

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

James A. Cully, (Claimant) vs. Investors Capital Corporation, Daniel David Sheehan, and Sheehan Elder Planning, Inc., (Respondents)

Case Number: 01-02374

Hearing Site: Boston, Massachusetts

REPRESENTATION OF PARTIES

Claimant, James A. Cully, hereinafter referred to as "Claimant": Joseph P. Carmichael, Esq., a sole practitioner, Salem, MA.

Respondent, Investors Capital Corporation ("Investors"): Valerie S. Carter, Esq., Riley & Dever, P.C., Lynnfield, MA.

Respondents, Daniel David Sheehan ("Sheehan") and Sheehan Elder Planning, Inc. ("SEP"): Grover S. Parnell, Esq., Finneran & Nicholson, P.C., Boston, MA.

CASE INFORMATION

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

Response to Respondents' Motions to Dismiss filed by Claimant on or about: August 23, 2001.

Claimant signed the Uniform Submission Agreement: April 25, 2001.

Statement of Answer and Motion to Dismiss filed by Investors on or about: August 3, 2001.
Investors signed the Uniform Submission Agreement: August 17, 2001.

Joint Statement of Answer and Motion to Dismiss filed by Sheehan and SEP on or about: July 30, 2001.

Sheehan signed the Uniform Submission Agreement: July 27, 2001.

SEP signed the Uniform Submission Agreement: July 27, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; churning; breach of contract; breach of fiduciary duty; negligence; violations of the Massachusetts Uniform Securities Act and the Massachusetts Consumer Protection Act; and failure to supervise. Claimant's claim involved a variety of mutual funds and annuities.

Unless specifically admitted in its Answer, Investors denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's claims and damages, if any, relate to and are a result of the acts or omissions of a person or persons over whom Investors does not exercise supervision, dominion, or control; Claimant's claims and damages, if any, relate to and are a result of the acts or omissions of Claimant and/or a person or persons over whom Claimant exercised dominion or control; the NASD lacks jurisdiction over Claimant's allegations relating to annuities; and Claimant's claims fail to state a claim upon which relief may be granted.

Unless specifically admitted in their Answer, Sheehan and SEP denied the allegations made in the Statement of Claim and asserted the following defenses: NASD Dispute Resolution has no jurisdiction over insurance products which are not securities, such as the annuities in dispute; the financial plan drafted for Claimant was based on personal and financial information given to Sheehan and SEP by Claimant; Claimant studied and considered the various investment options that were presented to him; Claimant made his investment decisions knowingly and with a full understanding of the lengthy discussion he had with Sheehan regarding said investments; Claimant independently selected the annuities in dispute as one of several options available under the financial plan; the investment decisions made by Claimant were very suitable; and no churning occurred in Claimant's account because all load fees were waived, and the management fee was discounted.

RELIEF REQUESTED

Claimant requested compensatory damages in the approximate amount of \$85,000.00, plus interest, attorneys' fees, costs, rescission of all costs, fees, and surrender charges associated with the wrongful investments, and the value that Claimant would have received had he not been induced to sell the four mutual funds he held prior to joining Respondents.

Investors requested that the Statement of Claim be dismissed.

Sheehan and SEP requested that the Statement of Claim be dismissed and that they be awarded their costs of defending this action, including reasonable attorneys' fees. Sheehan and SEP further requested that all forum fees be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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. Claimant's claims are hereby dismissed in their entirety.
2. 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	= \$ 225.00
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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, Investors Capital Corporation is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

Adjournment Fees

Adjournments requested during these proceedings:

July 17, 18 & 19, 2002, adjournment by Investors	= WAIVED
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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 \$750.00		= \$ 750.00
Pre-hearing conference:	January 23, 2002	1 session
Four (4) Hearing sessions x \$750.00		= \$3,000.00
Hearing Dates:	December 9, 2002	2 sessions
	December 11, 2002	2 sessions
Total Forum Fees		= \$3,750.00

1. The Panel has assessed \$3,375.00 of the forum fees against Claimant.
2. The Panel has assessed \$375.00 of the forum fees jointly and severally against Investors, Sheehan, and SEP.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= \$3,375.00
Total Fees	= \$3,600.00
<u>Less payments</u>	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$2,625.00

2. Investors is solely liable for:

<u>Member Fees</u>	= \$3,100.00
Total Fees	= \$3,100.00
<u>Less payments</u>	= \$2,600.00
Balance Due NASD Dispute Resolution	= \$ 500.00

3. Investors, Sheehan and SEP are jointly and severally liable for:

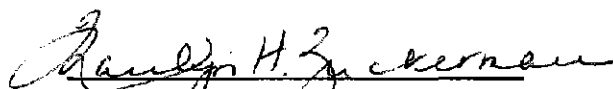
<u>Forum Fees</u>	= \$ 375.00
<u>Total Fees</u>	= \$ 375.00
<u>Less payments (made by SEP)</u>	= \$ 600.00
<u>Refund Due SEP</u>	= \$ 225.00

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

ARBITRATION PANEL

Marilyn H. Zuckerman, Esq.	-	Public Arbitrator, Presiding Chair
Matthew R. Gilson, Esq.	-	Public Arbitrator
Jack A. Marshall	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Marilyn H. Zuckerman, Esq.
Public Arbitrator, Presiding Chair

1/2/03
Signature Date

Matthew R. Gilson, Esq.
Public Arbitrator

Signature Date

Jack A. Marshall
Non-Public Arbitrator

Signature Date

January 16, 2003
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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Matthew R. Gilson, Esq. -

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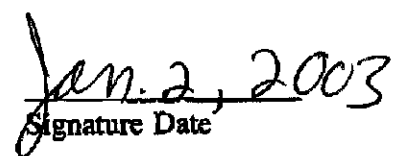
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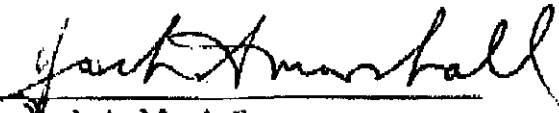
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