \$750.00 = \$ 750.00
Pre-hearing conference: December 18, 2006 1 session

Five (5) Hearing sessions x \$750.00		= \$ 3750.00
Hearing Dates:	November 27, 2007	3 sessions
	November 28, 2007	2 sessions
<hr/>		
Total Forum Fees		= \$ 5,400.00

The Panel has assessed \$5,400.00 of the forum fees jointly and severally to Casimir Capital, L.P. and James Ahern.

FEE SUMMARY

Claimants, Richard L. Lackey and Diane Lackey, Individually and as Trustees of The Lackey Family Trust, 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
<u>Refund Paid to Claimants</u>	= \$ 750.00

Respondent, National Financial Services, LLC, is liable for:

<u>Member Fees</u>	= \$ 3,550.00
<u>Total Fees</u>	= \$ 3,550.00
<u>Less payments</u>	= \$ 3,550.00
<u>Balance Due FINRA Dispute Resolution</u>	= \$ 0.00

Respondent, Casimir Capital, L.P., is liable for:

<u>Member Fees</u>	= \$ 3,550.00
<u>Adjournment Fee</u>	= \$ 750.00
<u>Total Fees</u>	= \$ 4,300.00
<u>Less payments</u>	= \$ 4,300.00
<u>Balance Due FINRA Dispute Resolution</u>	= \$ 0.00

Respondents, Casimir Capital, L.P. and James Ahern, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 5,400.00
<u>Total Fees</u>	= \$ 5,400.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due FINRA Dispute Resolution</u>	= \$ 5,400.00

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

ARBITRATION PANEL

John Courtade - Public Arbitrator, Presiding Chair
Phillip Lee Scheldt, Ph.D - Public Arbitrator
Preston Deaton Rigsby - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

John Courtade
Public Arbitrator, Presiding Chair

Signature Date

Phillip Lee Scheldt, Ph.D
Public Arbitrator

Signature Date

Preston Deaton Rigsby
Non-Public Arbitrator

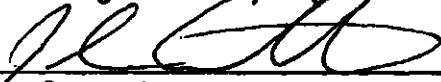
Signature Date

Date of Service (For FINRA office use only)

ARBITRATION PANEL

John Courtade - Public Arbitrator, Presiding Chair
Phillip Lee Scheldt, Ph.D - Public Arbitrator
Preston Deaton Rigsby - Non-Public Arbitrator

Concurring Arbitrators' Signatures:



John Courtade
Public Arbitrator, Presiding Chair

7 Dec. 2007
Signature Date

Phillip Lee Scheldt, Ph.D
Public Arbitrator

Signature Date

Preston Deaton Rigsby
Non-Public Arbitrator

Signature Date

12/7/07 
Date of Service (For FINRA office use only)

ARBITRATION PANEL

John Courtade - Public Arbitrator, Presiding Chair
Phillip Lee Scheldt, Ph.D - Public Arbitrator
Preston Deaton Rigsby - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

John Courtade
Public Arbitrator, Presiding Chair

Signature Date



Phillip Lee Scheldt, Ph.D
Public Arbitrator

December 07, 2007
Signature Date

Preston Deaton Rigsby
Non-Public Arbitrator

Signature Date

12/7/07 JPC
Date of Service (For FINRA office use only)

ARBITRATION PANEL

John Courtade - Public Arbitrator, Presiding Chair
Phillip Lee Scheldt, Ph.D - Public Arbitrator
Preston Deaton Rigsby - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

John Courtade
Public Arbitrator, Presiding Chair

Signature Date

Phillip Lee Scheldt, Ph.D
Public Arbitrator

Signature Date

Preston Deaton Rigsby
Preston Deaton Rigsby
Non-Public Arbitrator

12-10-07
Signature Date

12/10/07
Date of Service (For FINRA office use only)