

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Move, Inc.

Case Number: 08-03355

vs.

Respondent
Citigroup Global Markets, Inc.

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Move, Inc. ("Claimant"): Michael G. King, Esq. and Janice M. Kroll, Esq., Law Offices of Hennelly & Grossfeld LLP, Marina Del Rey, California.

For Respondent Citigroup Global Markets, Inc. ("Respondent"): H. Nicholas Berberian, Esq., Kyle D. Rettberg, Esq., and Nicholas S. Graber, Esq., Neal, Gerber & Eisenberg LLP, Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed on or about: September 12, 2008.

Amended Statement of Claim dated: June 24, 2009.

Second Amended Statement of Claim dated: August 11, 2017.

Supplement to the Second Amended Statement of Claim dated: May 31, 2018.

Fully Supplemented Second Amended Statement of Claim dated: November 15, 2018.

Claimant signed the Submission Agreement: September 11, 2008.

Statement of Answer filed by Respondent on or about: December 12, 2008.

Answer to Claimant's Amended Statement of Claim filed by Respondent on or about: September 3, 2009.

Answer to Claimant's Second Amended Statement of Claim filed by Respondent on or about: October 16, 2017.

Response and Answer to the Supplement to the Second Amended Statement of Claim filed by Respondent on or about: August 30, 2018.

Response and Answer to the Second Supplement to the Second Amended Statement of Claim filed by Respondent on or about: November 19, 2018.

Respondent signed the Submission Agreement: January 8, 2009.

CASE SUMMARY

Claimant asserted the following causes of action in the Second Amended Statement of Claim¹: breach of fiduciary duty; breach of contract and breach of the contractual duty of good faith and fair dealing; purchase of unsuitable investments (violation of SEC Rule 10b-5); misrepresentations and misleading statements (violation of SEC Rule 10b-5); violation of SEC Rule 15c1-2; fraud and concealment; negligent misrepresentation; negligent supervision; and violation of California Corporations Code §§ 25401, 25501. The causes of action relate to Claimant's investments in Auction Rate Securities ("ARS").

Unless specifically admitted in the Answer to Claimant's Second Amended Statement of Claim, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In the Supplement to the Second Amended Statement of Claim, Claimant added supplemental factual allegations and exhibits, and included an additional relief request for unjust enrichment damages (disgorgement).

In the Response and Answer to the Supplement to the Second Amended Statement of Claim, Respondent incorporated by reference the Answer to Claimant's Second Amended Statement of Claim.

In the Fully Supplemented Second Amended Statement of Claim, Claimant added supplemental factual allegations.

In the Response and Answer to the Second Supplement to the Second Amended Statement of Claim, Respondent expressly denied all allegations of wrongdoing and incorporated by reference the Answer to Claimant's Second Amended Statement of Claim.

RELIEF REQUESTED

In the Second Amended Statement of Claim, Claimant requested:

1. Compensatory damages in an amount according to proof, but in excess of the \$19,600,000.00 principal loss;
2. Punitive damages;
3. Pre- and post-judgment interest at the statutory rate of 10%;
4. Attorneys' fees and costs incurred in prosecuting the prior and current arbitration proceedings; and
5. Other remedies that the Panel deems appropriate.

In the Answer to Claimant's Second Amended Statement of Claim, Respondent requested:

1. The Second Amended Statement of Claim be dismissed in its entirety; and
2. All forum fees should be assessed against Claimant.

¹ The Panel determined that Claimant's Second Amended Statement of Claim and its supplements are the operative statement of claim in this matter, and will be detailed for the purposes of this Award.

In the Supplement to the Second Amended Statement of Claim, Claimant added a request for unjust enrichment damages (disgorgement) in an amount according to proof, but well in excess of \$10,000,000.00.

In the Response and Answer to the Supplement to the Second Amended Statement of Claim, Respondent did not set forth a new relief request.

In the Fully Supplemented Second Amended Statement of Claim, Claimant did not set forth a new relief request.

In the Response and Answer to the Second Supplement of the Second Amended Statement of Claim, Respondent requested that the Panel dismiss the claims in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

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

On December 8, 2009, an award was issued in this matter by another arbitration panel ("Prior Award"). By court order dated January 23, 2017, the United States District Court for the Central District of California vacated the Prior Award and ordered a rehearing of the arbitration. Accordingly, this matter was reopened and a new panel was appointed to rehear this matter.

