

**Award
FINRA Dispute Resolution**

In the Matter of the Arbitration Between:

Claimant

J.D. Nicholas & Associates, Inc.

Case Number: 12-01451

vs.

Respondents

Cape Securities, Inc.

James Webb

Larry Yager

Michael Lovett

Paul Nardella

Hearing Site: New York, New York

Nature of the Dispute: Member vs. Member and Associated Persons

REPRESENTATION OF PARTIES

For Claimant J.D. Nicholas & Associates, Inc.: Ian J. Frimet, Esq., Burkhart Wexler & Hirschberg, LLP, Garden City, New York.

For Respondents Cape Securities, Inc. ("Cape"), James Webb ("Webb"), Larry Yager ("Yager"), and Michael Lovett ("Lovett"), hereinafter collectively referred to as "The Cape Respondents": Ron Amato, Esq., Amato Law Firm, LLC, Lisle, Illinois.

For Respondent Paul Nardella ("Nardella"): Anthony R. Filosa, Esq., Rosenberg Fortuna & Laitman, LLP, Garden City, New York.

CASE INFORMATION

Statement of Claim filed on or about: April 23, 2012.

Answer to Cape's Counterclaim filed by Claimant on or about: July 18, 2012.

Answer to Nardella's Counterclaim filed by Claimant on or about: July 18, 2012.

Claimant signed the Submission Agreement: April 20, 2012.

Joint Statement of Answer by the Cape Respondents, Counterclaim, and Cross Claim by Cape filed on or about: June 20, 2012.

Cape signed the Submission Agreement: June 18, 2012.

Webb signed the Submission Agreement: June 18, 2012.

Yager signed the Submission Agreement: June 16, 2012.

Lovett signed the Submission Agreement: June 18, 2012.

Statement of Answer and Counterclaim filed by Nardella on or about: June 11, 2012.
Answer to Cape's Cross Claim filed by Nardella on or about: July 5, 2012.
Nardella signed the Submission Agreement: April 27, 2012.

CASE SUMMARY

Claimant asserted the following causes of action: defamation, tortious interference with a business relationship, negligent entrustment, and failure to supervise.

Unless specifically admitted in their Answer, the Cape Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Nardella denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In its Counterclaim, Cape asserted the following causes of action: tortious interference with business relations, and defamation.

Unless specifically admitted in its Answer, Claimant denied the allegations made in Cape's Counterclaim and asserted various affirmative defenses.

In his Counterclaim, Nardella asserted the following causes of action: misrepresentation, defamation, and tortious interference with business relations.

Unless specifically admitted in his Answer, Claimant denied the allegations made in Nardella's Counterclaim and asserted various affirmative defenses.

In its Cross Claim, Cape asserted the following cause of action: indemnification.

Unless specifically admitted in his Answer, Nardella denied the allegations made in the Cross Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested injunctive relief, compensatory damages of approximately \$500,000.00 plus interest, punitive damages and attorneys' fees.

At the close of the hearing, Claimant requested compensatory damages between \$235,000.00 and \$618,000.00.

The Cape Respondents requested that Claimant's claims be dismissed in their entirety and that costs of this matter be borne by Claimant.

Nardella requested an award dismissing Claimant's claims and that costs be assessed against Claimant.

In its Counterclaim, Cape requested compensatory and punitive damages in amounts to be specified at the hearing.

In its Answer to Cape's Counterclaim, Claimant requested an award dismissing the Counterclaim, costs, a finding that the Counterclaim is frivolous, and sanctions against Cape.

In his Counterclaim, Nardella requested compensatory damages in excess of \$600,000.00 plus interest from May 1, 2012, and costs.

In its Answer to Nardella's Counterclaim, Claimant requested an award dismissing the Counterclaim, costs, a finding that the Counterclaim is frivolous, and sanctions against Nardella.

In its Cross Claim, Cape requested compensatory damages, including reimbursement for attorneys' fees, in an amount to be determined.

In his Answer to the Crossclaim, Nardella requested an award dismissing the Cross Claim with costs to be borne by Cape.

OTHER ISSUES CONSIDERED AND DECIDED

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

By stipulation dated April 30, 2012, the parties resolved the Claimant's request for injunctive relief.

On December 11, 2012, Claimant submitted a Motion for Sanctions against the Respondents. On December 21, 2012, the Cape Respondents submitted their opposition to the Motion. After due consideration, the Panel denied the Motion.

At the conclusion of Nardella's case-in-chief, Claimant made a Motion to Dismiss the Counterclaim. Nardella opposed the Motion. After due consideration, the Panel granted the Motion and dismissed Nardella's counterclaim.

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. Nardella is liable for and shall pay to Claimant compensatory damages in the amount of \$98,350.00.
2. Claimant's claims against Cape, Webb, Yager, and Lovett are denied in their entirety.
3. Cape's Counterclaims are denied in their entirety.
4. Cape's Cross Claims are denied in their entirety.
5. Nardella's Counterclaim is dismissed.
6. Any and all relief not specifically addressed herein, including punitive damages and sanctions, 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	= \$ 2,125.00
Counterclaim Filing Fee	= \$ 1,575.00
Cross Claim Filing Fee	= \$ 2,125.00

**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 that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as parties, J. D. Nicholas & Associates, Inc., and Cape Securities, Inc., are each assessed the following:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

May 9, 2012, joint adjournment by the parties = \$ 1,125.00

1. The Panel has assessed \$562.50 of the adjournment fees to Claimant.
2. The Panel has assessed \$562.50 of the adjournment fees to Cape.

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.

Claimant is assessed:

Injunctive relief surcharge =\$ 2,500.00

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 =\$ 450.00
Pre-hearing conference: November 8, 2012 1 session

One (1) Pre-hearing session with the Panel @ \$1,125.00 =\$1,125.00
Pre-hearing conference: May 9, 2012 1 session

Eight (8) Hearing sessions @ \$1,200.00 =\$9,600.00
Hearing Dates: January 8, 2013 2 sessions
January 9, 2013 2 sessions
January 10, 2013 2 sessions
January 11, 2013 2 sessions

Total Hearing Session Fees =\$11,175.00

1. The Panel has assessed \$5,587.50 of the hearing session fees to Claimant.
2. The Panel has assessed \$5,587.50 of the hearing session fees to Cape.

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

ARBITRATION PANEL

Marilyn J. Salzman	-	Public Arbitrator, Presiding Chairperson
Ernesto V. Luzzatto	-	Public Arbitrator
Michael J. McAllister	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures



Marilyn J. Salzman
Public Arbitrator, Presiding Chairperson

1/29/13

Signature Date

Ernesto V. Luzzatto
Public Arbitrator

Signature Date

Michael J. McAllister
Non-Public Arbitrator

Signature Date

February 4, 2013

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

ARBITRATION PANEL

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Ernesto V. Luzzatto	-	Public Arbitrator
Michael J. McAllister	-	Non-Public Arbitrator

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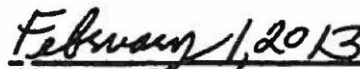
Concurring Arbitrators' Signatures

Marilyn J. Salzman
Public Arbitrator, Presiding Chairperson

Signature Date



Ernesto V. Luzzatto
Public Arbitrator



Signature Date

Michael J. McAllister
Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

Signature Date

Ernesto V. Luzzatto
Public Arbitrator

Signature Date



Michael J. McAllister
Non-Public Arbitrator

1/31/13

Signature Date

February 4, 2013

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