

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimants

Tanya L. April; and
James H. Fipps

Case No. 00-05304

Name of Respondents

Richard M. Politte;
Smith, Moore & Co.; and
Thomas J. Davidson

Hearing Site: St. Louis, Missouri

REPRESENTATION OF PARTIES

Claimants Tanya L. April ("April") and James H. Fipps ("Fipps") were represented by David N. Damick, Esq. of St. Louis, Missouri.

Respondents Richard M. Politte ("Politte") was represented by Louis J. Basso, Esq. of the firm of Basso, Krupp & Myers, P.C., located in St. Louis, Missouri.

Smith, Moore & Co. ("Smith, Moore") and Thomas J. Davidson ("Davidson") were represented by Kenneth J. Brennan, Esq. of the firm of Sandberg, Phoenix & von Gontard, located in St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on or about: November 30, 2000.

Claimants signed the Uniform Submission Agreement: October 8, 2000.

Statement of Answer filed by Respondent Politte on or about: July 24, 2001

Respondent Politte did not file an executed Uniform Submission Agreement.

Statement of Answer filed by Respondents Smith, Moore and Davidson on or about: March 22, 2001.

Respondent Smith, Moore signed the Uniform Submission Agreement: March 22, 2001.
Respondent Davidson signed the Uniform Submission Agreement: March 22, 2001.

CASE SUMMARY

Claimants asserted the following causes of action: Misrepresentation and engaging in unauthorized transactions. The claims asserted resulted from transaction involving an initial public offering.

Unless specifically admitted in its Answer, Respondents Smith, Moore and Davidson denied the allegations made in the Statement of Claim, asserting that April was a sophisticated investor who assumed the risk of her chosen investment and that Fipps has no claim because he did not lose anything.

Respondent Politte adopted the answer filed by Respondents Smith, Moore and Davidson, adding that he performed all trades requested by April in a manner consistent with the highest ethical and customary practices of the industry, and consistent with Smith, Moore's policies and training.

RELIEF REQUESTED

Claimants April requested compensatory damages in the amount of \$48,887.99, plus interest at the current treasury rate from March 2, 2000 to the date of payment. In addition, April requested her costs of litigation and reasonable attorneys' fees, plus an amount for her lost opportunity with the lost funds. Claimants Fipps requested damages for his loss of interest on his \$20,000.00 at the U.S. Treasury rate from March 2, 2000 to March 30, 2000, plus costs of arbitration and reasonable attorneys' fees. Furthermore, April and Fipps requested punitive damages sufficient to bring the total recovery for both Claimants in the amount of \$100,000.00.

Respondents Smith, Moore, Davidson and Politte requested that the arbitrators find in favor of the respondents.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Politte did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration 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.

At hearing, Claimants moved for default judgment against Respondent Politte. After review of the arguments, the panel denied the motion. In addition, Respondents Smith, Moore and Davidson moved for a directed verdict after Claimants presented their case. After considering

the arguments of counsel, the panel denied the motion.

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. Respondents Smith, Moore & Co. and Richard M. Politte are jointly and severally liable for and shall pay to Claimant Tanya L. April the sum of \$25,000.00 as compensatory damages, plus interest at the rate of 9% per annum, accruing from December 1, 2001 until the sum is paid in full;
2. Upon receipt of the above sum, Claimants Tanya L. April and James H. Fipps shall sign over and transfer all ownership of 200 shares of PALM stock in their possession to Respondent Smith, Moore & Co.;
3. The claims against Respondent Thomas J. Davidson are dismissed and denied in their entirety;
4. The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Thomas J. Davidson's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Thomas J. Davidson must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
5. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically determined in this award;
6. 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 = \$ 225.00

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge = \$1,000.00

Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

Adjournment Fees

Adjournments requested during these proceedings: None.

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$750.00	= \$ 750.00
Pre-hearing conference: August 30, 2001 1 session	
Three (3) Hearing sessions x \$750.00	= \$2,250.00
Hearing Date: October 15, 2001 3 sessions	
Total Forum Fees	= \$3,000.00

The panel has assessed \$3,000.00 of the forum fees to Respondent Richard M. Politte.

Administrative Costs

Respondent Smith, Moore & Co. requested additional copies of arbitrator awards beyond those provided without charge.

Total Administrative Fee:	= \$ 65.00
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SEE SUMMARY

Claimants Tanya L. April and James H. Fipps are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Less payments	= \$1,750.00
Balance Due from NASD Dispute Resolution, Inc.	= \$1,525.00

Respondent Smith, Moore & Co. is solely liable for:

Member Fees	= \$3,100.00
Administrative Costs	= \$ 65.00
Total Fees	= \$3,165.00
Less payments	= \$3,165.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0

Respondent Richard M. Politte is solely liable for:

Forum Fees	= \$3,000.00
Less payments	= \$ 0

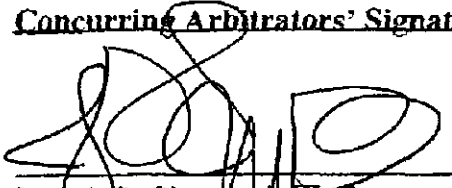
Balance Due NASD Dispute Resolution, Inc. = \$3,000.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Joseph D. Sheppard, III, Esq. - Public Arbitrator, Presiding Chair
George T. Mehan, Jr. - Public Arbitrator
Stanley F. Van Sant - Non-Public Arbitrator

Concurring Arbitrators' Signatures



Joseph D. Sheppard, III, Esq.
Public Arbitrator, Presiding Chair

11/27/01
Signature Date

George T. Mehan, Jr.
Public Arbitrator

Signature Date

Stanley F. Van Sant
Non-Public Arbitrator

Signature Date

12-10-01 
Date of Service (For NASD-Dispute Resolution office use only)

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Balance Due NASD Dispute Resolution, Inc. = \$3,000.00

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Signature Date



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Public Arbitrator



Signature Date

Stanley F. Van Sant
Non-Public Arbitrator

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Public Arbitrator, Presiding Chair

Signature Date

George T. Mehan, Jr.
Public Arbitrator

Signature Date


Stanley F. Van Sant
Non-Public Arbitrator12/7/01
Signature Date12-10-01 Mehan
Date of Service (For NASD-Dispute Resolution office use only)