

AWARD
FINRA OFFICE OF DISPUTE RESOLUTION

CASE #: 16-01204

OrthoTek, Inc. vs. J.D. Nicholas & Associates, Inc., Matthew DiGregorio, Anthony Minerva, and Andrew Brown

REPRESENTATION OF PARTIES:

For Claimant OrthoTek, Inc. ("Claimant"): Bradley D. Schnur, Esq., Law Office of Bradley D. Schnur, Esq. PC, Jericho, New York.

For Respondent J.D. Nicholas & Associates, Inc. ("JDN"): James Dolan, Custodian, c/o Aegis Capital Corporation, Melville, New York.

Respondent Matthew DiGregorio ("DiGregorio") appeared pro se.

Respondent Anthony Minerva ("Minerva") appeared pro se.

Respondent Andrew Brown ("Brown") did not appear.

NATURE OF DISPUTE: Customer vs. Member and Associated Persons

Statement of Claim filed on or about: April 28, 2016.

JDN did not file a Statement of Answer.

Statement of Answer filed jointly by DiGregorio and Minerva on or about: June 19, 2016.

Brown did not file a Statement of Answer.

Minerva filed a (Partial) Motion to Dismiss on or about August 1, 2016. Claimant filed an Opposition to Minerva's (Partial) Motion to Dismiss on or about August 11, 2016.

Minerva filed a Final Submission on or about August 14, 2016.

Claimant filed a Supplemental Submission on or about August 18, 2016. Minerva filed a Response to Claimant's Supplemental Submission on or about August 18, 2016.

CASE SUMMARY: Claimant asserted the following causes of action: unsuitability, failure to supervise, breach of fiduciary duty, and churning. The causes of action related to Claimant's allegations that Respondents churned Claimant's account and recommended unsuitable investments, including Human Genome Sciences, Inc. and Medivation stock.

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

RELIEF REQUESTED: In the Statement of Claim, Claimant requested:

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|-----------------------|-------------|
| Compensatory Damages: | \$43,297.36 |
| Punitive Damages: | Unspecified |
| Interest: | Unspecified |
| Attorneys' Fees: | Unspecified |
| Costs: | Unspecified |
| Other Relief: | Unspecified |

Claimant requested total damages of \$50,000.00 in the Statement of Claim. In Claimant's Supplemental Submission, dated August 18, 2016, Claimant requested attorneys' fees of no less than \$14,000.00, in addition to Claimant's damages requested in the Statement of Claim.

In their Statement of Answer, DiGregorio and Minerva requested that Claimant's claims be denied, that arbitration costs be assessed against Claimant, and that all references to this matter be expunged from their registration records maintained by the Central Registration Depository ("CRD").

AWARD: The undersigned Arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondent Anthony Minerva is liable for and shall pay to Claimant the sum of \$12,869.00. 2) Respondent Anthony Minerva is liable for and shall pay to Claimant interest on the aforementioned sum at the rate of 8% per annum, from and including the date of service of this Award, through and including the date this Award is paid in full. 3) Respondents J.D. Nicholas & Associates, Inc. and Matthew DiGregorio are jointly and severally liable for and shall pay to Claimant the sum of \$16,686.00. 4) Respondents J.D. Nicholas & Associates, Inc. and Matthew DiGregorio are jointly and severally liable and shall pay to Claimant interest on the aforementioned sum at the rate of 8% per annum, from and including the date of service of this Award, through and including the date this Award is paid in full. 5) Claimant's claims against Andrew Brown are dismissed without prejudice. 6) All requests for attorneys' fees are denied. 7) All requests for punitive damages are denied. 8) Matthew DiGregorio's request for expungement is denied. 9) Anthony Minerva's request for expungement is denied. 10) All other relief requests are denied. 11) FINRA Office of Dispute Resolution shall retain the \$600.00 filing fee that Claimant deposited previously. 12) Respondents J.D. Nicholas & Associates, Inc., Matthew DiGregorio, and Anthony Minerva are jointly and severally liable for and shall pay to Claimant \$450.00 to partially reimburse Claimant for the filing fee previously paid to FINRA Office of Dispute Resolution.

OTHER FEES: Respondent J.D. Nicholas & Associates, Inc. shall pay to FINRA Office of Dispute Resolution the \$750.00 Member Surcharge and \$1,750.00 Member Process Fee previously invoiced.

OTHER ISSUES: The Arbitrator acknowledges that he has read the pleadings and other materials filed by the parties.

The Arbitrator denied Minerva's (Partial) Motion to Dismiss in his Order dated August 22, 2016.

The Arbitrator determined that Respondent J.D. Nicholas & Associates, Inc. was served notice of the Statement of Claim by certified mail, as evidenced by the signed signature card on file, and Overdue Notice and Notification of Arbitrator by electronic mail and is, therefore, bound by the Arbitrator's ruling and determination.

The Arbitrator determined that Respondent Andrew Brown was not served notice of the Statement of Claim and, therefore, Brown is dismissed without prejudice.

ARBITRATOR

Richard Djokic

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Sole 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.

Arbitrator's Signature

/s/ Richard Djokic

Richard Djokic
Sole Public Arbitrator

October 20, 2016

Signature Date

October 21, 2016

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

OTHER ISSUES: The Arbitrator acknowledges that he has read the pleadings and other materials filed by the parties.

The Arbitrator denied Minerva's (Partial) Motion to Dismiss in his Order dated August 22, 2016.

The Arbitrator determined that Respondent J.D. Nicholas & Associates, Inc. was served notice of the Statement of Claim by certified mail, as evidenced by the signed signature card on file, and Overdue Notice and Notification of Arbitrator by electronic mail and is, therefore, bound by the Arbitrator's ruling and determination.

The Arbitrator determined that Respondent Andrew Brown was not served notice of the Statement of Claim and, therefore, Brown is dismissed without prejudice.

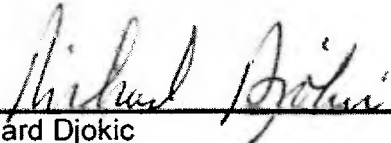
ARBITRATOR

Richard Djokic

Sole 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.

Arbitrator's Signature



Richard Djokic
Sole Public Arbitrator



Signature Date

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