

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Nicholas J. Adkins, Claimant v. U.S. Clearing Corporation n/k/a Fleet Securities, Inc.; Hill, Thompson, Magid & Co., Inc. and Pyramid Financial Corporation through its subsidiary Wyse Securities, Respondent

Case Number: 00-03274

Hearing Site: San Francisco, CA

REPRESENTATION OF PARTIES

For Claimant:

Richard Sacks
Investor Recovery Services
Two Commercial Blvd.
Suite 203C
Novato, CA 94949

For Respondent Pyramid Financial Corp. through its subsidiary Wyse Securities, ("Pyramid Financial"):

Dave Falk
Wyse Securities
20735 Stevens Creek Blvd.
Suite C
Cupertino, CA 95014

For Respondent U.S. Clearing Corporation n/k/a Fleet Securities ("U.S. Clearing"):

Kelly J. Moynihan, Esq.
Keesal, Young & Logan
Four Embarcadero Center
Suite 1500
San Francisco, CA 94111

For Respondent Hill, Thompson, Magid & Co., Inc.:

Tim Burke, Esq.
Bingham Dana LLP
150 Federal Street
Boston, MA 02110

CASE INFORMATION

Statement of Claim filed: August 2, 2000

Claimant's Uniform Submission Agreement signed: September 14, 2000

Statement of Answer filed by Pyramid Financial: November 28, 2000

Respondent Pyramid Financial's Uniform Submission Agreement signed: November 27, 2000

Statement of Answer filed by Respondent U.S. Clearing: November 24, 2000

Respondent U.S. Clearing's Uniform Submission Agreement signed: November 27, 2000

Statement of Answer filed by Respondent Hill, Thompson, Magid & Co., Inc.: November 28, 2000

Respondent Hill, Thompson, Magid & Co., Inc.'s Uniform Submission Agreement signed: July 18, 2001

CASE SUMMARY

Claimant alleged violation of Article III, Section IM-2110 of the NASD Rules of Conduct.

Respondent Pyramid Financial denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

Respondent U.S. Clearing denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim. Respondent U.S. Clearing further asserted several affirmative defenses, including that the Claimant failed to state a claim upon which relief could be granted; the alleged damages were caused in part or in whole by Claimant's acts or omissions; Claimant failed to mitigate the alleged damages; Claimant approved, authorized or ratified the actions of which he now complains; that damages were caused by Claimant's own negligence; Claimant assumed the risk associated with the investments at issue; Claimant failed to exercise due diligence and the alleged losses were caused by a third party.

Respondent Hill, Thompson, Magid & Co., Inc. denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim. Respondent Hill, Thompson, Magid & Co., Inc. further asserted several affirmative defenses, including that the Claimant failed to state a claim upon which relief could be granted; the claims are barred by the doctrines of laches, unclean hands, waiver and estoppel; Claimant proximately caused his own alleged damages and Claimant failed to mitigate his alleged damages.

RELIEF REQUESTED

Claimant requested \$11,625 (compensatory damages) and special punitive damages of \$1 million dollars. The Claimant asked that the damages be assessed jointly and severally against all of the Respondents.

Respondent Pyramid Financial requested that the claim be dismissed.

Respondent U.S. Clearing requested that the claim be dismissed with prejudice, that they be awarded costs, and for such other relief as the Panel deemed proper.

Respondent Hill, Thompson, Magid & Co., Inc. requested that the claim be dismissed with prejudice, that Claimant take nothing, and that Hill, Thompson, Magid & Co., Inc. recover costs in preparing and presenting a Motion to Dismiss in the matter.

OTHER ISSUES CONSIDERED AND DECIDED

In their opening statements on the first day of the evidentiary hearings, Respondents U.S. Clearing and Hill, Thompson, Magid & Co., Inc. repeated their substantive motions to dismiss the Statement of Claim for failure to state a claim, previously made and denied without prejudice in a pre-hearing conference call on May 18, 2001. The Panel took the renewed motions to dismiss under submission. After the taking of evidence was completed, the Panel granted the motion to dismiss made by Respondent U.S. Clearing, and denied the motion to dismiss made by Respondent Hill, Thompson, Magid & Co., Inc.

