

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Victor Alvarez-Mauras

Case Number: 19-01158

vs.

Respondents
Popular Securities, Inc.
Popular Securities, LLC
Alexander Garcia and His Wife Wanda O. Meléndez Santos
The Conjugal Partnership between Garcia and Meléndez

Hearing Site: San Juan, Puerto Rico

Nature of the Dispute: Customer vs. Members, Associated Person, and Non-Members

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Victor Alvarez-Mauras: Paul M. Vilaro-Nelms, Esq., Vilaro Law Offices, Guaynabo, Puerto Rico.

For Respondents Popular Securities, Inc., Popular Securities, LLC, Alexander Garcia and His Wife Wanda O. Meléndez Santos; and The Conjugal Partnership between Garcia and Meléndez: Sara L. Vélez-Santiago, Esq., Pietrantonio Mendez & Alvarez, LLC, San Juan, Puerto Rico.

CASE INFORMATION

Statement of Claim filed on or about: April 25, 2019.

Victor Alvarez-Mauras signed the Submission Agreement: April 29, 2019.

Statement of Answer filed by Respondents on or about: June 26, 2019.

Popular Securities, Inc. signed the Submission Agreement: May 3, 2019.

Popular Securities, LLC signed the Submission Agreement: June 27, 2019.

Alexander Garcia signed the Submission Agreement: May 14, 2019.

Wanda O. Meléndez Santos signed the Submission Agreement: June 25, 2019.

The Conjugal Partnership between Garcia and Meléndez signed the Submission Agreement: June 25, 2019.

CASE SUMMARY

Claimant asserted the following causes of action: racketeering and conspiracy to engage in racketeering activities in violation of The Racketeer Influenced and Corrupt Organization ("RICO") Act, including falsification of documents leading to embezzlement and bank fraud. The

causes of action relate to Respondent Garcia's alleged embezzlement of funds from Claimant's account.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested, pursuant to 18 U.S.C. § 1964(a) and (c) the following relief: (1) that the Panel find that all Respondents, both jointly and severally, have acquired and maintained, both directly and indirectly, an interest in and/or control of a RICO enterprise of persons and of other individuals who were associated in fact, all of whom engaged in, and whose activities did affect, interstate and foreign commerce in violation of 18 U.S.C. § 1962(b) (Prohibited activities); (2) that all Respondents and all their directors, officers, employees, agents, servants and all other persons in active concert or in participation with them, be enjoined temporarily during pendency of this action, and permanently thereafter, from acquiring or maintaining, whether directly or indirectly, any interest in or control of any RICO enterprise of persons, or of other individuals associated in fact, who are engaged in, or whose activities do affect, interstate or foreign commerce; (3) that all Respondents and all of their directors, officers, employees, agents, servants and all other persons in active concert or in participation with them, be enjoined temporarily during the pendency of this action, and permanently thereafter, from committing any more predicate acts in furtherance of the RICO enterprise alleged herein; (4) that all Respondents be required to account for all gains, profits, and advantages derived from their several acts of racketeering activity in violation of 18 U.S.C. § 1962 (b) and from all other violation(s) of applicable State and federal law(s); (5) that an Award be entered for Claimant and against all Respondents for Claimant's actual damages, and for any gains, profits, or advantages attributable to all violations of 18 U.S.C. § 1962(b), according to the best available proof; (6) that all Respondents pay to Claimant treble (triple) damages, under authority of 18 U.S.C. § 1964(c), for any gains, profits, or advantages attributable to all violations of 18 U.S.C. § 1962(b), according to the best available proof; (7) that all Respondents pay to Claimant all damages sustained by Claimant in consequence of Respondents' several violations of 18 U.S.C. § 1962(b), according to the best available proof; (8) that all Respondents pay to Claimant his costs of the Verified Statement of Claim incurred herein including, but not limited to, all necessary research, all non-judicial enforcement and all reasonable counsel's fees, at a minimum of \$200.00 per hour worked (standard professional rate at start of this action); (9) that all damages caused by all Respondents, and all gains, profits, and advantages derived by all Respondents, from their several acts of racketeering in violation of 18 U.S.C. § 1962(b) and from all other violation(s) of applicable state and federal law(s), be deemed to be held in constructive trust, legally foreign with respect to the federal zone, for the benefit of Claimant, His heirs and assigns; (10) that Claimant have such other and further relief as the Panel deems just and proper, under the circumstances of this action; and (11) grant any other remedy it deems proper according to Law, Equity and Justice. Claimant's total requested damages of \$51,638,943.68 are comprised of the following: reasonable counsel's fees in an amount to be determined; consequential damages in an amount to be determined; \$640,000.00 in unpaid professional invoices; triple unpaid professional invoices of \$1,920,000.00; \$2,167,801.55 in loss of income; triple loss of income of \$6,503,404.65; \$419,632.43 in embezzlement damages; triple embezzlement damages of \$1,258,897.29; and \$38,729,207.76 in punitive damages.

