

Award
FINRA Dispute Resolution

In the Matter of the Arbitration Between:

Claimants
Lionel Gonzalez
Henry T. Mora

Master Consolidated Case Number: 13-02150

vs.

Respondent
Royal Alliance Associates, Inc.

Hearing Site: San Francisco, California

Consolidated with:

Claimant
Michele R. Lewis

Subordinate Case Number: 13-02006

vs.

Respondent
Royal Alliance Associates, Inc.

Hearing Site: San Francisco, California

Nature of the Disputes:

Master Consolidated Case 13-02150: Customers vs. Member

Subordinate Case 13-02006: Customer vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Lionel Gonzalez (“Gonzalez”), Michele R. Lewis (“Lewis”) and Henry T. Mora (“Mora”), hereinafter collectively referred to as “Claimants”: Bruce D. Oakes, Esq., Oakes & Fosher, LLC, St. Louis, Missouri.

For Respondent Royal Alliance Associates, Inc., hereinafter referred to as “Respondent”: G. Thomas Fleming III, Esq., Jones, Bell, Abbott, Fleming & Fitzgerald, LLP, Los Angeles, California.

CASE INFORMATION

Statement of Claim filed in Master Case 13-02150 by Gonzalez and Mora on or about: July 18, 2013.

Statement of Claim filed in Subordinate Case 13-02006 by Lewis on or about: July 3, 2013.

First Amended Statement of Claim filed by Claimants on or about: September 8, 2014.

Gonzalez signed the Submission Agreement: June 17, 2013.

Mora signed the Submission Agreement: June 3, 2013.

Lewis signed the Submission Agreement in Master Case 13-02150: November 6, 2014.

Lewis signed the Submission Agreement in Subordinate Case 13-02006: May 30, 2013.

Statement of Answer filed in Master Case 13-02150 by Respondent on or about:
September 23, 2013.

Statement of Answer filed in Subordinate Case 13-02006 by Respondent on or about:
September 25, 2013.

Statement of Answer to the Amended Statement of Claim filed by Respondent on or
about: October 28, 2014.

Respondent signed the Submission Agreement in Subordinate Case 13-02006: January
2, 2014.

CASE SUMMARY

In the Statements of Claim and the First Amended Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty; violation of California's Securities Act; breach of contract; negligence, negligent misrepresentation and omission; common law fraud; restitution; and negligent supervision. The causes of action relate to Claimants' investments in Inland Real Estate and unspecified variable annuities.

Unless specifically admitted in its Answers, Respondent denied the allegations made in the Statements of Claim and the First Amended Statement of Answer.

RELIEF REQUESTED

In the Statement of Claim filed in Master Case 13-02150, Gonzalez and Mora requested:

1. Compensatory damages in the approximate amount of \$800,000.00;
2. Punitive damages;
3. Pre-judgment interest, attorneys' fees and costs;
4. Filing fees and forum fees incurred herein; and
5. Such other and further relief the Panel deems just and proper.

In the Statement of Claim filed in Subordinate Case 13-02006, Lewis requested:

1. Compensatory damages in the approximate amount of \$400,000.00;
2. Punitive damages;
3. Pre-judgment interest, attorneys' fees and costs;
4. Filing fees and forum fees incurred herein; and

5. Such other and further relief the Panel deems just and proper.

In the First Amended Statement of Claim, Claimants requested:

1. Compensatory damages in the approximate amount of \$1,200,000.00;
2. Punitive damages;
3. Pre-judgment interest, attorneys' fees and costs;
4. Filing fees and forum fees incurred herein; and
5. Such other and further relief the Panel deems just and proper.

In its Statement of Answer filed in Master Case 13-02150, Respondent requested:

1. Denial of Gonzalez and Mora's claims;
2. An award entered in favor of Respondent;
3. Assessment of all costs and non-attorneys' fees against Gonzalez and Mora;
4. A recommendation that all references to this matter be expunged from non-party Kathleen Tarr's Central Registration Depository ("CRD") record; and
5. Such other and further relief as the Panel deems appropriate.

In its Statement of Answer filed in Subordinate Case 13-02006, Respondent requested:

1. Denial of Lewis' claims;
2. An award entered in favor of Respondent;
3. Assessment of all costs and non-attorneys' fees against Lewis;
4. A recommendation that all references to this matter be expunged from non-party Kathleen Tarr's CRD record; and
5. Such other and further relief as the Panel deems appropriate.

In its Statement of Answer to the First Amended Statement of Claim, Respondent requested:

1. Denial of Claimants' claims;
2. An award entered in favor of Respondent;
3. Assessment of all costs and non-attorneys' fees against Claimants;
4. A recommendation that all references to this matter be expunged from non-party Kathleen Tarr's CRD record; and
5. Such other and further relief as the Panel deems appropriate.

