

2010-48532 / Court: 190

Filed 10 August 5 A11:20
Loren Jackson - District Clerk
Harris County
ED101J015897537
By: Nelson Cuero

AWARD
FINRA Dispute Resolution

In the Matter of the Arbitration Between:

Name of Claimant

Luby's Restaurants Limited Partnership

vs.

Case Number: 08-04007
Hearing Site: Houston, Texas

Name of Respondent

Credit Suisse Securities (USA), LLC

NATURE OF THE DISPUTE

Customer vs. Member

REPRESENTATION OF PARTIES

Luby's Restaurants Limited Partnership ("Claimant") was represented by Peter Tropoli, Esq., Houston, Texas until on or about April 13, 2009. On or about April 13, 2009, Roy Camberg, Esq., The Camberg Law Firm, PC, Houston, Texas filed a Notice of Designation of Lead Counsel.

Credit Suisse Securities (USA), LLC ("Respondent") was represented by Brian F. Amery, Esq. and Edwin A. Zipf, Esq., Bressler, Amery & Ross, New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about October 24, 2008. The Submission Agreement of Claimant, Luby's Restaurants Limited Partnership, was signed on or about October 22, 2008. On or about June 6, 2009, Claimant filed a First Amended Statement of Claim.

The Statement of Answer was filed by Respondent, Credit Suisse Securities (USA), LLC, on or about January 27, 2009. The Submission Agreement of Respondent, Credit Suisse Securities (USA), LLC, was signed on or about February 12, 2009. On or about January 15, 2010, Respondent filed an Answer to the First Amended Statement of Claim.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; breach of contract; breach of good faith and fair dealings; conversion; fraud; negligence and



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negligent misrepresentation; and violation of the Blue Sky Law and the Texas Security Act. The causes of action related to the recommendation and purchase of auction rate securities. Claimant alleged that Respondent represented to Claimant that auction rate securities were equivalent to cash or money market funds, were highly liquid, safe investments for short-term investing, and were suitable for Claimant. Claimant alleged that Respondent knew, but failed to disclose to Claimant, material facts about auction rate securities, in particular that they were not cash alternatives, but were instead complex, long-term financial instruments with 30 year maturity dates, or longer. Claimant also alleged that Respondent knew, but failed to disclose to Claimant, that auction rate securities were only liquid at the time of sale because broker-dealers and others were artificially supporting and manipulating the auction market to maintain the appearance of liquidity and stability. Claimant asserted that to date, it has been unable to liquidate approximately \$8.85 million of its securities and as a result of Respondent's actions, Claimant invested in securities that have become completely illiquid and Claimant has been unable to access the money it invested.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted; the Statement of Claim is barred by the doctrines of laches, waiver, ratification, and estoppel; Respondent acted in good faith and without malice or reckless indifference to Claimant; Respondent denied any liability for failure to supervise, or under any theory of control person liability, respondeat superior, or apparent authority; Respondent did not breach any duty to Claimant imposed by operation of law or contract; Claimant failed to mitigate its damages; and Claimant's claims are barred, or should be reduced, by Claimant's own contributory negligence.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$8,850,000.00
Exemplary/Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Non-Monetary Relief	Rescission

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

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OTHER ISSUES CONSIDERED & DECIDED

The Panel acknowledges that they have each read the pleadings and other materials filed by the parties.

On or about May 12, 2009, Claimant filed a Motion for Leave to Amend the Statement of Claim. Respondent did not file an Opposition. On or about June 6, 2009, the Panel issued an Order granting the Motion for Leave to Amend the Statement of Claim.

On or about May 4, 2010, Claimant filed a post-hearing submission to substantiate his attorneys' fee claim. The Panel denies the request for attorneys' fees herein.

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, the 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, Credit Suisse Securities (USA), LLC, is liable to Claimant, Luby's Restaurants Limited Partnership, and shall purchase Claimant's auction rate securities at par;
- 2.) Respondent, Credit Suisse Securities (USA), LLC, is liable for and shall pay to Claimant, Luby's Restaurants Limited Partnership, interest on the at par purchase price of the auction rate securities at the rate of 6% per annum from and including May 29, 2010 through and including the date the Award is paid in full;
- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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FINRA Dispute Resolution will retain the non-refundable 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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Credit Suisse Securities (USA), LLC is assessed the following:

Member surcharge = \$ 3,350.00
 Pre-hearing process fee = \$ 750.00
 Hearing process fee = \$ 5,500.00

Adjournment Fees

Adjournments granted during these proceedings:

October 27-30, 2009, adjournment requested by jointly by the parties = \$ 1,200.00
 March 1-3, 2010, adjournment requested by jointly by the parties = \$ 1,200.00

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each hearing 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:

Three (3) Pre-hearing sessions with a single arbitrator x \$450.00 = \$ 1,350.00
 Pre-hearing conferences: June 5, 2009 1 session
 February 22, 2010 1 session
 March 1, 2010 1 session

Two (2) Pre-hearing sessions with Panel x \$1,200.00 = \$ 2,400.00
 Pre-hearing conferences: March 30, 2009 1 session
 March 4, 2010 1 session

Seven (7) Hearing sessions x \$1,200.00 = \$ 8,400.00
 Hearing Dates: April 27, 2010 2 sessions
 April 28, 2010 2 sessions

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April 29, 2010 3 sessions
Total Hearing Session Fees = \$12,150.00

The Panel has assessed \$6,075.00 of the hearing session fees to Luby's Restaurants Limited Partnership.

The Panel has assessed \$6,075.00 of the hearing session fees to Credit Suisse Securities (USA), LLC.

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

ARBITRATION PANEL

Larry J. Craddock - Public Arbitrator, Presiding Chair
Allan R. Lazor - Public Arbitrator
Carol Ann Stapper - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

/s/ Larry J. Craddock
Larry J. Craddock
Public Arbitrator, Presiding Chair

May 21, 2010
Signature Date

/s/ Allan R. Lazor
Allan R. Lazor
Public Arbitrator

May 21, 2010
Signature Date

/s/ Carol Ann Stapper
Carol Ann Stapper
Non-Public Arbitrator

May 21, 2010
Signature Date

May 21, 2010
Date of Service (For FINRA office use only)

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Allan R. Lazor - Public Arbitrator
Carol Ann Stapper - Non-Public Arbitrator

Concurring Arbitrators' Signatures:


Larry J. Craddock
Public Arbitrator, Presiding Chair

5/21/2010
Signature Date

Allan R. Lazor
Public Arbitrator

Signature Date

Carol Ann Stapper
Non-Public Arbitrator

Signature Date

Date of Service (For FINRA office use only)

FINRA Dispute Resolution
Arbitration No. 08-04077
Award - Final

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Public Arbitrator, Presiding Chair


Signature Date

Allan R. Lazor
Public Arbitrator


Signature Date

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Non-Public Arbitrator

Signature Date

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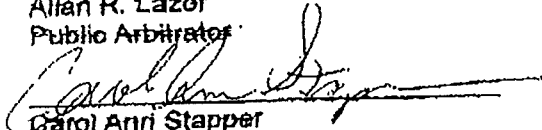
Concurring Arbitrators' Signatures:

Larry J. Craddock
Public Arbitrator, Presiding Chair

Signature Date

Allan R. Lazor
Public Arbitrator

Signature Date



Carol Ann Stapper
Non-Public Arbitrator

5/2/10

Signature Date

Date of Service (For FINRA office use only)