

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Willaim H. Shoemaker and The Estate of Dorothy C. Shoemaker, (Claimants) v.
JWGenesis Financial Services, Inc., David L. Avidon, Glenn I. Beyer, Justyn S. Feldman,
Hugh O'Callaghan, Alan L. Elkes, David Mugrabi and Dalton Kent Securities Group,
Inc., (Respondents)

Case Number: 00-04082

Hearing Site: Houston, Texas

REPRESENTATION OF PARTIES

Claimant Willaim H. Shoemaker and The Estate of Dorothy C. Shoemaker
("Shoemaker"): John O'Neill, Esq. of the firm Clements, O'Neill, Pierce, Nickens &
Wilson, LLP located in Houston, Texas

Respondent JWGenesis Financial Services, Inc. ("JWGenesis"): Michael J. Stanley of the
firm Beirne, Maynard & Parsons, LLP located in Houston, Texas

Respondents David L. Avidon ("Avidon"), Glenn I. Beyer ("Beyer"), Justyn S. Feldman
("Feldman"), Hugh O'Callaghan ("O'Callaghan"), Alan L. Elkes ("Elkes"), David
Mugrabi ("Mugrabi") and Dalton Kent Securities Group, Inc. ("Dalton Kent Securities"):
Michael J. Stanley, Esq. of the firm Sidler, Berlin, Shereff, Friedman LLP located in New
York, New York

CASE INFORMATION

Statement of Claim filed on or about: September 18, 2000

First Amended Statement of Claim filed on or about: February 23, 2001

Claimants Shoemaker signed the Uniform Submission Agreement: April 24, 2001

Statement of Answer and Motion to Dismiss filed by Respondent JWGenesis on or about:
December 06, 2000

Respondent JWGenesis signed the Uniform Submission Agreement:

Statement of Answer filed by Respondents Dalton Kent Securities, Avidon, Beyer,
Feldman, and Elkes on or about: November 30, 2000

Statement of Answer to Amended Statement of Claim and Motion to Dismiss filed by Dalton Kent Securities, Avidon, Beyer, Feldman, O'Callaghan, Elkes, Mugrabi on or about: April 11, 2001

Respondent Avidon signed the Uniform Submission Agreement: April 07, 2001

Respondent Beyer signed the Uniform Submission Agreement: April 07, 2001

Respondent Feldman signed the Uniform Submission Agreement: April 07, 2001

Respondent O'Callaghan signed the Uniform Submission Agreement:

Respondent Elkes signed the Uniform Submission Agreement: April 07, 2001

Respondent Mugrabi signed the Uniform Submission Agreement:

CASE SUMMARY

Claimant Willaim H. Shoemaker and The Estate of Dorothy C. Shoemaker asserted the following causes of action: Breach of Contract, Negligence, Fraud, Unsuitability, Failure to Supervise, Breach of Fiduciary Duty, Churning, Omission of Facts, Misrepresentation, Unauthorized Trading, Excessive Markups, Violations of NASD Rules, Violation of Sections 9 and 10 and Rule 10b-5 of the 1934 Securities Exchange Act, Violation of the 1933 Securities Act, Violation of Texas Securities Act, and Violation of the Texas Deceptive Practices Act.

The causes of action relate to the handling of Claimants' accounts.

Unless specifically admitted in their Answer and Answer to Amended Statement of Claim, Respondents David L. Avidon, Glenn I. Beyer, Justyn S. Feldman, Hugh O'Callaghan, Alan L. Elkes, David Mugrabi, and Dalton Kent Securities Group, Inc. denied the allegations made in the Statement of Claim and asserted the following defenses: Failure to State a Claim; Damages sustained were not caused by any act, or failure to act, attributable to Respondents; Damages were caused or contributed by the Claimants' own general lack of due care; Damages were caused by Market Conditions or other independent forces; Respondents exercised the degree of care diligence and skill required under the circumstances; and Claim Barred by applicable Statutes of Limitation.

Unless specifically admitted in its Answer, Respondent JWGenesis Financial Services, Inc.'s denied the allegations made in the Statement of Claim and asserted the following defenses: Claim Barred by applicable Statutes of Limitation; Estoppel; Waiver; Ratification, Authorization; Respondent JWGeneis acted in good faith and commercially reasonable manner; Assumption of Risk; Failure to Mitigate; and Claims Ineligible for Submission pursuant to the NASD Code of Arbitration Procedure.