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

- 1) All claims against Respondent U.S. Clearing are dismissed.
- 2) Respondents Pyramid Financial and Hill, Thompson, Magid & Co., Inc. are jointly and severally liable to and shall pay Claimant \$2,000.
- 3) Each party shall bear its own costs, including attorney's fees.
- 4) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$ 500

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firms, U.S. Clearing, Hill, Thompson, Magid & Co., Inc. and Wyse Securities are parties to this claim and accordingly, following fees are assessed:

For Respondent Hill, Thompson, Magid & Co., Inc.

Member Surcharge = \$2500

Pre-Hearing Process Fee = \$ 600

Hearing Process Fee = \$4500

Total Member Fees = \$7600

For Respondent U. S. Clearing

Member Surcharge = \$ 400

Pre-Hearing Process Fee = \$ 0

Hearing Process Fee = \$ 0

Total Member Fees = \$400

For Respondent Pyramid Financial

Member Surcharge = \$ 400

Pre-Hearing Process Fee = \$ 0

Hearing Process Fee = \$ 0

Total Member Fees = \$400

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

One (1) Pre-hearing conference session with a single arbitrator @ \$450/session = \$ 450

Pre-hearing conference: June 8, 2001 1 session

Two (2) Pre-hearing conference sessions with the Panel @ \$1200/session = \$2400

Pre-hearing conferences: March 27, 2001 1 session

May 18, 2001 1 session

Four 4 Hearing sessions @ \$1200/session		= \$4800
Hearings:	July 24, 2001	2 sessions
	July 25, 2001	2 sessions

Total Forum Fees = **\$7650**

1. The Panel assessed \$2550 of the forum fees to Claimant.
2. The Panel assessed \$5100 of the forum fees jointly and severally to Respondents Hill, Thompson, Magid & Co., Inc. and Pyramid Financial.

Fee Summary

Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 500
<u>Forum Fees</u>	= \$2550
Total Fees	= \$3050
<u>Less Payments</u>	= \$(1700)
Balance Due NASD Dispute Resolution, Inc.	= \$1350

Respondent U.S. Clearing is charged with the following fees and costs:

<u>Member Fees</u>	= \$ 400
Total Fees	= \$ 400
<u>Less Payments</u>	= \$(7600)
Refund Due	= \$7200

Respondent Hill, Thompson, Magid & Co., Inc. is charged with the following fees and costs:

<u>Member Fees</u>	= \$7600
Total Fees	= \$7600
<u>Less Payments</u>	= \$7600
Balance Due NASD Dispute Resolution, Inc.	

Respondent Pyramid Financial is charged with the following fees and costs:

<u>Member Fees</u>	= \$ 400
Total Fees	= \$ 400
<u>Less Payments</u>	= \$(2500)
Refund Due	= \$2100

Respondents Hill, Thompson, Magid & Co., Inc. and Pyramid Financial are jointly and severally liable for the following fees and costs:

<u>Forum Fees</u>	= \$5100
Total Fees	= \$5100
<u>Application of Respondent Pyramid Financial's Refund</u>	= \$2100

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Balance Due NASD Dispute Resolution, Inc.

= \$3000

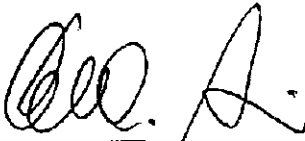
All balances are payable to NASD Dispute Resolution, Inc. and are payable upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

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ARBITRATION PANEL

Edwin C. Shiver, Esq.	-	Public Arbitrator, Presiding Chair
Joseph M. O'Connor, P.E.	-	Public Arbitrator
Edgar Stone	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Edwin C. Shiver, Esq.
Chair, Public Arbitrator

August 3, 2001
Signature Date

Joseph M. O'Connor, P.E.
Public Arbitrator

Signature Date

Edgar Stone
Industry/Non-Public Arbitrator

Signature Date

Date Served:
AUG 07 2001

Date of Service

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Concurring Arbitrators' Signatures

Edwin C. Shiver, Esq.
Chair, Public Arbitrator

Signature Date

Joseph M. O'Connor, P.E.
Public Arbitrator

Signature Date

Edgar N. Stone
Edgar Stone
Industry/Non-Public Arbitrator

8/3/01
Signature Date

Date Served:

AUG 07 2001

Date of Service