

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

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In the Matter of the Arbitration Between:

Claimant  
Manuel G. Diaz

Case Number: 19-01630

vs.

Respondent  
National Financial Services, 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 a majority-public panel.

**REPRESENTATION OF PARTIES**

For Claimant Manuel G. Diaz: Luis E. Miñana, Esq., Espada, Miñana, & Pedrosa Law, PSC, San Juan, Puerto Rico.

For Respondent National Financial Services, LLC (“NFS”): Carlos Bobonis-Gonzalez, Esq., Bobonis, Bobonis & Rodriguez Poventud, San Juan, Puerto Rico.

**CASE INFORMATION**

Statement of Claim filed on or about: June 10, 2019.

Manuel G. Diaz signed the Submission Agreement: May 1, 2019.

Statement of Answer filed by Respondent on or about: September 10, 2019.

National Financial Services, LLC signed the Submission Agreement: September 18, 2019.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted eight (8) counts of breach of contractual duties. The causes of action relate, among other things, to Respondent’s alleged failure to supervise, monitor and act regarding the amount of margin in Claimant’s margin account invested in Puerto Rico bonds and shares of Puerto Rico closed-end bond 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: no less than \$5,090,180.72 for Claimant's capital losses due to the improper use of margin in his account; the money paid by Claimant for the purchase of the voided PR securities, and null margin loans, transaction fees, commissions and other charges related to the purchase and sale of the PR securities, in an amount no less than \$17,085,847.49; disgorgement of all commissions and fees earned by Respondent; attorneys' fees in an unspecified amount to be determined by the Panel, plus the reimbursement of arbitration and litigation costs and expenses to be determined at the hearing; legal interest accrued over the forestated monetary amounts since the filing of this claim in an unspecified amount to be determined at the hearing; and, any such other and further relief, as the arbitration panel deems just and appropriate.

In the Statement of Answer, Respondent requested the dismissal of Claimant's claims with prejudice, and that all expenses incurred by Respondent NFS in its defense of this case, including attorneys' fees, be assessed against Claimant.

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

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

On December 1, 2020, Respondent filed a Motion to Dismiss pursuant to Rule 12206 of the Code of Arbitration Procedure ("Code"). On December 29, 2020, Claimant filed a response opposing the Motion to Dismiss. On February 11, 2021, the Panel heard oral arguments on the Motion to Dismiss. On February 16, 2021, the Panel granted the Motion to Dismiss on the following grounds:

The Statement of Claim was filed on June 10, 2019. Accordingly, the occurrences or events giving rise to the claims must have occurred after June 10, 2013.

The Statement of Claim has eight (8) counts. Counts 1 through 6 of Claimant's claim are for breach of the margin contract with Respondent executed by Claimant on August 20, 2008. The basis for these six (6) breach of contract claims are allegations that Respondent failed to supervise, monitor, and act regarding the amount of margin in Claimant's margin account. The Claimant's margin account was at its highest balance in November 2012. All transactions in Claimant's account after November 2012 resulted in a reduction of the margin balance so no transactions could have given rise to an occurrence or event after June 10, 2013. Therefore, counts 1 through 6 are ineligible for arbitration under FINRA Rule 12206(a).

In Count 7, Claimant is seeking to have the margin contract with Respondent nullified and rescinded. Since the document was signed in August 2008, the alleged inducement to sign the margin contract occurred in August 2008. Thus, Count 7 is also ineligible for arbitration under FINRA Rule 12206(a).

In Count 8, Claimant alleges that Respondent breached its contractual obligations of fair dealing and good faith when Respondent took as collateral certain Puerto Rico Closed End Fund shares that were not subject to hypothecation. Based on Claimant's account statements, there were no

purchases by Claimant of PR Closed End Fund shares after June 2013. Therefore, Count 8 is also ineligible for arbitration under FINRA Rule 12206(a).

For the foregoing reasons, Respondent's Motion to Dismiss pursuant to Rule 12206 of the Code is granted by the Panel without prejudice to any right Claimant has to file in court; Claimant is not prohibited from pursuing his claims in court pursuant to Rule 12206(b) of the Code.

The Panel has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

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

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the February 11, 2021 pre-hearing conference, 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 are dismissed pursuant to FINRA Rule 12206(a) of the Code.
2. Any and all claims for relief not specifically addressed herein, including Claimant and Respondent's respective requests for 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 = \$ 2,250.00

\*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 NFS is 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), which lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) pre-hearing sessions with the Panel @ \$1,500.00/session = \$ 4,500.00  
Pre-Hearing Conferences: October 7, 2019 1 session

July 29, 2020	1 session
February 11, 2021	1 session

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Total Hearing Session Fees	= \$ 4,500.00
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The Panel has assessed \$1,500.00 of the hearing session fees to Claimant.

The Panel has assessed \$3,000.00 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Gloria O. North	-	Public Arbitrator, Presiding Chairperson
Brian James Tagtmeier	-	Public Arbitrator
Howard B. Scherer	-	Non-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**

***Gloria O. North***

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Gloria O. North  
Public Arbitrator, Presiding Chairperson

***02/22/2021***

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

***Brian James Tagtmeier***

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Brian James Tagtmeier  
Public Arbitrator

***02/21/2021***

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

***Howard B. Scherer***

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Howard B. Scherer  
Non-Public Arbitrator

***02/22/2021***

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

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February 22, 2021

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