RELIEF REQUESTED

Claimant Willaim H. Shoemaker and Dorothy C. Shoemaker requested:

Compensatory Damages	\$1,000,000.00
Punitive Damages	\$1,000,000.00
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	as panel deems equitable

Respondent JW Genesis Financial Services, Inc., requested

Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	dismissal of Claims

Respondents David L. Avidon, Glenn I. Beyer, Justyn S. Feldman, Hugh O'Callaghan, Alan L. Elkes, David Mugrabi and Dalton Kent Securities Group, Inc. requested:

Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	dismissal of Claims and any relief the panel deems appropriate

OTHER ISSUES CONSIDERED AND DECIDED

Claimants William H. Shoemaker and Dorothy Shoemaker settled with Respondents David L. Avidon, Glenn I. Beyer, Justyn S. Feldman, Hugh O'Callaghan, Alan L. Elkes, and Dalton Kent Securities Group, Inc. Consequently, any and all claims against these respondents were dismissed with prejudice. At hearing Claimants orally Motioned for Sanctions against JWGenesis for Noncompliance with Discovery. Respondent JWGenesis orally Cross-Motioned against Claimants for Noncompliance with Discovery.

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. Respondent JWGenesis Financial Services, Inc., n/k/a First Union Securities Financial Network, Inc., is liable to Claimants William H. Shoemaker and The Estate of Dorothy C. Shoemaker for the sum of \$375,000.00 as compensatory damages. However, JW Genesis Financial Services, Inc. n/k/a First Union Securities Financial Network, Inc., is entitled to a settlement credit in the amount of \$ 275,000.00 (Arising from Claimant's settlement with other Respondents). Therefore, Respondent JWGenesis Financial Services, Inc., n/k/a First Union Securities Financial Network, Inc., shall pay to Claimants William H. Shoemaker and The Estate of Dorothy C. Shoemaker compensatory damages in the amount of \$100,000.00.

2. Respondent JWGenesis Financial Services, Inc., n/k/a First Union Securities Financial Network, Inc. is liable to and shall pay Claimants William H. Shoemaker and The Estate of Dorothy C. Shoemaker interest at the rate of 10% per annum on the \$100,000.00 compensatory damages awarded above. Interest begins to accrue on the date of service of the award until it is fully paid.
3. Respondent JWGenesis Financial Services, Inc., n/k/a First Union Securities Financial Network, Inc. is liable to and shall pay Claimants William H. Shoemaker and The Estate of Dorothy C. Shoemaker the sum of \$80,000.00 as attorney's fees. In deciding to award attorney's fees the panel considered the arguments of the parties as well as the pleadings filed in the arbitration and determined that authority existed for an award of attorney's fees.
4. The panel denies Respondent JWGenesis Financial Services, Inc., n/k/a First Union Securities Financial Network, Inc.'s Cross-Motion for Sanctions against Claimants for Discovery Non-Compliance.
5. The panel grants Claimants William H. Shoemaker and The Estate of Dorothy C. Shoemaker's Motion for Sanctions against JWGenesis Financial Services, Inc., n/k/a First Union Securities Financial Network, Inc. for Non-Compliance with Discovery. Respondent JWGenesis Financial Services, Inc., n/k/a First Union Securities Financial Network, Inc. is liable and shall pay to Claimants William H. Shoemaker and The Estate of Dorothy C. Shoemaker the sum of \$25,000.00 as sanctions.
6. Parties shall bear their own costs.
7. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$600.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$4,500.00</u>
Total Member Fees	= \$7,600.00

Forum Fees and Assessments

The panel has the authority to assess forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00 = \$ 450.00
Pre-hearing conference: October 10, 2001 1 session

Two (2) Pre-hearing sessions with Panel x \$1,200.00 = \$ 2,400.00
Pre-hearing conferences: April 26, 2001 1 session
June 11, 2001 1 session

Ten (10) Hearing sessions x \$1,200.00 = \$12,000.00
Hearing Dates: December 03, 2001 2 sessions
December 04, 2001 3 sessions
December 05, 2001 2 sessions
December 06, 2001 3 sessions

Total Forum Fees = \$14,850.00

1. The panel has assessed \$3,712.50 of the forum fees jointly and severally to William H. Shoemaker and The Estate of Dorothy C. Shoemaker.
2. The panel has assessed \$11,137.50 of the forum fees to Respondent JWGenesis Financial Services n/k/a First Union Securities Financial Network, Inc.

