

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
Carlos D. Bolet Alvarez

Case Number: 16-02338

vs.

Respondent  
Santander Securities, LLC

Hearing Site: San Juan, Puerto Rico

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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

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimant Carlos D. Bolet Alvarez: Peter J. Mougey, Esq., Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A., Pensacola, Florida.

For Respondent Santander Securities, LLC: Diego Murgia-Diaz, Esq., Pietrantonio Mendez & Alvarez LLC, San Juan, Puerto Rico.

**CASE INFORMATION**

Statement of Claim filed on or about: August 10, 2016.

Carlos D. Bolet Alvarez signed the Submission Agreement: August 10, 2016.

Statement of Answer filed by Respondent on or about: November 14, 2016.

Santander Securities, LLC signed the Submission Agreement: September 12, 2016.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty; violation of NASD and NYSE rules, breach of contract and negligence; fraud; violation of §12(a)(2) of the Securities Act of 1933; false inducements to inaction; negligent supervision; and violation of Article 1802 of the Civil Code of Puerto Rico, 31 Laws of Puerto Rico Annotated [L.P.R.A.] §§5141, 3020 and 3021. The causes of action relate to Claimant's investments in Puerto Rican securities, including but not limited to Puerto Rican bonds, and the Santander Puerto Rico closed-end funds.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: actual damages of no less than \$244,000.00; interest on losses at the legal rate; costs, legal fees and expenses; punitive damages; rescission of all transactions under 31 L.P.R.A. § 3052; and such other and additional damages and relief, which the Panel deemed just and equitable.

In the Statement of Answer, Respondent requested: dismissal of Claimant's Statement of Claim in its entirety; attorneys' fees; and expungement from the brokers' Central Registration Depository ("CRD").

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

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

On or about November 20, 2018, Respondent filed a Partial Motion to Dismiss pursuant to Rule 12206(a) of the Code of Arbitration Procedure ("Code"). On or about December 28, 2018, Claimant filed a response opposing the Partial Motion to Dismiss. On or about January 3, 2019, Respondent filed a reply in support of its Partial Motion to Dismiss. On January 15, 2019, the Panel heard oral arguments on the Partial Motion to Dismiss. On or about January 15, 2019, the Panel issued an Order that denied the Partial Motion to Dismiss.

On or about July 23, 2020, Respondent filed a Motion to Dismiss pursuant to Rule 12504 of the Code. On or about September 8, 2020, Claimant filed a response opposing the Motion to Dismiss. On or about September 14, 2020, Respondent filed a reply in support of its Motion to Dismiss. On October 16, 2020, the Panel heard oral arguments on the Motion to Dismiss. On or about October 16, 2020, the Panel issued an Order that denied the Motion to Dismiss.

On or about October 30, 2020, Claimant filed a Motion to Amend Statement of Claim. On or about November 9, 2020, Respondent filed a response opposing the Motion to Amend Statement of Claim. On or about November 16, 2020, Claimant filed a reply in support of his Motion to Amend Statement of Claim. On or about November 19, 2020, Respondent filed a sur-reply in support of its response to the Motion to Amend Statement of Claim. On December 7, 2020, the Panel heard oral arguments on the Motion to Amend Statement of Claim. On or about December 11, 2020, the Panel issued an Order that deferred ruling on the Motion to Amend Statement of Claim, pending receipt of certain documents requested in the Order. On or about January 15, 2021, Claimant filed a response in compliance with the Panel's Order. On or about January 19, 2021, Respondent filed a letter opposing Claimant's notice of compliance and notified the Panel that Respondent would file a response brief within the time prescribed by the Code.

On or about January 22, 2021, Respondent filed a Motion to Dismiss pursuant to Rule 12212(c) of the Code. On or about February 3, 2021, Claimant filed a response opposing the Motion to Dismiss. On or about February 8, 2021, Respondent filed a reply in support of its Motion to Dismiss. On or about March 17, 2021, the Panel issued an Order that granted Respondent's

Motion to Dismiss pursuant to Rule 12212(c) with prejudice. The Panel granted Respondent's Motion to Dismiss on the following grounds:

The case was filed on August 10, 2016. Claimant passed away in November of 2018.

