

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Carol B. Mann as Trustee of the C. Boetger Mann Family Trust and as Custodian for Alexander M. Mann, Claimant v. Higgins Capital Management, Inc. and Raymond L. Higgins, Respondents

Case Number: 01-02779

Hearing Site: San Diego, California

REPRESENTATION OF PARTIES

For Claimant:

Jonathan A. Boynton, Esq.
Post Kirby Noonan & Sweat, LLP
San Diego, California

For Respondents:

G. Thomas Fleming, Esq.
Jones, Bell, Abbott, Fleming
& Fitzgerald, LLP
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: May 24, 2001

Claimant's Uniform Submission Agreement signed: August 5, 2001

Joint Statement of Answer filed by Respondents Higgins Capital Management, Inc. and Raymond L. Higgins: October 9, 2001

Respondent Higgins Capital Management, Inc.'s Uniform Submission Agreement signed:
October 5, 2001

Respondent Raymond L. Higgins' Uniform Submission Agreement signed: October 31, 2001

CASE SUMMARY

Claimant alleged breach of fiduciary duty, constructive fraud, negligent misrepresentation, and negligence.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$650,000.00, unspecified punitive damages, interest, attorney's fees, and arbitration costs.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, attorney's fees, and arbitration costs. Additionally, Respondent Raymond L. Higgins requested any and all references to this matter be expunged from his CRD record.

OTHER ISSUES CONSIDERED AND DECIDED

On September 13, 2002, Claimant requested the NASD dismiss this matter in its entirety without prejudice.

On September 18, 2002, Respondents filed an objection to Claimant's request that this matter be dismissed in its entirety without prejudice. Additionally, Respondents requested this matter be dismissed in its entirety with prejudice and an Award be issued recommending this matter be expunged from Respondent Raymond L. Higgins' CRD record.

On October 2, 2002, Claimant filed a response to Respondents' objection that this matter be dismissed without prejudice.

On November 19, 2002, the Arbitration Panel deliberated to determine if this matter should be dismissed without prejudice and if an Award should be issued to recommend the expungement of Respondent Raymond L. Higgins' CRD record.

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, and Claimant's request that this matter be dismissed without prejudice, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims are dismissed without prejudice.
- 2) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Raymond L. Higgins' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Raymond L. Higgins must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 375.00
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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 that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Higgins Capital Management, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,000.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 3,500.00</u>
Total Member Fees	= \$ 6,100.00

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 Panel. The following fees are assessed:

2 Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences:	
February 26, 2002	1 session
May 6, 2002	1 session

Total Forum Fees	= \$ 2,400.00
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1. The Panel assessed \$1,200.00 of the forum fees to Claimant Carol B. Mann as Trustee of the C. Boetger Mann Family Trust and as Custodian for Alexander M. Mann.
2. The Panel assessed \$1,200.00 of the forum fees jointly and severally to Respondents Higgins Capital Management, Inc. and Raymond L. Higgins.

Fee Summary

1. Claimant Carol B. Mann as Trustee of the C. Boetger Mann Family Trust and as Custodian for Alexander M. Mann is charged with the following fees and costs:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	= \$ 1,200.00
Total Fees	= \$ 1,575.00
<u>Less payments</u>	= \$(1,650.00)
Refund Due Claimant	= \$(75.00)

2. Respondent Higgins Capital Management, Inc. is charged with the following fees and costs:

Member Fees	= \$ 6,100.00
<u>Less payments</u>	= \$(6,100.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Higgins Capital Management, Inc. and Raymond L. Higgins are charged jointly and severally with the following fees and costs:

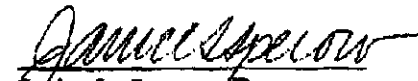
<u>Forum Fees</u>	= \$ 1,200.00
Balance Due NASD Dispute Resolution	= \$ 1,200.00

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

ARBITRATION PANEL

Janice L. Sperow, Esq.	-	Public Arbitrator, Presiding Chair
Evelyn R. Wiggins, Esq.	-	Public Arbitrator
Katherine M. Van Hagan	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Janice L. Sperow, Esq.
Chair, Public Arbitrator

1/7/03
Signature Date

Evelyn R. Wiggins, Esq.
Public Arbitrator

Signature Date

Katherine M. Van Hagan
Non-Public Arbitrator

Signature Date

01/08/03
Date of Service

ARBITRATION PANEL

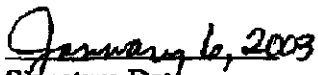
Janice L. Sperow, Esq.	-	Public Arbitrator, Presiding Chair
Evelyn R. Wiggins, Esq.	-	Public Arbitrator
Katherine M. Van Hagan	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Janice L. Sperow, Esq.
Chair, Public Arbitrator

Signature Date


Evelyn R. Wiggins, Esq.
Public Arbitrator


Signature Date

Katherine M. Van Hagan
Non-Public Arbitrator

Signature Date


Date of Service