

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
David Gaudet

Case Number: 21-01036

vs.

Respondents
Arive Capital Markets
Michael Joseph Digioia

Hearing Site: Boston, Massachusetts

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Customer vs. Member and Associated Person

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant David Gaudet: Christa M. Hibbard, Esq., and Jason J. Kane, Esq., Peiffer Wolf Carr Kane & Conway, LLP, Rochester, New York.

For Respondent Arive Capital Markets: Anthony C. Varbero, Esq., Joseph Mure Jr. & Associates, Brooklyn, New York.

Respondent Michael Joseph Digioia appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: April 20, 2021.

David Gaudet signed the Submission Agreement: April 20, 2021.

Statement of Answer filed by Respondent Arive Capital Markets on or about: June 9, 2021.

Arive Capital Markets signed the Submission Agreement: June 7, 2021.

Statement of Answer filed by Respondent Michael Joseph Digioia on or about: June 29, 2021.

Michael Joseph Digioia signed the Submission Agreement: November 17, 2021.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty; violation of NASD and FINRA Rules; failure to supervise; negligence; breach of contract; and respondeat superior. The causes of action relate to purchase of stocks in Nostrum Holdings Inc.

Unless specifically admitted in the Statement of Answer, Respondent Arive Capital Markets denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in the Statement of Answer, Respondent Michael Joseph Digioia denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested unspecified compensatory damages; pre-judgment and post-judgment interest, commissions, and fees paid; loss of income that would have been received had Claimant's accounts been managed properly, as well as other losses, foreseeable or not, that Claimant suffered, including non-pecuniary losses; attorneys' fees, costs, and other expenses; punitive damages; and all other sums Claimant is entitled to at law or equity.

In the Statement of Answer, Respondent Arive Capital Markets requested that Claimant's claims be denied; and Claimant should be ordered to pay for Arive Capital Markets' costs and expenses.

In the Statement of Answer, Respondent Michael Joseph Digioia requested that Claimant's claims be denied; and that Claimant be ordered to pay Michael Joseph Digioia's legal costs and expenses.

OTHER ISSUES CONSIDERED AND DECIDED

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

On September 17, 2021, Respondent Arive Capital Markets filed a Motion to Dismiss pursuant to Rule 12504 of the Code of Arbitration Procedure ("Code"). On November 1, 2021, Claimant filed a response opposing the Motion to Dismiss. On November 8, 2021, Respondent filed a reply in support of the Motion to Dismiss. On November 19, 2021, the Panel heard oral arguments on the Motion to Dismiss. By Order dated November 19, 2021, the Panel deferred the Motion to Dismiss with leave to refile after further discovery.

On December 27, 2021, Respondent Arive Capital Markets filed a Motion for Leave to File Counterclaim and Crossclaim. On January 6, 2022, Claimant filed a response opposing the Motion for Leave to File Counterclaim and Crossclaim. On January 7, 2022, Respondent Arive Capital Markets filed a Reply to Claimant's Opposition. By Order dated January 13, 2022, the Panel granted Respondent Arive Capital Markets' Motion for Leave to File Counterclaim and Crossclaim.

On April 21, 2022, Claimant filed a notice of settlement with Respondent Arive Capital Markets. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim against Respondent Arive Capital Markets.

The Award in this matter may be executed in counterpart copies.

AWARD

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

1. Respondent Michael Joseph Digioia is liable for and shall pay to Claimant the sum of \$150,000.00 in compensatory damages.
2. Respondent Michael Joseph Digioia is liable for and shall pay to Claimant interest on the above-stated sum at the rate of 9% per annum from January 1, 2019 through and including the date the award is paid.
3. Respondent Michael Joseph Digioia is liable for and shall pay to Claimant \$400.00 to reimburse Claimant for the non-refundable portion of the filing fee previously paid to FINRA Dispute Resolution Services.
4. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, and attorneys' fees, are denied.

FEES

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee = \$ 1,600.00

**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, Respondent Arive Capital Markets is assessed the following:

Member Surcharge = \$ 2,000.00

Member Process Fee = \$ 3,850.00

Discovery-Related Motion Fees

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

One (1) decision on a discovery-related motion on the papers with one (1) Arbitrator @ \$200.00/decision = \$ 200.00

Claimant submitted one (1) discovery-related motion.

Total Discovery-Related Motion Fees	= \$ 200.00
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The Panel has assessed the total discovery-related motion fees to Respondent Michael Digioia.

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, which lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with the Panel @ \$1,150.00/session	= \$ 2,300.00
Pre-Hearing Conferences: September 9, 2021	1 session
November 19, 2021	1 session

Three (3) hearing sessions @ \$1,150.00/session	= \$ 3,450.00
Hearings: May 24, 2022	2 sessions
May 25, 2022	1 session

Total Hearing Session Fees	= \$ 5,750.00
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The Panel has assessed \$575.00 of the hearing session fees to Claimant.

The Panel has assessed \$575.00 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed \$1,150.00 of the hearing session fees to Respondent Arive Capital Markets.

The Panel has assessed \$3,450.00 of the hearing session fees to Respondent Michael Joseph Digioia.

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

ARBITRATION PANEL

Gene M. Bauer	-	Public Arbitrator, Presiding Chairperson
Patrick Sullivan	-	Public Arbitrator
Carol Ellen Carson	-	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

Gene M. Bauer

Gene M. Bauer
Public Arbitrator, Presiding Chairperson

06/02/2022

Signature Date

Patrick Sullivan

Patrick Sullivan
Public Arbitrator

06/02/2022

Signature Date

Carol Ellen Carson

Carol Ellen Carson
Public Arbitrator

06/02/2022

Signature Date

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June 03, 2022

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