
Stipulated Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

John Stewart Jackson, IV, individually and as custodian for John Stewart Jackson, V, Andrew Jackson, Madison Sara Mackenzie and Austin Britt Mackenzie; Joanne Jackson, CC Renee Evans, Renee George, Gregory Development, Inc., Stew Jackson Foundation, Inc., Cherlydee Huddleston, Howard E. Huddleston, Jennifer Jackson, Michelle Baere, Claimants,

Vs.

Kirkpatrick, Pettis, Smith, Polian, Inc., Steven Ernest Muth, Reid Duane Houser, Stephen Thomas Peterson, Brian Paul McGinty, Mutual of Omaha Insurance, Co., KFS Corporation, Respondents.

Case Number: 00-05583

Hearing Site: Denver, Colorado

REPRESENTATION OF PARTIES

Claimants, John Stewart Jackson, IV ("Mr. Jackson"), John Stewart Jackson, V ("John Jackson"), Andrew Jackson ("A. Jackson"), Madison Sara Mackenzie ("M. Mackenzie"), Austin Britt Mackenzie ("A. Mackenzie"), Joanne Jackson ("J. Jackson"), CC Renee Evans, ("C. Evans"), Renee George ("R. George"), Gregory Development, Inc. (G. Development"), Stew Jackson Foundation ("Jackson Foundation"), Cherlydee Huddleston ("C. Huddleston"), Howard E. Huddleston ("H. Huddleston"), Jennifer Jackson, ("Jen Jackson") Michelle Baere ("M. Baere"), hereinafter collectively referred to "Claimants": Patrick J. Kanouff, Esq. of Davis & Ceriani, P.C. Denver, Colorado.

Respondents, Kirkpatrick, Pettis, Smith, Polian, Inc., ("KP"), Reid Duane Houser ("Houser"), Stephen Thomas Peterson ("Peterson"), Brian Paul McGinty ("McGinty"), Mutual of Omaha Insurance ("Mutual Omaha"): Douglas M. Hagerman, Esq. of the firm Foley & Lardner, Chicago, Illinois.

Respondent, Steven Ernest Muth ("Steven Muth"): Thomas Birge, Esq. of the firm Birge & Minckley, Denver Colorado.

CASE INFORMATION

Statement of Claim filed on or about: January 5, 2001.

Claimant, John Stewart Jackson signed the Uniform Submission Agreement on December 12, 2000.

Claimant, John Stewart Jackson as custodian for John Stewart Jackson, V, Andrew Jackson, Madison Sara Mackenzie and Austin Britt Mackenzie signed the Uniform Submission Agreement on December 12, 2000.

Claimant, John Stewart Jackson, President of the Stew Jackson Foundation and Gregory Development Inc. signed the Uniform Submission Agreement on December 12, 2000.

Claimant, Jennifer Jackson signed the Uniform Submission Agreement on December 12, 2000.

Claimant, Renee George signed the Uniform Submission Agreement on December 12, 2000.

Claimant, Howard and Cheryldee Huddleston signed the Uniform Submission Agreement on December 12, 2000.

Claimant, Joanne Jackson signed the Uniform Submission Agreement on December 13, 2000.

Claimant, Michelle Baere signed the Uniform Submission Agreement on December 13, 2000.

Claimant, CC Renee Evans signed the Uniform Submission Agreement on December 13, 2000.

Claimants filed an Amended Statement of Claim on or about June 4, 2001.

Respondent Steven Muth filed a Statement of Answer on or about February 28, 2001.

The NASD has no record of Respondent Steven Muth's signed the Uniform Submission Agreement.

Respondents KP, Peterson, McGinty and Houser jointly filed a Statement of Answer on or about March 9, 2001.

An Officer of the Company, on behalf of Respondent, KP signed a Uniform Submission Agreement on February 23, 2001.

Respondent, Reid Duane Houser signed the Uniform Submission Agreement on February 22, 2001.

Respondent, Stephen Thomas Peterson signed the Uniform Submission Agreement on January 23, 2001.

Respondent, Brian Paul McGinty signed the Uniform Submission Agreement on February 22, 2001.

Along with the Statement of Answer, Respondents KP, Peterson, McGinty and Houser filed a Counterclaim on or about: March 9, 2001.

Claimant/Counter Respondent filed an Answer to the Statement of Counterclaim on or about: March 12, 2001.

Respondent, Mutual of Omaha Insurance declined to submit to arbitration and therefore did not file a Statement of Answer or a signed Uniform Submission Agreement.

