

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Jose A. Rivera

Case Number: 05-04256

Names of the Respondents  
Galleon Merchant Banking  
n/k/a Granite Associates, Inc.  
James Morrell  
John D. Elwin  
Nicholas Natale

Hearing Site: Orlando, FL

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

**REPRESENTATION OF PARTIES**

For Jose A. Rivera, hereinafter referred to as "Claimant": **Scott L. Silver, Esq.** and Michael P. McCahill, Esq., Blum & Silver, LLP, Coral Springs, FL.

For Respondent Galleon Merchant Banking n/k/a Granite Associates, Inc. ("Galleon"): Nicholas Natale, Delray Beach, FL.

Respondent James Morrell appeared pro se.

Respondents John D. Elwin ("Elwin") and Nicholas Natale ("Natale") were represented by James Morrell until January 11, 2008. Thereafter, they appeared pro se.

**CASE INFORMATION**

Statement of Claim filed on or about: August 15, 2005.

Claimant signed the Uniform Submission Agreement: August 4, 2005.

Respondents' Galleon, Morrell, Elwin, and Natale's Statement of Answer filed on or about: November 7, 2005.

Respondents Galleon, Morrell, Elwin, and Natale, hereinafter collectively referred to as "Respondents", did not file executed Uniform Submission Agreements.

Claimant's Emergency Motion for Sanctions, Telephonic Hearing and Summary Judgment With Supporting Memorandum of Law ("Motion for Summary Judgment") filed on or about: January 16, 2008.

**CASE SUMMARY**

Claimant asserted the following causes of action: Respondents sold Claimant unregistered securities in violation of federal and state Blue Sky laws; violation of industry rules; common law fraud; failure to disclose material information; negligent supervision, retention, and hiring; material misrepresentation; and, breach of fiduciary

duty. The causes of action relate to the purchase of Home Distribution Network stock, through a private offering, in Claimant's account.

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$207,000.00, interest at the legal rate from the date of purchase or a reasonable market return, rescission, punitive damages, costs, and such other relief as is just and proper.

Respondents requested dismissal of the Statement of Claim, costs, that all forum fees be assessed against Claimant, expungement, and such other and further relief as the undersigned arbitrators (the "Panel") deemed appropriate.

### **OTHER ISSUES CONSIDERED AND DECIDED**

In his Motion for Summary Judgment, Claimant asserted the following: no material issue of fact is in dispute by operation of law; Respondents produced very few documents during discovery; and, Respondents did not comply with the Panel's orders. Respondents did not file a response to the Motion.

On or about January 17, 2008, the Panel entered an order concerning Claimant's Motion for Summary Judgment. The order denied Claimant's request for telephonic hearing and deferred the other matters in the Motion for consideration at the evidentiary hearing. During the evidentiary hearing, the Panel denied the remainder of Claimant's Motion for Summary Judgment.

On or about January 23, 2008, Claimant advised FINRA Dispute Resolution that it reached a settlement with Respondent Morrell.

Respondents Galleon, Elwin, and Natale did not appear at the evidentiary hearing. Upon review of the file and the representations made by/on behalf of the Claimant, the Panel determined that Respondents Galleon, Elwin, and Natale have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the Code of Arbitration Procedure (the "Code").

Respondents Galleon, Morrell, Elwin, and Natale did not file with FINRA Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

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

Respondents Galleon and Elwin are liable, jointly and severally, for the sale of unregistered securities, breach of fiduciary duty, and fraud and shall pay to Claimant compensatory damages in the sum of \$55,000.00 plus interest at the rate of 11% per annum accruing from January 22, 2008 until the date of payment of the Award.

Evidence presented during deliberation on damages established that the out-placement in Home Distribution Network Corporation constituted a thinly-veiled *Ponzi* scheme perpetuated by Respondent Elwin and knowingly supported by Respondent Galleon Merchant Banking, n/k/a Granite Associates, Inc. There was insufficient evidence to determine specifically which other members of the firm aided and abetted the scheme.

