

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

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In the Matter of the Arbitration Between:

Name of the Claimants

Kanella V. Sarros  
Kanella V. Sarros Roth IRA  
Sarros Family Trust dtd 10/03/2001  
Kanella V. Sarros 403B

Case Number: 08-03899

Name of the Respondents

Traderight Securities, Inc.  
Advisory Financial Consultants, Inc.  
Ruthe Pessin Gomez  
Michael John Rukujzo  
George Edward Dragel

Hearing Site: San Francisco, California

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Nature of the Dispute: Customers vs. Members and Associated Persons

**REPRESENTATION OF PARTIES**

Claimants, Kanella V. Sarros ("K. Sarros"), Kanella V. Sarros Roth IRA ("Roth IRA"), Sarros Family Trust dtd 10/03/2001 ("Sarros Family Trust") and Kanella v. Sarros 403B (the "403B"), hereinafter collectively referred to as "Claimants": Jeffrey A. Feldman, Esq., Law Offices of Jeffrey A. Feldman, San Francisco, California

Respondents, Traderight Securities, Inc. ("TRS"), George Edward Dragel ("G. Dragel") and Michael John Rukujzo ("M. Rukujzo"), hereinafter collectively referred to as "TRS Respondents": Andrew May, Esq., May Law PC, Lincolnwood, Illinois

Respondents, Advisory Financial Consultants, Inc. ("AFC") and Ruthe Pessin Gomez ("R. Gomez") hereinafter collectively referred to as "AFC Respondents": Christopher Mader, Esq., Baldwin Law Group, Menlo Park, California

**CASE INFORMATION**

Statement of Claim filed on or about: October 21, 2008

Claimants signed the Submission Agreement: October 13, 2008

Statement of Answer filed by TRS Respondents on or about: January 13, 2009

TRS signed the Submission Agreement: March 13, 2009

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**G. Dragel signed the Submission Agreement: March 13, 2009**

**M. Rukujzo signed the Submission Agreement: March 13, 2009**

**Statement of Answer filed by the AFC Respondents on or about: January 20, 2009**

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty; negligent supervision; negligence, negligent misrepresentation and negligent referral; fraud; violations of California Corporations Code Sections 25,400 *et seq*; and fiduciary abuse under the California Welfare and Institutions Code Section 15610.30. The causes of action relate to transactions in unspecified securities.

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

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

**RELIEF REQUESTED**

In the Statement of Claim, Claimants requested compensatory damages of no less than \$100,000.00 and no more than \$500,000.00 as follows:

1. Out-of-pocket damages and lost return on principal damages in an amount which will be proven at the arbitration hearing, but no less than an \$86,000.00 principal loss;
2. Interest on the principal damages;
3. Punitive and exemplary damages;
4. Emotional distress damages;
5. Costs;
6. Reasonable attorneys' fees as provided by the California Welfare and Institutions Code;
7. Costs incurred by Claimants in resolving any tax issues as a result of Claimants' qualified money being transferred into a non-qualified account, including professional fees, penalties, interest and taxes;
8. Treble damages; and
9. Such other and further relief as the Panel may deem just and proper.

At the close of the hearing, Claimant reduced their damage demand by \$16,000.00 which the Panel accounted for in its decision.

In their Answer, TRS Respondents requested dismissal of all claims in their entirety.

In their Answer, AFC Respondents requested:

1. The dismissal of all claims in their entirety;
2. Costs; and

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3. Such other and further relief as the Panel deems to be just and proper.

**OTHER ISSUES CONSIDERED AND DECIDED**

The Panel acknowledges that they have each read the pleadings and other materials filed by the parties.

AFC did not file with FINRA Dispute Resolution a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

R. Gomez did not file with FINRA Dispute Resolution a properly executed Submission Agreement but is required to submit to arbitration pursuant to the 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 January 29, 2009, TRS Respondents filed a motion to consolidate this arbitration with FINRA Docket No. 08-03782. On February 6, 2009, Claimants filed an opposition. On March 17, 2009, after due deliberation, the Panel denied the motion to consolidate.

On November 2, 2009, Claimants dismissed with prejudice M. Rukujzo and G. Dragel.

On November 9, 2009, Claimants advised FINRA that they had settled all claims with TRS.

The parties 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 hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The arbitrators have provided an explanation of their decision in this award, the explanation is for the information of the parties only and is not precedential in nature.