In Claimants' Response to Respondent's Post-Hearing Brief, Claimants requested:

1. Compensatory damages in a range based on the model portfolio/market adjusted damages in the amount of \$225,338.00 to \$453,937.00 for Lewis;
2. Compensatory damages in a range based on the model portfolio/market adjusted damages in the amount of \$257,185.00 to \$480,037.00 for Mora;
3. Compensatory damages in a range based on the model portfolio/market adjusted damages in the amount of \$354,225.00 to \$648,897.00 for Gonzalez;
4. Alternatively, damages pursuant to the formula established by the legislature under California Securities Act in the amount of \$143,908.00 for Lewis;
5. Alternatively, damages pursuant to the formula established by the legislature under California Securities Act in the amount of \$188,751.00 for Mora;
6. Alternatively, damages pursuant to the formula established by the legislature under California Securities Act in the amount of \$323,285.00 for Gonzalez;
7. Alternatively, damages pursuant to the annuity damage calculation in the amount of \$184,523.00 for Lewis;

8. Alternatively, damages pursuant to the annuity damage calculation in the amount of \$244,368.00 for Mora;
9. Alternatively, damages pursuant to the annuity damage calculation in the amount of \$244,184.00 for Gonzalez;
10. Attorneys' fees in the amount of \$184,000.00; and
11. Costs in the amount of \$57,231.05.

OTHER ISSUES CONSIDERED AND DECIDED

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

On September 5, 2014, Claimants submitted a Motion to Join Parties and File First Amended Statement of Claim. On September 10, 2014, Respondent submitted a response opposing the motion. On the same day, Respondent submitted a Motion to Sever Claimants' claims. On September 17, 2014, Claimants filed a reply in support of their motion and a response opposing Respondent's Motion to Sever. On September 22, 2014, Respondent submitted a reply in support of its Motion to Sever.

On October 16, 2014, the Panel heard oral arguments on Claimants' Motion to Join Parties and File First Amended Statement of Claim and Respondent's Motion to Sever Claimants' Claims. By Order dated October 21, 2014, the Panel determined to grant Claimants' Motion to Join Parties and File First Amended Statement of Claim, consolidating FINRA Case Nos. 13-02150 and 13-02006. The Panel also determined to deny Respondent's Motion to Sever Claimants' Claims.

On March 11, 2015, Respondent submitted a Motion for Reconsideration of Order Granting Consolidation. On March 23, 2015, Claimants submitted a response opposing the motion. On March 24, 2015, Respondent submitted a reply in support of its motion.

On April 1, 2015, the Panel heard oral arguments on Respondent's Motion for Reconsideration of Order Granting Consolidation. On April 2, 2015, the Panel issued an Order denying Respondent's Motion and provided the following reasons for denial:

Reasons for Denial of Respondent's Motion for Reconsideration of Order Granting Consolidation

Granting the motion would cause unfairness due to the resulting delay. Respondent had prior opportunity to seek consolidation with the lower numbered claim and did not do so at any time prior to the issue being decided by this panel. This issue is procedural, not jurisdictional, and the Neutral Corner guidance was issued after this panel had ruled. Nothing in the guidance indicated that it was to apply retroactively.

Moreover, even if applied retroactively, it would appear that it is appropriate for this panel to continue in that: (1) Respondent advised that it asked the lower numbered panel to address the issue and the lower numbered panel elected to defer to this panel and removed its own hearing from the calendar. Removing

that hearing from the calendar introduces another aspect of unfairness due to delay if even that matter was referred back to the lower numbered panel.

It is the conclusion of this panel that the claims were and remain appropriate for consolidation and that the parties submitted the issue of consolidation to this panel for determination, which the lower numbered panel ultimately *de facto* ratified. Accordingly there is no reason to change the previous rulings of the panel respecting the consolidation of the matters or the surviving panel or the hearing date.

On April 28, 2015, Claimants submitted a Request for an Emergency Motion to permit Claimant Henry T. Mora to appear via Skype for the May 6-7, 2015 evidentiary hearing. On April 29, 2015, Respondent filed a response to the motion. On May 1, 2015, the Panel issued the following Order:

Claimant Henry T. Mora will testify via deposition on Tuesday, May 5, 2015 at a time mutually agreeable to the parties. The deposition will be transcribed by a certified shorthand reporter and also be videographed. The costs to be split by the parties equally, subject to reallocation at a later time.

The transcript and video shall be available for the panel's review at the session commencing May 6, 2015 at 1:30 pm.

On May 27, 2015, the Panel issued the following Interim Order:

The Panel has concluded its deliberations in this matter and will issue a ruling for the Claimants.

If the Respondent still seeks an order for expungement of Kathleen Tarr's CRD registration record, Respondent's motion must be filed and served by June 8, 2015. Claimants' opposition must be filed and served by June 18, 2015 and Respondent's reply must be filed and served by June 23, 2015.