In their Statement of Answer, Respondents requested: that Claimant's claim be dismissed in its

entirety, with prejudice; expungement of this claim in favor of the financial consultants whose records were unduly affected by its filing; attorney's fees; and costs incurred in responding to the claim.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondents Wanda O. Meléndez Santos and The Conjugal Partnership between Garcia and Meléndez are not registered with FINRA but having filed a Statement of Answer and signed Submission Agreements, have voluntarily submitted to FINRA jurisdiction. Therefore, Respondents Wanda O. Meléndez Santos and The Conjugal Partnership between Garcia and Meléndez are bound by all determinations made by the Panel.

Inasmuch as Respondents' request for expungement on behalf of the financial consultants was not reasserted, the Panel deemed the request withdrawn.

On June 26, 2019, Respondents filed a Motion to Dismiss Pursuant to FINRA Rule 12504(a)(6)(C) and for Sanctions against Claimant, in which Respondents asserted (1) that Claimant's claims are ineligible for arbitration because Claimant had previously brought a claim regarding the same dispute against the same party that was fully and finally adjudicated on the merits and memorialized in an Award (FINRA Case No. 12-00225); and (2) that sanctions be issued against Claimant for his frivolous litigation and malicious prosecution against Respondents. In his August 28, 2019, Opposition, Claimant asserted that the prior adjudicated claim was not the same dispute and requested that the Panel impose sanctions on Respondents for the frivolous filing of their Motion to Dismiss and for their malicious, negligent and criminal behavior against Claimant. In their September 10, 2019, Reply, Respondents asserted that FINRA Rule 12504(a)(6)(C) is clear that the 2012 FINRA Award against Claimant impedes him from bringing the present claim against Respondents; and that Claimant grossly misled the Panel by coloring the District and First Circuit Courts statements as findings of fact, when the courts were merely taking Claimant's pleadings as true for purposes of ruling on the motion to dismiss. On September 30, 2019, the Panel heard oral arguments on Respondents' Motion to Dismiss Pursuant to FINRA Rule 12504(a)(6)(C) and for Sanctions against Claimant and, by Order dated September 30, 2019, the Panel denied Respondents' Motion. Inasmuch as Claimant did not reassert his request for sanctions, the Panel deemed the request withdrawn.

On October 22, 2019, Respondents filed a Motion for Reconsideration of the Panel's September 30, 2019 Order on their Motion to Dismiss Pursuant to FINRA Rule 12504(a)(6)(C), in which Respondents asserted (1) that Claimant's counsel admitted that the issue had been fully and finally adjudicated on the merits in the 2012 FINRA proceeding during the September 30, 2019 pre-hearing conference; and (2) that Respondent Alexander Garcia's transcript at the final hearing of the 2012 FINRA proceeding clearly demonstrates that this issue was previously litigated and finally and fully adjudicated on the merits. In his November 1, 2019 Opposition, Claimant asserted: (1) that without being specifically permitted by the Panel, Respondents cannot refile their Motion to Dismiss as a "Motion for Reconsideration;" and (2) that Claimant's RICO claim had never been adjudicated on the merits during the 2012 FINRA proceeding nor in any other Puerto Rico or federal judicial case. In their November 6, 2019 Reply, Respondents asserted that the 2012 FINRA Award did not need to include any rationale or explained decision

and that Claimant's attempt to use his Opposition to the Motion for Reconsideration in an effort to prove the merits of his case prior to the final hearing is highly improper and any reference to those documents, and the documents themselves, should be stricken from the record.

On December 16, 2019, the Panel heard oral arguments on Respondents' Motion for Reconsideration of the Panel's September 30, 2019 Order and, by Order dated January 7, 2020, granted Respondents' Motion as to Respondents Popular Securities, LLC and its predecessor in interest Popular Securities, Inc., stating that the matter was fully adjudicated in FINRA Case Number 12-00225 in its Award dated April 1, 2013, that FINRA Case Number 12-00225 involved the same Claimant, the same Respondent brokerage firm, the same financial advisor, the same accounts, and the identical transactions which are at issue in this case, and that FINRA Case Number 12-00225 was decided after an evidentiary hearing during which Claimant had a full opportunity to present his claims. Therefore, the Panel dismissed this case with prejudice as against Respondent Popular Securities, LLC, and its predecessor in interest, Respondent Popular Securities, Inc., under FINRA Rule 12504(a)(6)(C). Therefore, the Panel made no determinations with respect to the relief requested of these Respondents in the Statement of Claim.

On January 7, 2020, the Panel directed the parties to submit briefs as to whether Claimant's claims against Respondents Wanda O. Meléndez Santos and The Conjugal Partnership between Garcia and Meléndez are time barred. In lieu of briefs, the parties filed separate motions addressing the Panel's query, as set forth below.

