

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Rolf A. Gille and Ione Gille Living Trust, Rolf Gille R-IRA and Ione Gille R-IRA, Claimants v.
First Security Van Kasper & Co., Anders A. de Joung and Arendt C. de Joung, Respondents.

Case Number: 01-00663

Hearing Site: San Francisco, CA

REPRESENTATION OF PARTIES

For Claimants:

Joseph C. Barton, Esq.
2833 Laguna Street
San Francisco, CA 94123

For Respondents:

Gordon C. Young, Esq.
Thomas M. McCallister, Esq.
Keesel, Young & Logan
Four Embarcadero Center
Suite 1500
San Francisco, CA 94111

CASE INFORMATION

Statement of Claim filed: February 9, 2001

Claimants' Uniform Submission Agreement signed: November 15, 2000

Statement of Answer filed by Respondents: May 11, 2001

Respondent First Security Van Kasper & Co.'s Uniform Submission Agreement signed: January 16, 2002

Respondent Anders A. de Joung's Uniform Submission Agreement signed: January 15, 2002

Respondent Arendt C. de Joung's Uniform Submission Agreement signed: January 15, 2002

CASE SUMMARY

Claimants alleged fraud/misrepresentation; unsuitability; breach of fiduciary duty; failure to supervise and elder abuse. The claims stem from alleged losses incurred in the Claimants' individual and IRA accounts.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim. Additionally, Respondents alleged numerous affirmative defenses, including that Claimant's achieved their investment objectives; Claimants controlled their account; Respondents acted properly with regard to the accounts; Respondent First Security Van Kasper had authority to trade in the account; no private right of action exists for alleged violations of NASD rules; Claimants caused their own alleged damages; the claims are barred by the doctrines of laches, unclean hands, waiver, estoppel and ratification; Claimants failed to mitigate damages and; the claims are barred by the applicable statute of limitations.

RELIEF REQUESTED

Claimants requested \$172,372 compensatory damages; \$500,000 for emotional distress pursuant to California Civil Code Sec. 3333.2; \$6,000,000 for exemplary damages pursuant to California Civil Code Sec. 3294; attorney's fees according to proof pursuant to Welfare & Institutions Code Sec. 15610.27; treble damages for substantial loss of property for retirement pursuant to California Civil Code Sec. 3345; and \$1800 pre and post judgment interest.

Respondents requested dismissal of the Claimants' Statement of Claim with prejudice in its entirety, costs of suit and for such other relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

The parties 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) Respondents First Security Van Kasper & Co., Anders A. de Jounge and Arendt C. de Jounge, are jointly and severally liable and shall pay to the Claimants \$118,434 in compensatory damages.
- 2) Respondents First Security Van Kasper & Co., Anders A. de Jounge and Arendt C. de Jounge, are jointly and severally liable and shall pay to the Claimants interest on the compensatory damages awarded in paragraph 1 above at the legal rate from the date of award until paid.
- 3) Respondents First Security Van Kasper & Co., Anders A. de Jounge and Arendt C. de Jounge are jointly and severally liable and shall pay Claimants the amount of their costs of suit.
- 4) Respondents First Security Van Kasper & Co., Anders A. de Jounge and Arendt C. de Jounge are jointly and severally liable and shall pay for all forum fees.
- 5) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 600
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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, the member firm is a party and the following fees are assessed:

Member Surcharge	= \$3000
Pre-Hearing Process Fee	= \$ 600
<u>Hearing Process Fee</u>	= \$5000
Total Member Fees	= \$8600

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:

One (1) Pre-hearing conference session with a single arbitrator @ \$450/session	= \$ 450
Pre-hearing conference: December 3, 2001 1 session	

One (1) Pre-hearing conference session with the Panel @ \$1200/session	= \$1200
Pre-hearing conference: August 31, 2001 1 session	

Eight (8) Hearing sessions @ \$1200/session	= \$9600
Hearings:	
January 15, 2002 2 sessions	
January 16, 2002 2 sessions	
January 17, 2002 2 sessions	
January 18, 2002 2 sessions	

Total Forum Fees	= \$11,250
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1. The Panel assessed \$11,250 of the forum fees jointly and severally to Respondents First Security Van Kasper & Co., Anders A. de Jonge and Arendt C. de Jonge.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 600
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Total Fees	= \$ 600
<u>Less Payments</u>	= \$(1800)
Refund Due to the Claimants	= \$(1200)

2. Respondent First Security Van Kasper is charged with the following fees and costs:

Member Fees	= \$8600
Total Fees	= \$8600
<u>Less Payments</u>	= \$(8600)
Balance Due NASD Dispute Resolution, Inc.	= \$ 0

3. Respondents First Security Van Kasper & Co., Anders A. de Jonge and Arendt C. de Jonge are jointly and severally liable for the following fees and costs:

Forum Fees	= \$11,250
<u>Claimants' Filing Fee</u>	= \$600
Total Fees	= \$11,850
<u>Less Payments</u>	= \$(600)
Balance Due NASD Dispute Resolution, Inc.	= \$11,250

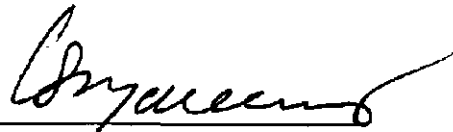
All balances are payable to NASD Dispute Resolution, Inc. and are payable upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

NASD Dispute Resolution, Inc.
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ARBITRATION PANEL

William S. Mailliard, Esq.	-	Non-Public, Presiding Chair
Charles B. Stark, Jr.	-	Public Arbitrator
Mark R. Topper, Esq.	-	Public Arbitrator

Concurring Arbitrators' Signatures



William S. Mailliard, Esq.
Chair, Industry Arbitrator

1/28/02

Signature Date

Charles B. Stark, Jr.
Public Arbitrator

Signature Date

Mark R. Topper, Esq.
Public Arbitrator

Signature Date

Date Served:
JAN 31 2001
Date of Service

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