On May 21, 2015, non-party Kathleen Tarr submitted a Request of Associated Person Kathleen Tarr for Expungement of Record. On June 4, 2015, Claimants submitted a response opposing the request. On June 5, 2015, Respondent submitted a response to Claimant's opposition to non-party Kathleen Tarr's request. On June 23, 2015, non-party Kathleen Tarr submitted a reply in support of her request.

On June 9, 2015, Claimants submitted a request for clarification of the Panel's Interim Order and Claimants' request to appear telephonically at the hearing regarding the pending request for expungement of Kathleen Tarr. On June 15, 2015, non-party Kathleen Tarr submitted a response to Claimants' request for clarification and to appear telephonically at the hearing regarding Kathleen Tarr's request for expungement. On June 17, 2015, Claimants submitted a reply in support of their requests. By Order dated June 23, 2015, the Panel determined to grant Claimants' request to appear telephonically. The Panel did not address Claimants' request for clarification of the Panel's Interim Order.

The Panel conducted a recorded in-person hearing on July 7, 2015 so the parties could present oral argument and evidence on non-party Kathleen Tarr's Request of Associated Person Kathleen Tarr for Expungement of Record. Claimants' counsel attended the hearing by telephone and opposed the request.

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, 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 Gonzalez compensatory damages in the amount of \$452,449.00.
2. Respondent is liable for and shall pay to Lewis compensatory damages in the amount of \$301,538.00.
3. Respondent is liable for and shall pay to Mora compensatory damages in the amount of \$331,469.00.
4. Respondent is liable for and shall pay to Gonzalez punitive damages in the amount of \$25,000.00 pursuant to California Civil Code Section 3294.
5. Respondent is liable for and shall pay to Lewis punitive damages in the amount of \$25,000.00 pursuant to California Civil Code Section 3294.
6. Respondent is liable for and shall pay to Mora punitive damages in the amount of \$25,000.00 pursuant to California Civil Code Section 3294.
7. Respondent is liable for and shall pay to Claimants attorneys' fees in the amount of \$184,000.00 pursuant to breach of contract and California Civil Code Section 1717.
8. Respondent is liable for and shall pay to Claimants costs in the amount of \$57,231.05.
9. Non-party Kathleen Tarr's request for expungement is denied.
10. Any and all relief not specifically addressed herein is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee

= \$ 1,800.00

**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 a party, Royal Alliance Associates, Inc. is assessed the following:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 5,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

January 12-16, 2015, adjournment by Respondent	= \$ 1,200.00
April 14, 2015, adjournment by Claimant	= WAIVED

Total Adjournment Fees	= \$ 1,200.00
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1. The Panel has assessed \$600.00 of the adjournment fees jointly and severally to Claimants.
2. The Panel has assessed \$600.00 of the adjournment fees to Respondent.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

April 14, 2015, adjournment by Claimant	= WAIVED
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Discovery-Related Motion Fees

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

Seven (7) Decisions on discovery-related motions on the papers with (1) <u>one</u> arbitrator @ \$200.00	= \$ 1,400.00
Claimants submitted <u>one</u> discovery-related motion	
Respondent submitted <u>six</u> discovery-related motions	

Total Discovery-Related Motion Fees	= \$1,400.00
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The Panel has assessed \$1,400.00 of the discovery-related motion fees to Respondent.

Contested Motion for Issuance of a Subpoena Fees

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) Decision on a contested motion for the issuance of a subpoena with (1) <u>one</u> arbitrator @ \$200.00	= \$ 200.00
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Total Contested Motion for Issuance of Subpoenas Fees = \$ 200.00

The Panel has assessed \$200.00 of the contested motion for issuance of subpoenas fees to Respondent.

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: December 4, 2013 1 session
October 16, 2014 1 session
December 30, 2014 1 session
March 26, 2015 1 session
April 1, 2015 1 session

Fourteen (14) Hearing sessions @ \$1,200.00/session = \$16,800.00
Hearing Dates: April 6, 2015 2 sessions
April 7, 2015 1 session
April 8, 2015 2 sessions
April 9, 2015 2 sessions
April 10, 2015 2 sessions
April 13, 2015 2 sessions
May 6, 2015 1 session
May 7, 2015 2 sessions

One (1) Hearing session on expungement request @ \$1,200.00/session = \$1,200.00
Hearing Date: July 7, 2015 1 session

Total Hearing Session Fees = \$24,000.00

The Panel has assessed \$24,000.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Debra Brothers Self	-	Public Arbitrator, Presiding Chairperson
Jeffrey M. Allen	-	Public Arbitrator
Byron L. Dare	-	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



Debra Brothers Self
Public Arbitrator, Presiding Chairperson

7/15/15

Signature Date

Jeffrey M. Allen
Public Arbitrator

Signature Date

Byron L. Dare
Public Arbitrator

Signature Date

July 15, 2015

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

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7.15.15

Signature Date

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