The Panel determined that the intentional actions of Respondents Galleon and Elwin, in complete disregard of the interests of the investor, justify the imposition of punitive damages against those Respondents in the amount of three times the original claim amount. The fact that some portion of the original claim was settled against Respondent Morrell, allowing a reduction of compensatory damages against the remaining Respondents, does not reduce the award of punitive damages in accordance with Florida Statutes §768.72(2).

Accordingly, Respondents Galleon and Elwin are liable, jointly and severally, for the sale of unregistered securities, breach of fiduciary duty, and fraud and shall pay to Claimant punitive damages in the sum of \$621,000.00 plus interest at the rate of 11% per annum accruing from January 22, 2008 until the date of payment of the Award, pursuant to Florida Statutes §768.72. The Panel found clear and convincing evidence of intentional misconduct on the part of Respondents Galleon and Elwin.

Claimant's request for attorneys' fees was denied.

The Panel found that Respondents Galleon, Elwin, and Natale defaulted by not appearing at the evidentiary hearing despite receiving due notice of same.

Claimant's claims against Respondent Natale are dismissed, with prejudice.

Any and all claims for relief not specifically addressed herein, including Respondents' request for expungement, are denied.

## **FEES**

Pursuant to the Code, the following fees are assessed:

### **Filing Fees**

FINRA Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$300.00

**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, Respondent Galleon is a party and was a member firm at the time the fees were assessed.

Member surcharge = \$1,700.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$2,750.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

July 10-13, 2007, adjournment by Respondents Galleon, Morrell, Elwin, and Natale. The Panel assessed the total adjournment fee of \$1,125.00 jointly and severally to Respondents.

**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:

July 10-13, 2007, adjournment by Respondents Galleon, Morrell, Elwin, and Natale. The Panel assessed the total three-day cancellation fee of \$300.00 jointly and severally to Respondents.

**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.

No injunctive relief fees were assessed during this proceeding.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on either a discovery-related motion on the papers or a contested motion for the issuance of a subpoena. 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:

Three (3) Decisions on discovery-related motions on the papers  
with one (1) arbitrator @ \$200.00/decision = \$ 600.00  
Claimant submitted two (2) discovery-related motions  
Respondents submitted one (1) discovery-related motion  
  
Two (2) Pre-hearing sessions with the Panel @ \$1,125.00/session = \$2,250.00

Pre-hearing conferences:	December 21, 2005	1 session	
	July 5, 2007	1 session	
One (1) Hearing session @ \$1,125.00/session			= \$1,125.00
Hearing Date:	January 22, 2008	1 session	
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Total Forum Fees			= \$3,975.00

The Panel has assessed the total forum fees of \$3,975.00 jointly and severally to Respondents Galleon and Elwin.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were assessed during this proceeding.

**Fee Summary**

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 300.00
Balance Due FINRA Dispute Resolution	= \$ 0.00

Respondent Galleon is solely liable for:

<u>Member Fees</u>	= \$5,200.00
<u>Total Fees</u>	= \$5,200.00
<u>Less payments</u>	= \$5,200.00
Balance Due FINRA Dispute Resolution	= \$ 0.00

Respondents Galleon and Elwin are jointly and severally liable for:

<u>Forum Fees</u>	= \$3,975.00
<u>Total Fees</u>	= \$3,975.00
<u>Less payments</u>	= \$ 0.00
Balance Due FINRA Dispute Resolution	= \$3,975.00

Respondents Galleon, Morrell, Natale, and Elwin are jointly and severally liable for:

Three-Day Cancellation Fee	= \$ 300.00
<u>Adjournment Fees</u>	= \$1,125.00
<u>Total Fees</u>	= \$1,425.00
<u>Less Payments</u>	= \$ 0.00
Balance Due FINRA Dispute Resolution	= \$1,425.00

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



**ARBITRATION PANEL**

Richard W. Thornburg, JD	-	Public Arbitrator, Presiding Chairperson
David P. Slater	-	Public Arbitrator
Thomas Roe Oldt	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Richard W. Thornburg, JD  
Public Arbitrator, Presiding Chairperson

02.13.08  
Signature Date

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David P. Slater  
Public Arbitrator

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Signature Date

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Thomas Roe Oldt  
Non-Public Arbitrator

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Signature Date

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Date of Service (For FINRA Dispute Resolution use only)

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