

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Tina Daniels, (Claimant) vs. Weatherly Securities Corp. and Jason Gross, (Respondents)

Case Number: 01-02336

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant Tina Daniels, hereinafter referred to as "Claimant": John E. Lawlor, Esq., a sole practitioner, Mineola, NY.

Respondents Weatherly Securities Corp. ("Weatherly") and Jason Gross ("Gross"), hereinafter collectively referred to as "Respondents", did not appear at the hearing in this matter.

Previously represented by: Marc J. Ross, Esq., Sichenzia Ross Friedman Ference LLP, New York, NY and Lionel E. Pashkoff, Esq., Proskauer Rose LLP, New York, NY, respectively.

CASE INFORMATION

Statement of Claim filed on or about: May 3, 2001.

Claimant signed the Uniform Submission Agreement: December 15, 2000.

Joint Statement of Answer filed by Respondents on or about: August 3, 2001.

Weatherly did not sign a Uniform Submission Agreement.

Gross did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: failure to supervise; common law fraud; breach of contract; negligence; breach of fiduciary duty; violations of the Conduct Rules of the NASD; excessive trading; unauthorized trading; and unsuitability. Claimant's claim involved unspecified financial products.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted; the Statement of Claim is barred by the doctrines of estoppel and ratification; the losses allegedly sustained by Claimant were a direct and proximate result of Claimant's own conduct and/or negligence and not by any act or omission on the part of Respondents; Claimant failed to take reasonable and prudent action in order to mitigate their losses; Claimant expressly authorized, approved, and consented to every transaction effectuated in her account; the facts of this case, as a matter of law, do not support a claim for punitive damages; Weatherly acted in good faith and in compliance with all applicable rules and regulations; an award of prejudgment interest and attorneys' fees is barred as a matter of law; and Respondents discharged their responsibilities in a professional and ethical manner, in good faith, and in accordance with the investment objectives expressed

by Claimant.

RELIEF REQUESTED

Claimant requested:

- a. Compensatory damages in the approximate amount of \$125,000.00;
- b. Punitive damages in an amount to be assessed by the Panel;
- c. An award of attorneys' fees in an amount to be proven at the hearing;
- d. The costs and disbursements of this proceeding; and
- e. Such other, further, and different relief as to the Panel seems just and proper under the circumstances.

Respondents requested that the Panel:

- a. Dismiss Claimant's claims in their entirety;
- b. Award Respondents the costs associated with the defense of this matter, including attorneys' fees and costs of suit; and
- c. Award Respondents any other relief which the Panel may find to be just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Weatherly and Gross have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Weatherly and Gross present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Weatherly and Gross did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

By letter dated September 25, 2002, attorney Jeffrey T. Varsalone, Esq., of the firm Wander & Associates, P.C., advised NASD Dispute Resolution that he was bankruptcy counsel for Respondent Gross, and that Gross would be filing for relief under Chapter 7 of the U.S. Bankruptcy Code the following morning.

The Panel reviewed and considered the September 25, 2002 letter from attorney Varsalone. The Panel, after hearing Claimant's arguments on the matter, decided to proceed against Gross because the only documentation received by NASD Dispute Resolution was an intent to file, and not an actual bankruptcy filing.

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

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$75,000.00 as compensatory damages.
2. Claimant's request for punitive damages is hereby denied.
3. All other requests for relief are hereby denied.

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	= \$ 300.00
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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, Weatherly Securities Corp. is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Forum Fees and Assessments

The Panel assesses 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 arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: December 18, 2001	1 session

Two (2) Hearing sessions x \$1,125.00	= \$2,250.00
Hearing Date: September 26, 2002	2 sessions

Total Forum Fees = \$3,375.00

The Panel has assessed all of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$1,425.00
<u>Refund Due Claimant</u>	= \$1,125.00

2. Weatherly is solely liable for:

<u>Member Fees</u>	= \$4,600.00
<u>Total Fees</u>	= \$4,600.00
<u>Less payments</u>	= \$4,600.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$3,375.00
<u>Total Fees</u>	= \$3,375.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$3,375.00

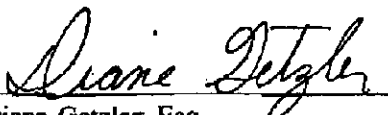
All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Diane Getzler, Esq.	-	Public Arbitrator, Presiding Chair
Stanley M. Ulanoff	-	Public Arbitrator
Mark A. Egert, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Diane Getzler, Esq.
Public Arbitrator, Presiding Chair

October 21, 2002
Signature Date

Stanley M. Ulanoff
Public Arbitrator

Signature Date

Mark A. Egert, Esq.
Non-Public Arbitrator

Signature Date

October 23, 2002
Date of Service (For NASD Dispute Resolution use only)


ARBITRATION PANEL

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Diane Getzler, Esq.
Public Arbitrator, Presiding Chair


Stanley M. Ulanoff
Public Arbitrator

Mark A. Egert, Esq.
Non-Public Arbitrator

Signature Date

21 Oct 02
Signature Date

Signature Date

October 23, 2002

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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Diane Getzler, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Stanley M. Ulanoff
Public Arbitrator

Signature Date



Mark A. Egert, Esq.
Non-Public Arbitrator

10/18/02
Signature Date

October 23, 2002

Date of Service (For NASD Dispute Resolution use only)