On January 16, 2020, Claimant filed a Motion for Reconsideration of the January 7, 2020 Order on Respondents' Motion to Dismiss, in which he reiterated that his RICO claim had never been adjudicated on the merits during the 2012 FINRA Proceeding nor in any other Puerto Rico or Federal Judicial case. In their January 20, 2020 Brief in Support of Dismissal Pursuant to RICO Statute of Limitations, Respondents Alexander Garcia, Wanda O. Meléndez Santos, and The Conjugal Partnership between Garcia and Meléndez asserted that the facts in this case, Claimant's own admissions in his Statement of Claim, and two decisions by a U.S. district court and a U.S. court of appeals, support the conclusion that Claimant's claims are time-barred against Respondents Alexander Garcia, Wanda O. Meléndez Santos, and The Conjugal Partnership between Garcia and Meléndez due to the RICO statute of limitations, and that the Panel should apply the same analysis as those courts and dismiss Claimant's Statement of Claim. By Order, dated March 6, 2020, the Panel denied Claimant's Motion for Reconsideration.

On September 30, 2021, Respondent Wanda O. Meléndez Santos filed a Partial Motion to Dismiss as to Respondents Wanda O. Meléndez Santos and The Conjugal Partnership between Garcia and Meléndez pursuant to FINRA Rule 12504(a)(6)(C), in which she asserted that the Panel must grant dismissal because the Statement of Claim does not allege any association or involvement whatsoever of Respondent Wanda O. Meléndez Santos with Claimant's accounts, securities, transactions or conduct at issue in this case, the sole condition for bringing Respondent Wanda O. Meléndez Santos as a co-Respondent in this case, which was her legal status as wife of Respondent Alexander Garcia - no longer exists, and the Conjugal Partnership ceased to exist upon the termination of the marriage of Respondents Alexander Garcia and Wanda O. Melendez Santos. In his October 10, 2020 Opposition, Claimant asserted that Respondent Wanda O. Melendez Santos erroneously based her Motion on the new Civil Code of Puerto Rico approved June 1, 2020, which became effective on November 28, 2020, but the divorce was notified on August 14, 2020, and became final on Monday, September 14, 2020,

prior to the effectiveness of the new Civil Code of Puerto Rico; thus all of the allegations by Respondent Wanda O. Meléndez Santos are incorrect as a matter of fact and law. Claimant further asserted that Respondents Wanda O. Meléndez Santos and The Conjugal Partnership between Garcia and Meléndez benefitted from the funds that were allegedly embezzled from Claimant. In their Reply and Sur-Reply, the parties reiterated their arguments. On October 28, 2021, the Panel heard oral arguments from the parties and issued an Order dated November 1, 2021 denying the Motion.

On December 2, 2021, after Claimant's case-in-chief, Respondents Alexander Garcia, Wanda O. Meléndez Santos, and The Conjugal Partnership between Garcia and Meléndez made an ore tenus Motion to Dismiss, in which they argued several grounds for dismissal, including the running of various statutes of limitations, res judicata and collateral estoppel, and failure to present a prima facie case under the RICO statute. Claimant opposed Respondent's Motion to Dismiss and asserted that his claim was timely filed and had been proven. As set forth in the Award Section below, Respondents' Motion to Dismiss was granted by the Panel on the basis that Claimant failed to prove a prima facie case under the civil RICO statute, which was the basis of his claim.

The parties present at the hearing have 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 recorded, telephonic pre-hearing conference, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims against Respondents Alexander Garcia, Wanda O. Meléndez Santos and The Conjugal Partnership between Garcia and Meléndez are dismissed with prejudice.
2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, are dismissed with prejudice.

FEES

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

Filing Fees

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

Initial Claim Filing Fee	= \$ 2,250.00
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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 parties, Respondents Popular Securities, Inc. and Popular Securities, LLC are each assessed the following:

Member Surcharge	= \$ 4,025.00
Member Process Fee	= \$ 7,000.00

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

Five (5) pre-hearing sessions with the Panel @ \$1,500.00/session = \$ 7,500.00

Pre-hearing conferences:

August 22, 2019	1 session
September 30, 2019	1 session
December 16, 2019	1 session
October 28, 2021	1 session
November 12, 2021	1 session

Seven (7) hearing sessions @ \$1,500.00/session = \$10,500.00

Hearing Dates:

November 29, 2021	2 sessions
November 30, 2021	2 sessions
December 1, 2021	2 sessions
December 2, 2021	1 session

Total Hearing Session Fees = \$18,000.00

The Panel has assessed \$15,000.00 of the hearing session fees to Claimant.

The Panel has assessed \$1,500.00 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed \$1,500.00 of the hearing session fees jointly and severally to Respondents Wanda O. Meléndez Santos and The Conjugal Partnership between Garcia and Meléndez.

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

ARBITRATION PANEL

Nancy J. Cliff	-	Public Arbitrator, Presiding Chairperson
Antonio Luis Bisbal-Bultron	-	Public Arbitrator
Wanda L Esteras	-	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

Nancy J. Cliff

Nancy J. Cliff
Public Arbitrator, Presiding Chairperson

12/15/2021

Signature Date

Antonio Luis Bisbal-Bultron

Antonio Luis Bisbal-Bultron
Public Arbitrator

12/15/2021

Signature Date

Wanda L Esteras

Wanda L Esteras
Public Arbitrator

12/15/2021

Signature Date

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.

December 15, 2021

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