

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Margaret L. Moten, Claimant v. Uvest Investment Services, Respondent

Case Number: 01-02233

Hearing Site: Charlotte, North Carolina

REPRESENTATION OF PARTIES

For Margaret L. Moten, hereinafter referred to as "Claimant": Kalju Nekvasil, Esq., Stephen Krosschell, Esq., and Jennifer Newsom, Esq., Goodman & Nekvasil, P.A., Clearwater, Florida.

For Uvest Investment Services, hereinafter referred to as "Respondent": John S. Barr, Esq. and Anne Bentley McCray, Esq., McGuire Woods LLP, Richmond, Virginia.

CASE INFORMATION

Statement of Claim filed: April 30, 2001.

Claimant's Uniform Submission Agreement signed: May 9, 2000.

Statement of Answer filed by Respondent: July 24, 2001.

Respondent's Uniform Submission Agreement signed: June 14, 2001.

CASE SUMMARY

Claimant alleged causes of action relating to Claimant's investment in a World Vision Entertainment, Inc. promissory note (the "Note"). The causes of action are: 1) violations of federal securities laws; 2) violations of the North Carolina Securities Act; 3) breach of contract; 4) common law fraud; 5) breach of fiduciary duty; and 6) negligence and gross negligence.

Claimant alleged that Respondent, acting through its account executive responsible for the handling of transactions with Claimant: 1) failed to disclose to Claimant that the Note was not registered with the Securities and Exchange Commission in violation of Section 5 of the Securities Act of 1933; 2) failed to disclose to Claimant that the Note was not registered with the State of North Carolina; and 3) made false statements of material facts to Claimant and omitted to disclose additional facts to Claimant concerning World Vision. Claimant alleged that Respondent is liable: 1) as a controlling person for failure to supervise; 2) pursuant to its common law duty to supervise; 3) for licensing its representative to sell securities and it had non-

delegable duties to supervise him; 4) under the *respondeat superior* doctrine; 5) under the inherent agency doctrine; and 6) under the apparent authority doctrine.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant requested: 1) compensatory damages in the amount of at least \$45,000.00; 2) benefit of the bargain damages; 3) damages for lost opportunity costs; 4) model portfolio damages; 5) pre-judgment interest; 6) attorneys' fees; 7) costs; 8) punitive damages; 9) rescission; and 10) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondent requested: 1) dismissal of the Claimant's Statement of Claim in its entirety; 2) costs; and 3) attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

On or about March 22, 2002, Respondent filed its Motion to Quash Claimant's Subpoenas as to Northern Life Insurance Company, Integon, Putnam Investments, Inc., American Heritage Life Insurance and Reliance Life Insurance Company. Respondent requested that Claimant's subpoenas be quashed and that Claimant be barred from presenting any documents which are produced pursuant to the subpoenas. At the evidentiary hearing, Respondent's motion became moot and therefore the Panel made no determination with respect to Respondent's motion.

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, and the post-hearing submissions (if any), the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent is liable and shall pay to Claimant compensatory damages in the amount of \$58,374.25, plus pre-judgment interest at the North Carolina legal rate of 8% per annum from July 10, 1998 through March 27, 2002. Respondent's broker sold "away" to Claimant a fraudulent, unregistered security. Respondent failed to maintain and enforce a reasonable system of supervision and internal control over the broker and is liable under 15 U.S.C. 77o of the Securities Act of 1933, the North Carolina General Statute Section 78A-56(c) and general principles of agency.

- 2) Claimant's request for punitive damages is denied.
- 3) Respondent is liable and shall pay to Claimant attorneys' fees in the amount of \$23,349.70. Attorneys' fees are awarded under North Carolina General Statutes Section 78A-56.
- 4) Respondent is liable and shall pay to Claimant costs in the amount of \$5,342.54.
- 5) Respondent is liable and shall pay to Claimant expert witness fees and costs in the amount of \$4,871.50.
- 6) All other relief requested, including Respondent's request for attorneys' fees, and not expressly granted is denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 175.00
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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 which gave rise to the dispute, claim, or controversy. Accordingly, the member firm, Respondent, is a party and the following fees are assessed:

Member Surcharge	= \$ 800.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$1,000.00</u>
Total Member Fees	= \$2,400.00

Adjournment Fees

The following adjournment fees are assessed:

There were no adjournments requested during these proceedings.

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:

(1) Pre-hearing conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: January 14, 2002 1 session	
(1) Pre-hearing conference session with the Panel @ \$600.00/session	= \$ 600.00
Pre-hearing conference: November 2, 2001 1 session	
(4) Hearing sessions @ \$600.00/session	= \$2,400.00
Hearings: March 25, 2002 2 sessions	
March 26, 2002 2 sessions	
Total Forum Fees	= \$3,450.00

The Panel assessed the total forum fees of \$3,450.00 to Respondent.

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 sundry other requests.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is charged with the following fees and costs:

<u>Initial Filing Fee</u>	= \$ 175.00
Total Fees	= \$ 175.00
<u>Less payments</u>	= \$ 175.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondent is charged with the following fees and costs:

Member Fees	= \$2,400.00
<u>Forum Fees</u>	= \$3,450.00
Total Fees	= \$5,850.00
<u>Less payments</u>	= \$1,400.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,450.00

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

NASD Dispute Resolution, Inc.

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ARBITRATION PANEL

Thomas W. Steed, Jr., Esq.

—

Public Arbitrator, Presiding Chair

Leonard Landsman

Public Arbitrator

M. Bruce Adelberg

—

Non-Public Arbitrator

Concurring Arbitrators' Signatures

15

Thomas W. Steed, Jr., Esq.

Chair, Public Arbitrator

Signature Date

/s/

Leonard Landsman

Public Arbitrator

Signature Date

15

M. Bruce Adelberg

Non-Public Arbitrator

Signature Date

April 19, 2002

Date of Service

NASD Dispute Resolution, Inc.
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ARBITRATION PANEL

Thomas W. Steed, Jr., Esq.
Leonard Landsman
M. Bruce Adelberg

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures


Thomas W. Steed, Jr., Esq.
Chair, Public Arbitrator

Leonard Landsman
Public Arbitrator

M. Bruce Adelberg
Non-Public Arbitrator


Signature Date

Signature Date

Signature Date

Date of Service

ARBITRATION PANEL

Thomas W. Steed, Jr., Esq.
Leonard Landsman
M. Bruce Adelberg

- Public Arbitrator, Presiding Chair
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures

Thomas W. Steed, Jr., Esq.
Chair, Public Arbitrator

Leonard Landsman
Public Arbitrator

Signature Date

4/12/02

Signature Date

M. Bruce Adelberg
Non-Public Arbitrator

Signature Date

Date of Service

NASD Dispute Resolution, Inc.
Arbitration No. 01-02233
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ARBITRATION PANEL

Thomas W. Steed, Jr., Esq.	-	Public Arbitrator, Presiding Chair
Leonard Landsman	-	Public Arbitrator
M. Bruce Adelberg	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Thomas W. Steed, Jr., Esq.
Chair, Public Arbitrator

Signature Date

Leonard Landsman
Public Arbitrator

Signature Date


M. Bruce Adelberg
Non-Public Arbitrator

4/16/02

Signature Date

4/16/02

Date of Service