FEE SUMMARY

1. Claimant Willaim H. Shoemaker and The Estate of Dorothy C. Shoemaker are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 3,712.50
Total Fees	= \$ 4,312.50
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,612.50

2. Respondent JW Genesis Financial Services, Inc., n/k/a First Union Securities Financial Network, Inc. is solely liable for:

Member Fees	= \$ 7,600.00
Forum Fees	= \$11,137.50
Total Fees	= \$18,737.50
Less payments	= \$ 7,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$11,137.50

3. Respondent Dalton Kent Securities Group is solely liable for:

<u>Member Fees</u>	= \$ 7,600.00
<u>Total Fees</u>	= \$ 7,600.00
<u>Less payments</u>	= \$ 7,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

R. Lee Britton Jr., Esq.	-	Public Arbitrator, Presiding Chair
Henry R. Barracano	-	Public Arbitrator
Mark C. Watler, J.D.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

R. Lee Britton Jr., Esq.
Public Arbitrator, Presiding Chair

Signature Date

Henry R. Barracano
Public Arbitrator

Signature Date

Mark C. Watler, J.D.
Non-Public Arbitrator

Signature Date

Date of Service (For NASD-Dispute Resolution office use only)

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3. Respondent Dalton Kent Securities Group is solely liable for:

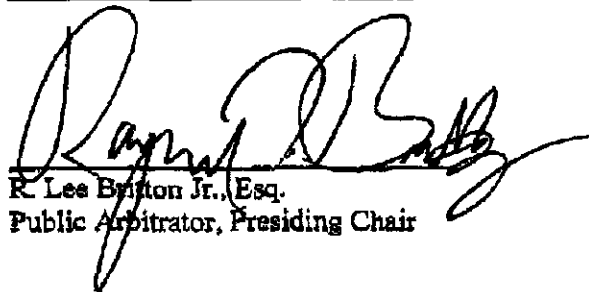
Member Fees	= \$ 7,600.00
Total Fees	= \$ 7,600.00
Less payments	= \$ 7,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

R. Lee Britton Jr., Esq.	-	Public Arbitrator, Presiding Chair
Henry R. Barracano	-	Public Arbitrator
Mark C. Watler, J.D.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


R. Lee Britton Jr., Esq.
Public Arbitrator, Presiding Chair

3-20-02
Signature Date

Henry R. Barracano
Public Arbitrator

Signature Date

Mark C. Watler, J.D.
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution, Inc.
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3. Respondent Dalton Kent Securities Group is solely liable for:

<u>Member Fees</u>	= \$ 7,600.00
<u>Total Fees</u>	= \$ 7,600.00
<u>Less payments</u>	= \$ 7,600.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$ 0.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

R. Lee Britton Jr., Esq.	-	Public Arbitrator, Presiding Chair
Henry R. Barracano	-	Public Arbitrator
Mark C. Watler, J.D.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

R. Lee Britton Jr., Esq.
Public Arbitrator, Presiding Chair

Signature Date



Henry R. Barracano
Public Arbitrator

20 MARCH 02

Signature Date

Mark C. Watler, J.D.
Non-Public Arbitrator

Signature Date

Date of Service (For NASD-Dispute Resolution office use only)

NASD Dispute Resolution, Inc.

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3. Respondent Dalton Kent Securities Group is solely liable for:

Member Fees	= \$ 7,600.00
Total Fees	= \$ 7,600.00
Less payments	= \$ 7,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

R. Lee Britton Jr., Esq.	-	Public Arbitrator, Presiding Chair
Henry R. Barracano	-	Public Arbitrator
Mark C. Watler, J.D.	-	Non-Public Arbitrator


Concurring Arbitrators' Signatures

R. Lee Britton Jr., Esq.
Public Arbitrator, Presiding Chair

Signature Date

Henry R. Barracano
Public Arbitrator

Signature Date


Mark C. Watler, J.D.
Non-Public Arbitrator

MARCH 20, 2002
Signature Date

Date of Service (For NASD-Dispute Resolution office use only)