CASE SUMMARY

Claimants alleged the following causes of action against the Respondents: Violations of the applicable State and Federal Securities Laws, violations of the applicable NASD and other SRO Rules and Regulations, breach of their fiduciary obligations to Claimants, Breach of their duties of due, fraud and deceit (both misrepresentation and fraudulent non-disclosure), breach of contract, including breach of the duty of good faith and fair dealing, conversion and such other legal theories which may be asserted at hearing. All causes of action relate to the purchase of two stocks: Creative Host Services ("CHST") and Bonso Electronics ("BNSO").

Unless specifically admitted in their Statement of Answer, Respondents, KP, Peterson, McGinty and Houser denied the allegations set forth in the Statement of Claim and asserted the following affirmative defenses:

1. The Claimants failed to take reasonable steps to mitigate their claimed damages.
2. Each of the Claimants voluntarily and knowingly assumed all risk related to their BNSO and CHST stock purchases, which assumption of risk was the direct and proximate cause of any losses that they incurred.
3. Claimants were contributory and comparatively negligent or reckless in connection with their KP accounts to a degree sufficient to bar their recovery, which was the direct and proximate cause of any losses they have incurred.
4. Claimants have failed to plead facts showing any scienter or the requisite state of mind with particularity. They have failed to allege facts showing that any of the alleged violations of the Respondents were committed willfully, knowingly or recklessly.
5. Respondents did not willfully, knowingly or recklessly participate in any violations of the law, nor did they act negligently in connection with any of the transactions alleged in the Statement of Claim.
6. None of the Respondents violate any NASD or other applicable rules, but, in any event, no private right of action for damages exists for violation of such rules, including the NASD's suitability rule or the duty to supervise.
7. Through the acts and omissions described above, Claimant, Mr. Jackson acted with unclean hands and in bad faith.
8. Acts, omissions, circumstances and events other than the alleged wrongdoing of the Respondents were the direct and proximate cause of Claimants alleged damages.
9. To the extent that any current or former employees of Respondent KP, including Steven Muth acted outside the scope of that employment or without actual or apparent authority from KP, KP has no liability to the Claimants.

10. The Statement of Claim does not cite a single misrepresentation that any Respondent supposedly made to Claimant, Mr. Jackson.

Respondents' Counterclaim alleged Claimant Mr. Jackson and two other Claimants chose not to satisfy their margin requirement, making Respondent KP's Counterclaim necessary.

Unless specifically admitted in his Statement of Answer, Respondent, Steven Muth denied the allegations set forth in the Statement of Claim and asserted the following defenses:

1. Claimant, Mr. Jackson has been an experienced businessman and investor in the real estate and stock markets for more than twenty years.
2. Claimant, Mr. Jackson was aware of and authorized all of the transactions in his account, the Foundation account and in the Jackson family accounts.
3. Claimant, Mr. Jackson was well aware of the benefits and risks of margin.
4. Claimant, Mr. Jackson was also aware of the benefits and risks of making concentrated investments in a few stocks.
5. Claimant, Mr. Jackson was well aware of the companies and their prospects.
6. Claimant, Mr. Jackson had the assistance of his own legal counsel in preparing certain SEC filings and advising him regarding his rights and responsibilities as a director and major shareholder. His efforts to shift this responsibility to Respondent, Steven Muth are disingenuous and misplaced.
7. The most misplaced and disingenuous allegation made by Claimant Jackson is his allegation that the buy transactions in June were unauthorized.
8. Claimant, Mr. Jackson carefully followed the transactions in his account and frequently spoke with Respondent, Steven Muth regarding orders that he wished to place for the purchase of BNSO and CHST.
9. At no time did Claimant, Mr. Jackson "turn over control" of any of the Jackson's accounts to Respondent Steven Muth.
10. At all times Claimant, Mr. Jackson was aware of the amount of margin that he was using in his accounts and also the fact that he was concentrating his investments in two stocks.
11. Respondent, Steven Muth maintains that Claimant H. Huddleston was an active individual who understood the investments in his account and indicated he wanted to be more aggressive with his investments.
12. Respondent, Steven Muth denies the allegation that any of the trades in the account were unauthorized and denies that any of the transactions that occurred in the Claimants, C and H. Huddleston accounts were unsuitable.
13. Claimant, C. and H. Huddleston made informed decisions to invest in the securities in their account. These investment decisions were obviously based upon the advice that they had received from their friend and Claimant, Mr. Jackson. Being advised of the risks, Claimant, H. Huddleston made the investments in his account in hopes of replicating a portion of Mr. Jackson's success.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$25,000,000
Punitive Damages	unspecified
Attorney's Fees	unspecified
Interest	unspecified
Costs	unspecified

Respondent, KP requested:

Compensatory Damages	\$7,034,432.66
Attorney's Fees	unspecified
Costs	unspecified
Interest	unspecified

Respondents, Peterson, McGinty, Houser requested that their claims be dismissed with prejudice and that the Panel order expungement.

