

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

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In the Matter of the Arbitration Between:

Claimant

Catherine E. Napolitano

Case Number: 20-01839

vs.

Respondents

G.Distributors, LLC

G. Research, LLC

Gabelli Direct Inc.

Gabelli Fixed Income Distributors, Inc.

GAMCO Securities, Inc.

Jason G. Swirbul

Gabelli Funds

Gabelli Investment Funds, Inc.

Gabelli Funds, LLC

GAMCO Asset Management Inc.

GAMCO Investors, Inc.

Gabelli & Company Investment Advisers, Inc.

Gabelli Fixed Income LLC

Teton Advisors, Inc.

Boston Financial Data Services

John Lubold

Denise Scott

Candace Porter

Elizabeth Snow

Hearing Site: New York, New York

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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. Members, Associated Person, and Non-Members

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Catherine E. Napolitano: Ronald Filler, Esq., Naples, Florida.

For Respondents G.Distributors, LLC, G. Research, LLC, Gabelli Direct Inc., Gabelli Fixed Income Distributors, Inc., GAMCO Securities, Inc., Jason G. Swirbul, Gabelli Funds, Gabelli Investment

Funds, Inc., Gabelli Funds, LLC, GAMCO Asset Management Inc., GAMCO Investors, Inc., Gabelli & Company Investment Advisers, Inc., Gabelli Fixed Income LLC, and Teton Advisors, Inc.: Peter D. Goldstein, G.Distributors, LLC, Rye, New York.

Respondent Boston Financial Data Services did not enter an appearance in this matter.

Respondent John Lubold did not enter an appearance in this matter.

Respondent Denise Scott did not enter an appearance in this matter.

Respondent Candace Porter did not enter an appearance in this matter.

Respondent Elizabeth Snow did not enter an appearance in this matter.

### **CASE INFORMATION**

Statement of Claim filed on or about: June 10, 2020.

Catherine E. Napolitano signed the Submission Agreement: August 26, 2020.

Statement of Answer filed by Respondent G.Distributors, LLC on or about: September 11, 2020.

G.Distributors, LLC signed the Submission Agreement: September 14, 2020.

Joint Statement of Answer filed by Respondents G. Research, LLC, Gabelli Direct Inc., Gabelli Fixed Income Distributors, Inc., GAMCO Securities, Inc., Jason G. Swirbul, Gabelli Funds, Gabelli Investment Funds, Inc., Gabelli Funds, LLC, GAMCO Asset Management Inc., GAMCO Investors, Inc., Gabelli & Company Investment Advisers, Inc., and Gabelli Fixed Income LLC on or about: September 18, 2020.

G. Research, LLC signed the Submission Agreement: September 24, 2020.

Gabelli Direct Inc. signed the Submission Agreement: September 24, 2020.

Gabelli Fixed Income Distributors, Inc. signed the Submission Agreement: September 24, 2020.

GAMCO Securities, Inc. did not sign the Submission Agreement.

Jason G. Swirbul signed the Submission Agreement: September 24, 2020.

Gabelli Funds did not sign the Submission Agreement.

Gabelli Investment Funds, Inc. did not sign the Submission Agreement.

Gabelli Funds, LLC did not sign the Submission Agreement.

GAMCO Asset Management Inc. did not sign the Submission Agreement.

GAMCO Investors, Inc. did not sign the Submission Agreement.

Gabelli & Company Investment Advisers, Inc. did not sign the Submission Agreement.

Gabelli Fixed Income LLC did not sign the Submission Agreement.

Statement of Answer filed by Respondent Teton Advisors, Inc. on or about: September 22, 2020.

Teton Advisors, Inc. did not sign the Submission Agreement.

Respondent Boston Financial Data Services did not file a Statement of Answer or sign the Submission Agreement.

Respondent John Lubold did not file a Statement of Answer or sign the Submission Agreement.

Respondent Denise Scott did not file a Statement of Answer or sign the Submission Agreement.

Respondent Candace Porter did not file a Statement of Answer or sign the Submission Agreement.

Respondent Elizabeth Snow did not file a Statement of Answer or sign the Submission Agreement.

### **CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: unsuitable recommendation; conditional trade; reasonable reliance; retraction; fraud, material misrepresentations and omissions; failure to disclose; unauthorized trade; failure to supervise; and failure to train. The causes of action relate to Gabelli Value 25 Fund-CL AAA ("GVAX").

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

Unless specifically admitted in the Joint Statement of Answer, Respondents G. Research, LLC, Gabelli Direct Inc., Gabelli Fixed Income Distributors, Inc., GAMCO Securities, Inc., Jason G. Swirbul, Gabelli Funds, Gabelli Investment Funds, Inc., Gabelli Funds, LLC, GAMCO Asset Management Inc., GAMCO Investors, Inc., Gabelli & Company Investment Advisers, Inc., and Gabelli Fixed Income LLC denied the allegations made in the Statement of Claim and asserted various defenses.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested \$20,124.71 in compensatory damages; \$1,967.02 in interest; \$4,000.00 in legal fees; and \$15,000.00 in costs; or equitable relief of reinstating the GVAX account as of June 10, 2015.

In the Statement of Answer, Respondent G.Distributors, LLC requested that the Statement of Claim be denied in its entirety; costs, including attorneys' fees; and any arbitration fees incurred in connection with this proceeding.

