
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 01-00333

Joan Hunsberger and Douglas Holley as
Co-Trustees of the Holley Irrevocable Family Trust
Naomi Holley as Beneficiary of the Holley
Irrevocable Family Trust YAD 11/20/92

Names of the Respondents

Hearing Site: Boca Raton, FL

CIBC Oppenheimer, Corp.
Lawrence S. Rule, Jr.
Arthur W. Lewis

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

REPRESENTATION OF PARTIES

For Joan Hunsberger and Douglas Holley as Co-Trustees of the Holley Irrevocable Family Trust ("HIFT") and Naomi Holley as Beneficiary of the Holley Irrevocable Family Trust YAD 11/20/92 ("Holley"), hereinafter referred to as "Claimants": Alan J. Foxman, Esq., Law Offices of Alan J. Foxman, P.A.

For Respondents CIBC Oppenheimer, Corp. ("CIBC"), and Arthur W. Lewis ("Lewis"): Joseph Sullivan III, Sheindlin and Sullivan, LLP, New York, New York.

For Respondent Lawrence S. Rule ("Rule"): John L. Chalif, J.D., LL.M, West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed on or about: January 19, 2001.

Claimants signed the Uniform Submission Agreement: February 11, 2001 and February 17, 2001.

Statement of Answer filed by Respondents CIBC and Lewis on or about: April 6, 2001.

Respondent CIBC did not file an executed Uniform Submission Agreement.

Respondent Lewis did not file an executed Uniform Submission Agreement.

Statement of Answer filed by Respondent Rule on or about: April 2, 2001.

Respondent Rule did not file an executed Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: 1) breach of contract; 2) churning; 3) failure to supervise; 4) violation of Florida Statute Chapter 517, 5) misrepresentation; and 6) negligence. The causes of action relate to the sale of shares of stock in AT&T from Claimants' account as well as the purchase and sale of other unspecified securities including those made on margin.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages of \$550,000.00 based on a calculation of their estimated losses including excess taxes, commissions and actual loss, plus interest, punitive damages of \$1,650,000.00, attorney's fees, and costs.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice, expungement of this matter from the NASD Central Registration Depository ("CRD") record of Respondent Rule and that Claimants be required to reimburse Respondents for defense of this matter including costs and expert fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents CIBC, Lewis and Rule did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, are bound by the determination of the undersigned arbitrators (the "Panel") on all issues submitted.

On or about October 21, 2002, Claimants notified NASD that they were dismissing Respondent Lewis with prejudice.

On or about September 30, 2003, Claimants notified NASD that they had entered into a settlement agreement with Respondent CIBC and were, therefore, dismissing Respondent CIBC with prejudice and would only be proceeding against Respondent Rule.

In April 2004, Claimants notified NASD that they were dismissing Counts II, III, IV, V and VI of the Statement of Claim and would, therefore, only be proceeding on Count I of the Statement of Claim (i.e., breach of contract). Claimants stated in their "Notice of Dismissal of Certain Claims" that, upon further review of this case, the Claimants had determined that those causes of action were not supported by the facts and information currently available to Claimants. Claimants further advised in that Notice that, if NASD Rule 2130 were in effect for this case, it would appear that Section 2130(b)(1)(A) would most likely be applicable since these causes of action could be considered "clearly erroneous" in light of the information currently available to Claimants. Consequently, Claimants advised that they were dismissing with prejudice the claims of churning, failure to supervise, violation of Florida Statute Chapter 517, fraud and misrepresentation and negligence and that they would only be proceeding against Respondent

Rule on the claim of breach of contract and to the extent any of the other causes of action were included in the breach of contract claim, those allegations should be disregarded.

In May 2004, the parties informed NASD that they had amicably settled this matter and submitted a proposed Stipulated Award and Joint Motion for Issuance of Stipulated Award and for Order of Expungement. The final of the undersigned arbitrators verbally advised NASD on October 6, 2004 that the Joint Motion would be granted.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten signed Stipulated Award may be entered.

AWARD

After considering the pleadings, the proposed Stipulated Award and the Joint Motion for Issuance of Stipulated Award and for Order of Expungement, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Based upon the information that has been supplied in the course of this arbitration, the Panel finds that the causes of action alleged against Respondent Rule are not supported by the facts and information available to Claimants. The Panel further finds that Respondent Rule was not involved in certain of the investment related practices alleged. Accordingly, the Panel hereby dismisses all claims against Respondent Rule, with prejudice. Consequently, the Panel also affirmatively finds that, if NASD Rule 2130 was in effect for this case, it would appear that Sections 2130(b)(1)(A) and (B) would most likely be applicable since the causes of action alleged could be considered "clearly erroneous" and inapplicable to Respondent Rule, respectively.
2. The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Rule's public and non-public registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Rule must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. In view of the foregoing, the Panel has dismissed this matter in its entirety, with prejudice. This dismissal shall be a bar to the bringing of any action based on or including the claims for which these actions have been or could have been brought against Respondent Rule by the Claimants or by Respondent Rule against Claimants, including counterclaims for tortious interference and defamation.
4. The parties shall each bear their respective costs, expenses and attorney's fees.
5. All other claims in this proceeding brought by any party are dismissed with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee = \$ 500.00

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 person at the time of the events giving rise to the dispute. Accordingly, Respondent CIBC is a member firm and a party.

Member surcharge = \$2,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$4,500.00

Total Member Fees = \$7,600.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

December 17 through 20, 2002 hearing dates, adjournment requested by Respondent CIBC. The Panel waived the \$1,200.00 adjournment fee.

April 14 through 16, 2004 hearing dates, adjournment requested by Respondent Rule. The Panel assessed the \$1,200.00 adjournment fee to Respondent Rule.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred during these proceedings.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 the Panel @ \$1,200.00 = \$1,200.00

Pre-hearing conference: July 11, 2002 1 session

Total Forum Fees = \$1,200.00

Pursuant to the agreement of the parties, the Panel has assessed the total forum fees of \$1,200.00 jointly and severally to Claimants.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	<u>= \$1,200.00</u>
Total Fees	= \$1,700.00
<u>Less payments</u>	<u>= \$1,700.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent CIBC is solely liable for:

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

Respondent Rule is solely liable for:

<u>Adjournment Fee</u>	<u>= \$1,200.00</u>
Total Fees	= \$1,200.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$1,200.00

ARBITRATION PANEL

Monica I. Salis, Esq.	-	Public Arbitrator, Presiding Chairperson
James Barry Wright	-	Public Arbitrator
Thomas C. Krumenacker	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Monica I. Salis, Esq.
Public Arbitrator, Presiding Chairperson

October 19, 2004
Signature Date

/s/
James Barry Wright
Public Arbitrator

October 21, 2004
Signature Date

/s/

Thomas C. Krumenacker
Non-Public Arbitrator

October 20, 2004
Signature Date

October 22, 2004
Date of Service (For NASD Dispute Resolution office use only)

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James Barry Wright	-	Public Arbitrator
Thomas C. Krumenacker	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Monica I. Salis, Esq.
Public Arbitrator, Presiding Chairperson

10/19/04
Signature Date


James Barry Wright
Public Arbitrator

Signature Date

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James Barry Wright	-	Public Arbitrator
Thomas C. Krumenacker	-	Non-Public Arbitrator


Concurring Arbitrators' Signatures

Monica I. Salis, Esq.
Public Arbitrator, Presiding Chairperson

James Barry Wright
Public Arbitrator

Signature Date

Signature Date


Thomas C. Krumenacker
Non-Public Arbitrator

Signature Date 10/20/04

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