

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

The Hellman Family Trust, Claimant v. San Clemente Securities, Inc., Stephen J. Kelso, Otto C. Johnson, Thomas H. Sunderland and Cooke B. Christopher, Respondents

Case Number: 01-00020

Hearing Site: San Francisco, California

Nature of the Dispute: Customer vs. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimant:	Timothy D. Murphy, Esq. Law Offices of James Jay Seltzer Emeryville, California
For Respondent San Clemente Securities, Inc.:	Cooke B. Christopher San Clemente Securities, Inc. San Clemente, California
For Respondent Stephen J. Kelso:	Stephen J. Kelso San Clemente Securities, Inc. San Clemente, California
For Respondent Otto C. Johnson:	Otto C. Johnson Las Vegas, Nevada
For Respondent Thomas H. Sunderland:	Thomas H. Sunderland Family Financial Services Laguna Hills, California
For Respondent Cooke B. Christopher:	Cooke B. Christopher San Clemente, California

CASE INFORMATION

Statement of Claim filed: December 27, 2000

Claimant's Answer to Counterclaim of Respondent Otto C. Johnson filed: December 26, 2001

Claimant's Uniform Submission Agreement signed: January 23, 2001

Joint Statement of Answer filed by Respondents San Clemente Securities, Inc. ("San Clemente Securities"), Thomas H. Sunderland and Cooke B. Christopher: March 7, 2001

Statement of Answer and Counterclaim filed by Respondent Otto C. Johnson: May 21, 2001

Supplement to Answer and Counterclaim filed by Respondent Otto C. Johnson: June 14, 2001

Supplement to Answer and Counterclaim filed by Respondent Otto C. Johnson: July 24, 2001

Respondent Otto C. Johnson's Uniform Submission Agreement signed: May 21, 2001

CASE SUMMARY

Claimant alleged the following claims with respect to investments in various certificates of deposit: 1) Unsuitability; 2) Misleading Advertising; 3) Omissions and Misrepresentations of Material Fact; 4) Negligent Supervision and Failure to Supervise; 5) Negligence; 6) Breach of Contract; 7) Breach of Fiduciary Duty; 8) Common Law Fraud; 9) Violation of Rule 10b-5; 10) Violation of Corporations Code Sections 25401 and 25504.1; 11) Unfair Competition; and 12) Successor Liability.

Respondents Thomas H. Sunderland and Cooke B. Christopher denied Claimant's allegations of wrongdoing and denied any liability to Claimant.

Respondent Otto C. Johnson denied Claimant's allegations of wrongdoing and denied any liability to Claimant. In his Counterclaim, Respondent Johnson alleged that he is entitled to damages for libel.

Claimant denied the allegations in Respondent Johnson's Counterclaim and denied any liability to Respondent Johnson.

RELIEF REQUESTED

Claimant requested:

1. Damages in the amount of \$315,000,
2. Punitive damages in the amount of 945,000;
3. Attorney's fees;
4. Costs; and
5. Such other relief as the Panel deems just and appropriate.

Claimant also requested a reasoned decision by the Panel.

Respondent Johnson requested an award of compensatory damages and punitive damages as determined by the Panel.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, the Panel was advised that United Custodial Corporation, US Trust of California, Provident Bank, LaSalle National Bank N.A. and European American Bank were invited to voluntarily submit to arbitration and that said Respondents did not voluntarily submit to NASD Dispute Resolution ("NASD-DR") jurisdiction and were removed as parties in this matter.

Prior to the hearing, the Panel was advised that Claimant reached a settlement with Respondents CIBC World Markets Corp., also known as CIBC Oppenheimer, Joseph A. Mastriani, Correspondent Services Corporation and UBS Financial Services Inc., also known as PaineWebber Group Incorporated ("PaineWebber").

Prior to the hearing, the Panel was advised that Claimant dismissed Respondents Stanley R. Stearns, Anthony C. Byrd and Bradford A. Phillips.