2. AFC and R. Gomez are jointly and severally liable for and shall pay K. Sarros compensatory damages in the amount of \$73,306.00. The award is made in favor of K. Sarros and against AFC and R. Gomez, based upon R. Gomez's lack of due diligence in investigating the buyers of her business, including failing to follow up on significant information provided to her before the sale was consummated. R. Gomez's January 2007 letter to her clients, written in glowing terms without investigating whether said information was truthful and/or accurate, was negligent. R. Gomez did not act with a degree of care "which persons of ordinary prudence would use in order to avoid damages to others," *Poole vs. City of Oakland*, 42 C. 3<sup>rd</sup> 1051, 1063. K. Sarros' injuries are a foreseeable consequence of Gomez's lack of due diligence.

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3. AFC and R. Gomez are jointly and severally liable for and shall pay Claimants \$300.00 as reimbursement of the non-refundable portion of the initial claim filing fee.
4. Any and all relief not specifically addressed herein, including punitive damages, exemplary damages and treble damages, is denied.

**FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

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

Initial claim filing fee	= \$1,425.00
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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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as parties the following fees are assessed:

<b><u>Traderight Securities, Inc.</u></b>	
Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

<b><u>Advisory Financial Consultants, Inc.</u></b>	
Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

**Discovery-Related Motion Fees**

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

Four (4) Decisions on discovery-related motions on the papers with one (1) arbitrator @ \$200.00	= \$ 800.00
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<b>Claimant submitted four (4) discovery-related motions</b>	
<b>Total Discovery-Related Motion Fees</b>	<b>= \$ 800.00</b>

1. The Panel has assessed \$200.00 of the discovery-related motion fees to Claimants.
2. The Panel has assessed \$200.00 of the discovery-related motion fees to TRS.
3. The Panel has assessed \$400.00 of the discovery-related motion fees to AFC and R. Gomez.

**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 arbitrators, including a pre-hearing conference

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

One (1) Pre-hearing session with Panel @ \$1,125.00/session		= \$ 1,125.00
Pre-hearing conference: April 13, 2009	1 session	
Five (5) Hearing sessions @ \$1,125.00/session		= \$ 5,625.00
Hearing Dates: November 11, 2009	2 sessions	
November 12, 2009	2 sessions	
November 13, 2009	1 session	
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<b>Total Hearing Session Fees</b>		<b>= \$6,750.00</b>

1. The Panel has assessed \$6,750.00 of the hearing session fees jointly and severally to AFC and R. Gomez.

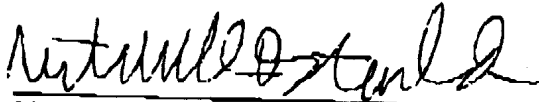
All balances are payable to FINRA Dispute Resolution and are due upon receipt.

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**ARBITRATION PANEL**

<b>Mitchell S. Ostwald</b>	-	<b>Public Arbitrator, Presiding Chairperson</b>
<b>Benjamin Slomoff, M.A.</b>	-	<b>Public Arbitrator</b>
<b>Richard Conlon Lehmann</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**



**Mitchell S. Ostwald,  
Presiding Chairperson, Public Arbitrator**

12-01-09

**Signature Date**

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**Benjamin Slomoff, M.A.  
Public Arbitrator**

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**Signature Date**

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**Richard Conlon Lehmann  
Non-Public Arbitrator**

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**Signature Date**

December 2, 2009

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

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**ARBITRATION PANEL**

Mitchell S. Oswald	-	Public Arbitrator, Presiding Chairperson
Benjamin Slomof., M.A.	-	Public Arbitrator
Richard Conlon Lehmann	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Mitchell S. Oswald,  
Presiding Chairperson, Public Arbitrator

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Signature Date

  
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Benjamin Slomoff, M.A.  
Public Arbitrator

  
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Signature Date

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Richard Conlon Lehmann  
Non-Public Arbitrator

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Signature Date

  
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**ARBITRATION PANEL**

Mitchell S. Ostwald	-	Public Arbitrator, Presiding Chairperson
Benjamin Stomof, M.A.	-	Public Arbitrator
Richard Conlon Lehmann	-	Non-Public Arbitrator

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Mitchell S. Ostwald,  
Presiding Chairperson, Public Arbitrator

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Signature Date

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Benjamin Stomof, M.A.  
Public Arbitrator

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

*Richard Conlon Lehmann* 11/30/09

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Richard Conlon Lehmann  
Non-Public Arbitrator

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

December 2, 2009  
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