Respondent, Steven Muth requested that the Statement of Claim be dismissed with prejudice. In addition, Respondent Steven Muth requests that the Panel order expungement of any reference to this Statement of Claim from his CRD record.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent, Steven Muth 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 is bound by the determination of the Panel on all issues submitted.

On or about December 14, 2000, Claimant Mr. Jackson filed a Motion for an Interim Injunction enjoining Respondent, KP from further margin sales.

On or about January 2, 2001, Respondent, KP filed a Memorandum in Opposition to Claimants' Motion for Interim Injunction.

On or about January 4, 2001, Claimants filed a Withdrawal of Motion for an Interim Injunction and asked that the case proceed in the normal course.

On or about June 20, 2001, Respondents, Brian McGinty, Reid Houser and Stephen Peterson filed a Motion for Expungement of Disciplinary Record.

On or about June 21, 2001, Claimants' filed a Response in Opposition to Respondents Brian McGinty, Reid Houser and Stephen Peterson Motion for Expungement of Disciplinary Record.

On or about June 28, 2001, the undersigned panel upon consideration of the Motion filed by Respondents Brian McGinty, Reid Houser and Stephen Peterson, for a directive and award expunging references to this arbitration proceeding from disciplinary records on file with Central Registration Depository, included the Statement of Undisputed Facts as set forth in the Motion, and it appearing to the Arbitrators appointed to resolve this dispute, and as stipulated to by the parties, the Arbitrators find that:

- a. Claimants have amended their Statement of Claim and no claims are made against Respondents Brian McGinty, Reid Houser and Stephen Peterson;
- b. No allegations are made against Respondents Brian McGinty, Reid Houser and Stephen Peterson in this arbitration proceeding and the allegations naming them as Respondents in the original Statement of Claim were incorrect.
- c. Respondents, Brian McGinty, Reid Houser and Stephen Peterson have requested that the Arbitrators enter this Directive and Award regarding Disciplinary Records, which is intended to have the Central Registration Depository Expunge all references to this matter, including in particularly the "yes" answer to question 23(1) (and the corresponding DRP page) from Respondents Brian McGinty, Reid Houser and Stephen Peterson's Forms U-4, which were filed by their employer, Kirkpatrick, Pettis, Smith, Polian Inc. following the filing of this arbitration proceeding and which reference this proceeding and the allegations made against said Respondents, said Respondents believing the unproven allegations, if allowed to remain, will harm their reputations and Claimants; and
- d. Permitting the information about this arbitration proceeding to remain in the CRD system for these Respondents would be harmful to their reputations and status in the securities business and it is just and equitable that such information be expunged, deleted and erased.

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

The parties have requested that the Arbitration Panel enter language consistent with the agreements reached by the parties. After considering the parties' request, the Panel has entered the following award as stipulated to by the parties:

1. The undersigned Arbitration Panel directs the Central Registration Depository and other regulatory authorities to expunge, delete and erase the "yes" answer to question 23(1) on the Form U-4 for Brian McGinty (CRD#3224216) and the accompanying DRP page, filed on

February 23, 2001, by Kirkpatrick Pettis Smith Polian Inc. and revised by a Forum U-4 filed on March 5, 2001, both referencing this action;

2. The undersigned Arbitration Panel directs the Central Registration Depository and other regulatory authorities to expunge, delete and erase the "yes" answer to question 23I(1) on the Form U-4 for Reid Houser (CRD#2340399), and the accompanying DRP page, filed on February 23, 2001, by Kirkpatrick Pettis, Smith Polian Inc., referencing this action; and
3. The undersigned Arbitration Panel directs the Central Registration Depository and other regulatory authorities to expunge, delete and erase the "yes" answer to question 23I(1) on the Form U-4 for Stephen Peterson (CRD # 1281068), and the accompanying DRP page, filed on March 27, 2001, by Kirkpatrick Pettis Smith Polian Inc. referencing this action.
4. The undersigned Arbitration Panel recommends the expungement of the above stipulated language in paragraphs 1, 2 and 3 and all reference to the above captioned arbitration from Brian McGinty, Reid Houser, and Stephen Peterson'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, Respondents Brian McGinty, Reid Houser and Stephen Peterson must obtain confirmation from a court of competent jurisdiction before the Central Registration Depository will execute the expungement directive.