On or about March 7, 2001, Cooke B. Christopher advised that San Clemente Securities was under Chapter 7 bankruptcy protection. On or about August 10, 2001, Claimant filed a copy of the bankruptcy court order lifting the bankruptcy stay and permitting the above-referenced matter to proceed with respect to San Clemente Securities.

On or about February 5, 2003, the Panel was advised of the bankruptcy filing by InterFirst Capital Corporation and that the above-referenced matter was stayed with respect to InterFirst Capital Corporation.

Respondent Stephen J. Kelso did not file with NASD-DR a Statement of Answer. Respondents San Clemente Securities, Stephen J. Kelso, Thomas H. Sunderland and Cooke B. Christopher did not file properly executed submissions to arbitration. The Panel determined that said Respondents have been properly served with Claimant's Statement of Claim and further determined that said Respondents are required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and are bound by the determination of the Panel on all issues submitted.

Respondents San Clemente Securities, Stephen J. Kelso, Otto C. Johnson, Thomas H. Sunderland and Cooke B. Christopher did not appear at the evidentiary hearing in this matter. Pursuant to Rule 10318 of the Code, the Panel determined that said Respondents received proper notice of the hearing and ruled to proceed in Respondents' absence.

The parties present at hearing 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) The Panel found that Claimant wanted an investment with a one-year maturity. Respondents recommended and sold Claimant investments with a maturity date up to twenty years. Respondents were found to have violated the provisions of: 1) Suitability; 2) Misrepresentations of Material Fact; 3) Negligent Supervision 4) Negligence; 5) Breach of Contract; and 6) Breach of Fiduciary Responsibility. Accordingly, Respondents San Clemente Securities, Stephen J. Kelso, Thomas H. Sunderland and Cooke B. Christopher are jointly and severally liable for and shall pay to Claimant the sum of \$10,000.00 in compensatory damages.
- 2) Respondents San Clemente Securities, Stephen J. Kelso, Thomas H. Sunderland and Cooke B. Christopher are jointly and severally liable for and shall pay to Claimant the sum of \$25,000.00 in attorney's fees as reimbursement for Claimant's attorney fee retainer.
- 3) The Panel granted Claimant's request for sanctions for failure to respond to discovery requests. Accordingly, Respondents San Clemente Securities, Stephen J. Kelso, Thomas H. Sunderland and Cooke B. Christopher are jointly and severally liable for and shall pay to Claimant the sum of \$25,000.00 in attorney's fees for discovery sanctions.
- 4) Respondents San Clemente Securities, Stephen J. Kelso, Thomas H. Sunderland and Cooke B. Christopher are jointly and severally liable for and shall pay to Claimant the sum of \$500.00 as reimbursement for Claimant's filing fee.
- 5) All claims by Claimant against Respondent Otto C. Johnson are dismissed.
- 6) Claimant's claim for punitive damages is denied.
- 7) All claims by Respondent Otto C. Johnson are dismissed.
- 8) Each party shall bear its own costs incurred in this matter.
- 9) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$500.00
Counterclaim filing fee	= \$250.00

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, San Clemente Securities, CIBC World Markets Corp., Correspondent Services Corporation and PaineWebber are parties and each are assessed the following fees:

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

Adjournment Fees

The Panel assessed the \$1,200.00 adjournment fee against Respondents InterFirst Capital Corporation, Bradford A. Phillips, PaineWebber and Correspondent Services Corporation in connection with said Respondents' request to adjourn the hearing dates of May 6-8, 2002.

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:

(4) Pre-hearing conference sessions with the Panel @ \$1,200.00.00/session= \$4,800.00

Pre-hearing conferences:	September 25, 2001	1 session
	January 28, 2002	1 session
	April 28, 2003	1 session
	August 12, 2003	1 session

(2) Hearing sessions @ \$1,200.00/session = \$2,400.00

Hearing:	October 20, 2003	2 sessions
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Total Forum Fees = \$7,200.00

The Panel assessed the \$7,200.00 in forum fees jointly and severally to Respondents San Clemente Securities, Stephen J. Kelso, Thomas H. Sunderland and Cooke B. Christopher.

