

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

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In the Matter of the Arbitration Between:

Claimants

Acacia Noguera and Emporio Blue Ltd.

Case Number: 18-04305

vs.

Respondent

Aegis Capital Corp.

Hearing Site: Miami, Florida

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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: Customers vs. Member

This case was decided by an all-public panel.

The evidentiary hearing was conducted in part by videoconference.

**REPRESENTATION OF PARTIES**

For Claimants Acacia Noguera and Emporio Blue Ltd. (collectively “Claimants”): Brian Levin, Esq., Levin Law, P.A., Miami, Florida, until December 14, 2020. Thereafter, Acacia Noguera appeared pro se and Emporio Blue Ltd. was represented by Acacia Noguera, Miami Lakes, Florida.

For Respondent Aegis Capital Corp. (“Respondent”): Sameer Rastogi, Esq. and Michael H. Ference, Esq., Sichenzia Ross Ference LLP, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: December 20, 2018.

Claimants signed the Submission Agreement: December 19, 2018.

Statement of Answer filed on or about: February 22, 2019.

Respondent did not sign the Submission Agreement.

**CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action: negligence, breach of fiduciary duty, breach of contract, violation of the Florida Securities and Investor Protection Act, and negligent supervision. The causes of action relate to Claimants’ allegations

that Respondent made unnecessary trades for the primary purpose of generating commissions, made excessive and unnecessary short-term trades without having a reasonable basis for doing so, used excessive amounts of margin borrowing without Claimants' approval or fully explaining the risks, and over-concentrated Claimants' accounts with risky foreign bonds and other securities.

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, Claimants requested damages based on fairness and equity; compensatory damages in excess of \$1,000,000.00 and prejudgment interest at the statutory rate; rescission damages; damages pursuant to the Florida Securities and Investor Protection Act; disgorgement of all commissions and fees generated in Claimants' accounts; attorneys' fees and costs; punitive damages; and such additional relief as the Panel may deem appropriate.

In the Statement of Answer, Respondent requested that the Panel dismiss the Statement of Claim with prejudice.

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

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

Respondent did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having answered the claim, appeared, and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On August 13, 2020, Claimant filed a Motion for Zoom Hearing. On August 31, 2020, Respondent filed a response opposing Claimant's Motion for Zoom Hearing. On September 8, 2020, Claimant filed a reply in support of the Motion for Zoom Hearing. In an Order dated September 13, 2020, the Panel ruled that in the event that the July 2021 hearing dates could not take place in-person due to COVID-19, they would be conducted via Zoom. In accordance with the Panel's Order, the hearings on July 19-22, 2021 were conducted via Zoom.

During the hearing, Respondent made a motion for a directed verdict on Claimants' claims based on Florida Statutes, Chapter 517, which Claimants opposed. On the record, the Panel granted Respondent's motion.

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

### **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. Claimants' claims are denied in their entirety.
2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble 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	= \$	2,000.00
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*\*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	= \$	3,025.00
Member Process Fee	= \$	6,175.00

#### **Postponement Fees**

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

November 11-15, 2019, postponement requested by the parties	= \$	1,400.00
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Total Postponement Fees	= \$	1,400.00
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The Panel has assessed the total postponement fees jointly and severally to Claimants.

#### **Discovery-Related Motion Fees**

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

Two (2) decisions on discovery-related motions on the papers with one (1) Arbitrator @ \$200.00/decision	= \$	400.00
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Claimant submitted one (1) discovery-related motion  
Respondent submitted one (1) discovery-related motion

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Total Discovery-Related Motion Fees	= \$	400.00
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The Panel has assessed the total discovery-related motion fees jointly and severally to Claimants.

**Contested Motion for Issuance of Subpoena Fees**

Fees apply for each decision on a contested motion for the issuance of a subpoena.

Three (3) decisions on contested motions for the issuance of a subpoena with one Arbitrator @ \$250.00 = \$ 750.00

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Total Contested Motion for Issuance of Subpoena Fees = \$ 750.00

The Panel has assessed the total contested motion for issuance of subpoena fees jointly and severally to Claimants.

**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:

Eighteen (18) hearing sessions @ \$1,400.00/session = \$ 25,200.00

Hearings:

January 27, 2020	2 sessions
January 28, 2020	2 sessions
January 29, 2020	3 sessions
January 30, 2020	2 sessions
January 31, 2020	1 session
July 19, 2021	2 sessions
July 20, 2021	2 sessions
July 21, 2021	2 sessions
July 22, 2021	2 sessions

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Total Hearing Session Fees = \$ 25,200.00

The Panel has assessed the total hearing session fees jointly and severally to Claimants.

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

**ARBITRATION PANEL**

Christopher J. Klein	-	Public Arbitrator, Presiding Chairperson
Richard Carl Smukler	-	Public Arbitrator
Michael Greene	-	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**

***Christopher J. Klein***

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Christopher J. Klein  
Public Arbitrator, Presiding Chairperson

**07/26/2021**

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

***Richard Carl Smukler***

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Richard Carl Smukler  
Public Arbitrator

**07/26/2021**

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

***Michael Greene***

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Michael Greene  
Public Arbitrator

**07/26/2021**

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July 27, 2021

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