The Panel has been challenged to obtain from Claimant relevant, timely, complete evidence and documented full compliance with the Panel's Orders. For example:

At a Pre-hearing Conference held on April 23, 2019, and recognizing that a Puerto Rico court had to certify Claimant's Last Will and Testament, Claimant was requested to substitute the heirs as soon as possible or file a Motion for Dismissal. The Court's certification was issued twenty days later, on May 13, 2019. However, the Panel was only made aware of this fact fifteen months later during a Pre-hearing Conference held on October 16, 2020.

During that same Pre-hearing Conference, Claimant was ordered to provide, by October 30, 2020, the names of the beneficiaries of the Estate, the name of the Executor, whether there were any impediments to the Executor acting in full legal capacity to proceed and other matters.

On or about October 30, 2020, Claimant filed a Motion to Amend Statement of Claim. The Motion identified the Executor, but it did not identify the heirs and stated there were no impediments to the Executor acting on behalf of the heirs, a position which Respondent disputed.

On or about December 11, 2020, the Panel ordered: "For all heirs identified in the Will of Carlos D. Bolet Alvarez who are of legal age, Claimant is to provide to the arbitration panel copies of Power of Attorneys, authorizing the Executor, Brenda Alicia Bolet Nieto to act on their behalf in all matters relating to FINRA Case #16-02338."

No Powers of Attorney or contracts for legal representation were produced to the Panel.

The Orders issued were to the benefit of Claimant, as they were terms suggested by Claimant. Respondent agreed to the terms and agreed to alternatives, yet Claimant continued with non-compliance.

The Panel determined that this decision to ignore those Orders was deliberate and intentional.

On or about March 23, 2021, Respondent filed with FINRA Dispute Resolution Services notice of withdrawal of its request for expungement, without prejudice to the financial consultant's right to seek expungement directly.

### **AWARD**

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

1. Claimant's claims as stated in the Statement of Claim are dismissed in their entirety pursuant to Rule 12212(c) of the Code.
2. 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, the following fees are assessed:

#### **Filing Fees**

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

Initial Claim Filing Fee = \$ 1,425.00

*\*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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge = \$ 1,700.00  
Member Process Fee = \$ 3,250.00

#### **Postponement Fees**

Postponements granted during these proceedings for which fees were assessed or waived:

March 11-15, 2019, postponement requested by parties = \$ 1,125.00

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Total Postponement Fees = \$ 1,125.00

The Panel has assessed \$562.50 of the postponement fees to Claimant.

The Panel has assessed \$562.50 of the postponement fees to Respondent.

#### **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 Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session = \$ 450.00  
Pre-Hearing Conference: January 18, 2019 1 session

Five (5) pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 5,625.00  
Pre-Hearing Conferences: December 12, 2016 1 session  
January 15, 2019 1 session  
April 23, 2019 1 session  
October 16, 2020 1 session



**ARBITRATION PANEL**

Robert J. Gregory	-	Public Arbitrator, Presiding Chairperson
Julius P. Terrell	-	Public Arbitrator
Melissa Nycole Hearon	-	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**

***Robert J. Gregory***

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Robert J. Gregory  
Public Arbitrator, Presiding Chairperson

**03/25/2021**

\_\_\_\_\_  
Signature Date

***Julius P. Terrell***

\_\_\_\_\_  
Julius P. Terrell  
Public Arbitrator

**03/25/2021**

\_\_\_\_\_  
Signature Date

***Melissa Nycole Hearon***

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Melissa Nycole Hearon  
Public Arbitrator

**03/25/2021**

\_\_\_\_\_  
Signature Date

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March 26, 2021

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