The Panel waived the \$1,200.00 forum fee in connection with the pre-hearing conference held August 11, 2003.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

Claimant requested copies of pleadings = \$26.41

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
<u>Administrative Costs</u>	= \$ 26.41
Total Fees	= \$ 526.41
<u>Less Payments</u>	= \$ (1,800.00)
Refund Due Claimant	= \$ (1,273.59)

2. Respondent San Clemente Securities is charged with the following fees and costs:

Member Fees	= \$ 7,600.00
<u>Less Payments</u>	= \$ (0.00)
Balance Due NASD-DR	= \$ 7,600.00

3. Respondent CIBC World Markets Corp. is charged with the following fees and costs:

Member Fees	= \$ 7,600.00
<u>Less Payments</u>	= \$(12,700.00)
Refund Due CIBC World Markets Corp.	= \$ (5,100.00)

4. Respondent Correspondent Services Corporation is charged with the following fees and costs:

Member Fees	= \$ 7,600.00
<u>Less Payments</u>	= \$ (7,600.00)
Balance Due NASD-DR	= \$ 0.00

5. Respondent PaineWebber is charged with the following fees and costs:

Member Fees	= \$ 7,600.00
<u>Less Payments</u>	<u>= \$ (7,600.00)</u>
Balance Due NASD-DR	= \$ 0.00

6. Respondents PaineWebber, Correspondent Services Corporation and Bradford A. Phillips are charged jointly and severally with the following fees and costs:

Adjournment Fee	= \$ 1,200.00
<u>Less Payments by PaineWebber</u>	<u>= \$ (1,200.00)</u>
Balance Due NASD-DR	= \$ 0.00

7. Respondent Otto C. Johnson is charged with the following fees and costs:

Counterclaim Filing Fee	= \$ 250.00
<u>Less Payments</u>	<u>= \$ (1,250.00)</u>
Refund Due Mr. Johnson	= \$ (1,000.00)

8. Respondents San Clemente Securities, Stephen J. Kelso, Thomas H. Sunderland and Cooke B. Christopher are jointly and severally charged with the following fees and costs:

Forum Fees	= \$ 7,200.00
<u>Less Payments</u>	<u>= \$ (0.00)</u>
Balance Due NASD-DR	= \$ 7,200.00

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

ARBITRATION PANEL

Ralph A. Cotton, CPA
Joseph Berzok, J.D.
John Meade Finigan, Sr.

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

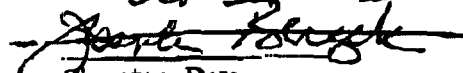
Concurring Arbitrators' Signatures

Ralph A. Cotton, CPA
Chair, Public Arbitrator


Joseph Berzok, J.D.
Public Arbitrator

John Meade Finigan, Sr.
Non-Public Arbitrator

Signature Date

Oct. 29, 2003

Signature Date

Signature Date

10/30/03
Date of Service

ARBITRATION PANEL

Ralph A. Cotton, CPA	-	Public Arbitrator, Presiding Chair
Joseph Berzok, J.D.	-	Public Arbitrator
John Meade Finigan, Sr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Ralph A. Cotton, CPA
Chair, Public Arbitrator

10-28-03
Signature Date

Joseph Berzok, J.D.
Public Arbitrator

Signature Date

John Meade Finigan, Sr.
Non-Public Arbitrator

Signature Date

10/30/03
Date of Service

ARBITRATION PANEL

Ralph A. Cotton, CPA	-	Public Arbitrator, Presiding Chair
Joseph Berzok, J.D.	-	Public Arbitrator
John Meade Finigan, Sr.	-	Non-Public Arbitrator


Concurring Arbitrators' Signatures

Ralph A. Cotton, CPA
Chair, Public Arbitrator

Signature Date

Joseph Berzok, J.D.
Public Arbitrator

Signature Date


John Meade Finigan, Sr.
Non-Public Arbitrator

02-31-2003
Signature Date

Date of Service