In the Joint Statement of Answer, Respondents G. Research, LLC, Gabelli Direct Inc., Gabelli Fixed Income Distributors, Inc., GAMCO Securities, Inc., Jason G. Swirbul, Gabelli Funds, Gabelli Investment Funds, Inc., Gabelli Funds, LLC, GAMCO Asset Management Inc., GAMCO Investors, Inc., Gabelli & Company Investment Advisers, Inc., and Gabelli Fixed Income LLC requested that the Statement of Claim be denied in its entirety; costs, including attorneys' fees; and any arbitration fees incurred in connection with this proceeding.

In the Statement of Answer, Respondent Teton Advisors, Inc. requested that the Statement of Claim be denied in its entirety; costs, including attorneys' fees; and any arbitration fees incurred in connection with this proceeding.

At the hearing, Claimant requested total damages in the amount of \$45,223.62 including: \$20,124.00 in compensatory damages; interest in the amount of \$3,398.00; filing fees in the amount \$250.00; legal fees in the amount of \$5,000.00; miscellaneous expenses in the amount of \$316.62; and an estimated \$16,135.00 for the amount of loss applying the S&P Index Fund.

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

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

Respondents Gabelli Funds, Gabelli Investment Funds, Inc., Gabelli Funds, LLC, GAMCO Asset Management Inc., GAMCO Investors, Inc., Gabelli & Company Investment Advisers, Inc., GAMCO Securities, Inc., and Gabelli Fixed Income LLC did not file properly executed Submission Agreements but are required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having answered the claim, are bound by the determination of the Arbitrator on all issues submitted.

Respondents Boston Financial Data Services, John Lubold, Denise Scott, Candace Porter, and Elizabeth Snow are not members or associated persons of FINRA and did not voluntarily submit to arbitration. Therefore, the Arbitrator made no determination with respect to the claims against Respondents Boston Financial Data Services, John Lubold, Denise Scott, Candace Porter, and Elizabeth Snow.

On December 11, 2020, Respondents G. Research, LLC, Gabelli Direct Inc., Gabelli Fixed Income Distributors, Inc., GAMCO Securities, Inc., Jason G. Swirbul, Gabelli Funds, Gabelli Investment Funds, Inc., Gabelli Funds, LLC, GAMCO Asset Management Inc., GAMCO Investors, Inc., Gabelli & Company Investment Advisers, Inc., Gabelli Fixed Income LLC, and Teton Advisors, Inc. (collectively the "GAMCO/Gabelli Respondents") filed a Motion to Dismiss all claims against the GAMCO/Gabelli Respondents pursuant to Rule 12504 of the Code of Arbitration Procedure ("Code"). On December 15, 2020, Claimant filed a Response opposing the Motion to Dismiss. On December 15, 2020, the GAMCO/Gabelli Respondents filed a Reply in further support of their Motion to Dismiss.

On December 29, 2020, the Arbitrator heard oral arguments on the GAMCO/Gabelli Respondents' Motion to Dismiss. On January 8, 2021, the Arbitrator granted the GAMCO/Gabelli Respondents' Motion to Dismiss all claims against G. Research, LLC, Gabelli Direct Inc., Gabelli Fixed Income Distributors, Inc., GAMCO Securities, Inc., Jason G. Swirbul, Gabelli Funds, Gabelli Investment Funds, Inc., Gabelli Funds, LLC, GAMCO Asset Management Inc., GAMCO Investors, Inc., Gabelli & Company Investment Advisers, Inc., Gabelli Fixed Income LLC, and Teton Advisors, Inc. on the grounds that the moving parties were not associated with the accounts, securities, or conduct at issue.

### **AWARD**

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

1. Claimant's claims are denied in their entirety.

2. Any and all claims for relief not specifically addressed herein, including any requests for attorneys' fees, are denied.

### **FEES**

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

#### **Filing Fees**

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

Initial Claim Filing Fee = \$ 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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents G.Distributors, LLC, G. Research, LLC, Gabelli Direct Inc., Gabelli Fixed Income Distributors, Inc., and GAMCO Securities, Inc. are each assessed the following:

Member Surcharge = \$ 450.00

#### **Hearing Session Fees and Assessments**

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with the Arbitrator, which lasts four (4) hours or less. Fees associated with these proceedings are:

Five (5) pre-hearing sessions @ \$450.00/session = \$ 2,250.00

Pre-Hearing Conferences:

November 2, 2020	1 session
November 16, 2020	1 session
December 29, 2020	1 session
January 7, 2021	1 session
January 21, 2021	1 session

Three (3) hearing sessions @ \$450.00/session = \$ 1,350.00

Hearings:

January 25, 2021	2 sessions
January 26, 2021	1 session

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Total Hearing Session Fees = \$ 3,600.00

The Arbitrator has assessed \$1,935.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$540.00 of the hearing session fees jointly and severally to Respondents G.Distributors, LLC, G. Research, LLC, Gabelli Direct Inc., Gabelli Fixed Income Distributors, Inc., GAMCO Securities, Inc., Jason G. Swirbul, Gabelli Funds, Gabelli Investment Funds, Inc., Gabelli Funds, LLC, GAMCO Asset Management Inc., GAMCO Investors, Inc., Gabelli & Company Investment Advisers, Inc., Gabelli Fixed Income LLC, and Teton Advisors, Inc.

The Arbitrator has assessed \$1,125.00 of the hearing session fees to Respondent G.Distributors, LLC.

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

**ARBITRATOR**

Edward F. Zagajeski

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

**Arbitrator's Signature**

***Edward F. Zagajeski***

Edward F. Zagajeski  
Sole Public Arbitrator

**02/18/2021**

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.

February 19, 2021

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