On August 11, 2017, Claimant filed a Motion to Amend the Statement of Claim. On September 15, 2017, Respondent filed a response to the motion. By order dated September 25, 2017, the Panel granted Claimant's motion and the Second Amended Statement of Claim became a part of the record per Rule 12309(b) of the Code of Arbitration Procedure ("Code").

On May 31, 2018, Claimant filed a Motion to Supplement the Second Amended Statement of Claim. On June 18, 2018, Respondent filed an opposition to Claimant's motion. On June 28, 2018, Claimant filed a reply in support of the motion. By order dated July 31, 2018, the Panel granted Claimant's motion to supplement the Second Amended Statement of Claim and it became part of the record.

On October 11, 2018, Claimant filed a Motion to Further Supplement the Second Amended Statement of Claim. On October 22, 2018, Respondent filed an opposition to the motion. On October 24, 2018, Claimant filed a reply in support of the motion. By order dated November 1, 2018, the Panel granted Claimant's motion to further supplement the Second Amended Statement of Claim. On November 15, 2018, Claimant filed its Fully-Supplemented Second Amended Statement of Claim.

At the evidentiary hearing, the Panel ordered the parties to submit post-hearing briefs and replies. By order dated December 19, 2018, the Panel issued guidance and questions regarding the post-hearing briefs.

On January 7, 2019, the parties each submitted their post-hearing briefs. On January 18, 2019, the parties each submitted their replies to the post-hearing briefs.

In its post-hearing brief, Claimant requested:

1. Principal loss on the sale of its ARS (\$19,500,000.00), plus interest for a total of \$36,300,000.00;
2. ARS loan expenses (\$2,400,000.00) plus interest for a total of \$4,500,000.00;
3. Consequential damages (\$1,000,000.00 transaction costs in selling its ARS inventory) plus interest for a total of \$1,800,000.00, plus attorneys' fees (by post-award motion practice);
4. FINRA forum fees and costs; and
5. Other legal remedies – here, disgorgement of Respondent's unjust enrichment and punitive damages.

The parties present at the hearing 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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimant the sum of \$8,319,223.00 in compensatory damages.
2. Respondent is liable for and shall pay to Claimant post-judgement interest on the sum of \$8,319,223.00 at the rate of 5% per annum from July 1, 2019 until paid in full.
3. Any and all claims for relief not specifically addressed herein, including punitive damages and attorneys' fees and costs, 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	= \$ 1,800.00
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**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 a party, Respondent is assessed the following:

Member Surcharge	= \$ 3,750.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 5,500.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

April 10 – 13 and 25 – 27, 2018, postponement by parties = waived

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:

Five (5) pre-hearing sessions with the Panel @ \$1,200.00/session	= \$6,000.00
Pre-hearing conferences:	
July 6, 2017	1 session
January 16, 2018	1 session
March 12, 2018	1 session
July 31, 2018	1 session
October 25, 2018	1 session
Twenty (20) hearing sessions @ \$1,200.00/session	= \$24,000.00
Hearing Dates:	
November 26, 2018	2 sessions
November 27, 2018	2 sessions
November 28, 2018	2 sessions
November 29, 2018	2 sessions
November 30, 2018	2 sessions
December 3, 2018	2 sessions
December 4, 2018	2 sessions
December 5, 2018	2 sessions
December 6, 2018	2 sessions
December 7, 2018	2 sessions
<hr/> Total Hearing Session Fees	<hr/> = \$30,000.00

The Panel has assessed \$15,000.00 of the hearing session fees to Claimant.
The Panel has assessed \$15,000.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Adam Michael Porter	-	Public Arbitrator, Presiding Chairperson
Mary M. O'Neil	-	Public Arbitrator
Hiro N Aragaki	-	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

Adam Michael Porter

Adam Michael Porter
Public Arbitrator, Presiding Chairperson

May 20, 2019

Signature Date

Mary M. O'Neil
Public Arbitrator

Signature Date

Hiro N Aragaki
Public Arbitrator

Signature Date

May 20, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)

ARBITRATION PANEL

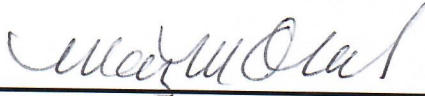
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Public Arbitrator

Signature Date



5/20/2019

Hiro N Aragaki
Public Arbitrator

Signature Date

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