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
Counter Claim Filing Fee	= \$2,500

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 Respondent, Kirkpatrick, Pettis, Smith, Polian, Inc.

Member surcharge	= \$ 3,600
Pre-hearing Process Fee	= \$ 600
Total Member Fees	= \$4,200

Forum Fees and Assessments

The arbitrator 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 Arbitrator that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,200	= \$ 1,200
<u>Pre-hearing conference(s)</u>	<u>June 21, 2001</u> <u>1 session</u>
Total Forum Fees	= \$ 1,200

Fee Summary

1. Claimants, John Stewart Jackson, IV, individually and as custodian for John Stewart Jackson, V, Andrew Jackson, Madison Sara Mackenzie and Austin Britt Mackenzie; Joanne Jackson, CC Renee Evans, Renee George, Gregory Development, Inc., Stew Jackson Foundation, Inc., Cherlydee Huddleston, Howard E. Huddleston, Jennifer Jackson, Michelle Baere, be and hereby are jointly and severally liable for:

Injunctive Fee	= \$ 2,500
<u>Claim Filing Fee</u>	<u>= \$ 600</u>
Total Fees	= \$ 3,100
<u>Less payments</u>	<u>= \$ 1,800</u>
Balance due to NASD Dispute Resolution, Inc.	= \$ 1,300

2. Respondent, Kirkpatrick, Pettis, Smith, Polian Inc., be and hereby is solely liable for:

Forum Fees	= \$ 1,200
Counter Claim Filing Fee	= \$ 2,500
<u>Member Fees</u>	<u>= \$ 4,200</u>
Total Fees	= \$ 7,900
<u>Less payments</u>	<u>= \$ 4,900</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,000

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Vincent P. Fitzgerald, CPA
Jess Burton Cohen
Lawrence J. Madden

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Public, Presiding Chair
Non-Public Arbitrator
Public Arbitrator

Vincent P. Fitzgerald, CPA
Public Arbitrator, Presiding Chair

Signature Date

Jess Burton Cohen
Non-Public Arbitrator, Panelist

Signature Date

Lawrence J. Madden
Public Arbitrator, Panelist

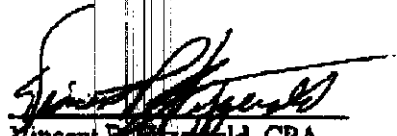
Signature Date

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

ARBITRATION PANEL

Vincent P. Fitzgerald, CPA
Jess Burton Cohen
Lawrence J. Madden

Public Presiding Chair
Non-Public Arbitrator
Public Arbitrator



Vincent P. Fitzgerald, CPA
Public Arbitrator, Presiding Chair

Aug 28 2001

Signature Date

Jess Burton Cohen
Non-Public Arbitrator, Panelist

Signature Date

Jess Burton Cohen
Non-Public Arbitrator

Lawrence J. Madden
Public Arbitrator, Panelist

Signature Date

Lawrence J. Madden
Public Arbitrator, Panelist

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

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Vincent P. Fitzgerald, CPA	-	Public, Presiding Chair
Jess Burton Cohen	-	Non-Public Arbitrator
Lawrence J. Madden	-	Public Arbitrator


Vincent P. Fitzgerald, CPA
Public Arbitrator, Presiding Chair

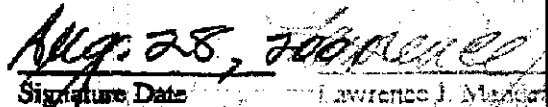
Signature Date

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Non-Public Arbitrator, Panelist

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Non-Public Arbitrator


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Public Arbitrator, Panelist


Signature Date
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Public Arbitrator, Panelist

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Jean Burton Cohen
Lawrence J. Madden

Public, Presiding Chair
Non-Public Arbitrator
Public Arbitrator

Vincent P. Fitzgerald, CPA
Public Arbitrator, Presiding Chair

Signature Date

Jean Burton Cohen
Jean Burton Cohen
Non-Public Arbitrator, Panelist

October 27, 2001
Signature Date
Jean Burton Cohen
Non-Public Arbitrator

Lawrence J. Madden
Lawrence J. Madden
Public Arbitrator, Panelist

Oct 25, 2001
Signature Date
Lawrence J. Madden
Public Arbitrator

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