

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimants

Doris Maceroni and Laura Trombley

and

Case Number: 02-00267  
Hearing Site: Detroit, Michigan

Respondents

Leonard & Company, James W. McLellan  
and McLellan Capital

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**NATURE OF DISPUTE**

Customers v. Member and Non-Member

**REPRESENTATION OF PARTIES**

Doris Maceroni and Laura Trombley ("Claimants") were represented by Anthony V. Trogan, Esq., and Lysa Postula-Stein, Esq., Anthony V. Trogan, PLLC, West Bloomfield, Michigan.

Leonard & Company ("Leonard") and James W. McLellan ("McLellan"), hereinafter collectively referred to as "Respondents," were represented by Dennis J. Levasseur, Esq., Bodman, LLP, Detroit, Michigan

McLellan Capital ("Respondent") did not voluntarily submit to arbitration.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 15, 2002. The Submission Agreement of Doris Maceroni and Laura Trombley was signed on or about November 30, 2001.

The Statement of Answer was filed jointly by Leonard & Company and James W. McLellan on or about March 13, 2002.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty, common law fraud, innocent misrepresentation, violation of Michigan Blue Sky Laws, breach of contract, and negligence in connection with Claimants' purchase of unspecified investments.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the losses Claimants complained of were due to trading activity that Claimants authorized and initiated based on full disclosure of the risks associated with that activity; Claimants failed to state a claim upon which relief could be granted; Respondents did not owe Claimants a fiduciary duty; Claimants' claims were not ripe for adjudication, Claimants' claims were barred by the applicable statute of limitations and the doctrines of assumption of the risk, comparative or contributory negligence, and ratification.

### **RELIEF REQUESTED**

Claimants requested:

Compensatory damages	\$ 250,000.00
Punitive Damages	\$ unspecified
Interest	\$ unspecified
Attorneys' Fees	\$ unspecified
Other Costs	\$ unspecified
Other Monetary/Non-Monetary Relief:	\$ unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondents, Leonard & Company and James W. McLellan, did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, are bound by the determination of the arbitration panel on all issues submitted.

McLellan Capital, is not an NASD Member Firm. McLellan Capital did not voluntarily submit to NASD arbitration, nor was a contract to arbitrate disputes with McLellan Capital presented. Therefore, McLellan Capital is not compelled by NASD rules to arbitrate disputes in this forum. In the absence of McLellan Capital's voluntary submission, NASD does not have jurisdiction over this party.

The panel has been advised that this matter has been settled. The parties present this Stipulated Award to the panel and request that it be entered.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

- 1.) Claimant's claims, having been withdrawn, are dismissed with prejudice;
- 2.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent James W. McLellan's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent McLellan must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

### **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

#### **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, the member firm is Leonard & Company.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each hearing session conducted and each decision rendered on a discovery-related motion on the papers. A hearing session is any

meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Six (6) Pre-hearing sessions with a single arbitrator x \$450.00	= \$ 2,700.00
Pre-hearing conferences: September 17, 2002	1 session
October 14, 2002	1 session
November 5, 2002	1 session
December 13, 2002	1 session
December 18, 2002	1 session
January 6, 2003	1 session
One (1) Pre-hearing session with Panel x \$1,125.00	= \$ 1,125.00
Pre-hearing conferences: July 26, 2002	1 session
Total Forum Fees	= \$ 3,825.00

The Arbitration Panel has assessed \$1,912.50 of the forum fees jointly and severally to Doris Maceroni and Laura Trombley.

The Arbitration Panel has assessed \$956.25 of the forum fees to Leonard & Company.

The Arbitration Panel has assessed \$956.25 of the forum fees to James W. McLellan.

#### Fee Summary

Claimants, Doris Maceroni and Laura Trombley, are liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,912.50
Total Fees	= \$ 2,212.50
Less payments	= \$ 2,212.50
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent, Leonard & Company, is liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 956.25
Total Fees	= \$ 6,156.25
Less payments	= \$ 6,156.25
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent, James W. McLellan, is liable for:

Forum Fees	= \$ 956.25
Total Fees	= \$ 956.25
Less payments	= \$ 956.25
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

Barry Goldman, Esq. - Public Arbitrator  
Peter S. Viviano – Non-Public Arbitrator

Concurring Arbitrators:

/s/ Barry Goldman, Esq.  
Barry Goldman, Esq.  
Public Arbitrator

08/18/06  
Signature Date

/s/ Peter S. Viviano  
Peter S. Viviano  
Non-Public Arbitrator

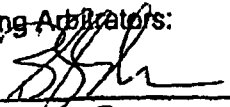
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Signature Date

08/22/06  
Date of Service (For NASD office use only)

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Signature Date

22. Nov. 2008  
\_\_\_\_\_  
Signature Date

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