

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Names of Claimants

Walter Gibala, Teresa A. Gibala, and
Eula Fay Weiss

and

Case Number: 02-04281
Hearing Site: Southfield, Michigan

Names of Respondents

Sigma Financial Corp.
Key Concerns, Inc., and
Sue Waterhouse

NATURE OF DISPUTE

Customer v. Member, Non-Member and Associated Person

REPRESENTATION OF PARTIES

Walter Gibala, Teresa A. Gibala, and Eula Fay Weiss ("Claimants") were represented by David J. O'Brien, Esq., Erie Michigan.

Sigma Financial Corp. ("Sigma") was represented by Joseph H. Spiegel, Esq., Ann Arbor, Michigan.

Key Concerns, Inc. ("Key") and Sue Waterhouse ("Waterhouse"), were represented by Norman Arnoff, Esq., and Stephen B. Wexler, Esq., Wexler & Burkhart, P.C., Mitchell Field, New York. Key and Waterhouse were represented by Walter Baumgardner, Esq., Musilli, Parnell and Baumgardner, St. Clair Shore, Michigan until in or around August 2003.

CASE INFORMATION

The Statement of Claim was filed on or about July 23, 2002. The Submission Agreement of Claimants Walter Gibala, Teresa A. Gibala, and Eula Fay Weiss, by Teresa A. Gibala, P.O.A, was signed on or about September 19, 2002.

Motion to Dismiss and Statement of Answer was filed by Respondent Sigma Financial Corp. on or about September 19, 2002.

Statement of Answer was filed by Respondents Key and Waterhouse on or about October 7, 2002.

Claimants filed a Response to Motion to Dismiss on or about October 7, 2002. Respondents Kay and Waterhouse filed a Concurrence in Respondent Sigma's Motion to Dismiss on or about October 7, 2002. Respondent Sigma filed a Reply to Motion to Dismiss on or about October 14, 2002.

Respondent Sigma filed a Motion for Sanctions and/or Dismissal on or about July 10, 2003.

Respondents Key and Waterhouse filed correspondence joining in dispositive motions submitted by Sigma on or about September 17, 2003. Respondents Key and Waterhouse filed a further joinder in Sigma's Motion to Dismiss on or about November 13, 2003.

Respondent Sigma filed a Motion to Bar Exhibits and Testimony from Claimants at Hearing on or about September 23, 2003, Respondents Key and Waterhouse joined in the Motion on or about September 24, 2003.

CASE SUMMARY

Claimants asserted causes of action including the following: unsuitability and breach of duty, and giving false and misleading information to Claimants. The causes of action relate to Claimants' allegations that Respondents failed to properly qualify them for high risk investment prior to soliciting investments in same, failing to properly advise them of the risks associated with their investments, failure to perform due diligence regarding solicited investments, and failure to provide a prospectus prior to Claimants investing their retirement funds in an annuity.

Unless specifically admitted in its Answer, Respondent Sigma denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim fails to state a cause of action upon which relief can be granted, the Statement of Claim is barred by the doctrines of assumption of the risk, estoppel, unclean hands and laches, and the Statement of Claim is barred by the statute of frauds.

Unless specifically admitted in their Answer, Respondents Key and Waterhouse denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

Claimants requested an award in the amount of \$156,000.00 in actual damages, plus \$450,000.00 in punitive damages, costs, attorney fees, and any other damages the Panel deemed appropriate or necessary.

Respondent Sigma requested that the claims asserted against it be dismissed in their entirety and that it be awarded its costs, attorneys' fees, and such other relief as is just and equitable or limit the claims.

Respondents Key and Waterhouse requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. Respondent Waterhouse requested expungement of this claim from her CRD on or about November 13, 2003.

OTHER ISSUES CONSIDERED & DECIDED

Respondents Sigma Financial Corp., and Sue Waterhouse did not file with the 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, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

Respondent Key Concerns, Inc., did not file with the NASD Dispute Resolution a properly executed submission to arbitration but having answered the claim, and appeared and testified through a representative at the hearing, is bound by the determination of the arbitration panel on all issues submitted.

Any motions not previously decided by the Panel are hereby denied with prejudice.

At the beginning of the arbitration hearing, all Respondents moved for dismissal. The Panel took the Motion under advisement. Respondents renewed their Motion following the close of Claimants' proofs and the Panel granted the Motion on the record.

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 pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimants' claims, each and all, are denied and dismissed with prejudice;
- 2.) The expungement request of Respondent Sue Waterhouse is denied and dismissed with prejudice;
- 3.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) That any relief not specifically enumerated, including punitive damages and attorney 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 (waived)	= \$ 375.00
Counterclaim filing fee (expungement request)	= \$ 250.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firms is Sigma Financial Corp.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

Adjournment Fees

Adjournments requested during these proceedings:

October 10-12, 2002, adjournment by Waterhouse and Key	= \$1,200.00
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Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. 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:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: September 12, 2003 1 session	
Three (3) Pre-hearing sessions with Panel x \$1,200.00	= \$3,600.00
Pre-hearing conferences: April 10, 2003 1 session	
October 20, 2003 1 session	
November 3, 2003 1 session	
Three (3) Hearing sessions x \$1,200.00	= \$3,600.00
Hearing Dates: November 18, 2003 2 sessions	
November 19, 2003 1 session	
<hr/> Total Forum Fees	<hr/> = \$7,650.00

The Arbitration Panel has assessed \$3,825.00 of the forum fees jointly and severally to Walter Gibala, Teresa A. Gibala, and Eula Fay Weiss.

The Arbitration Panel has assessed \$3,825.00 of the forum fees jointly and severally to Sigma Financial Corp., Key Concerns, Inc., and Sue Waterhouse.

Fee Summary

Claimants, Walter Gibala, Teresa A. Gibala, and Eula Fay Weiss, are jointly and severally liable for:

<u>Forum Fees</u>	= \$3,825.00
<u>Total Fees</u>	= \$3,825.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$3,825.00

Respondent, Sigma Financial Corp., is liable for:

<u>Member Fees</u>	= \$7,000.00
<u>Total Fees</u>	= \$7,000.00
<u>Less payments</u>	= \$7,000.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondents, Key Concerns, Inc. and Sue Waterhouse, are jointly and severally liable for:

<u>Adjournment Fee</u>	= \$1,200.00
<u>Total Fees</u>	= \$1,200.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$1,200.00

Respondent, Sue Waterhouse, is liable for:

<u>Counterclaim Filing Fee</u>	= \$ 250.00
<u>Total Fees</u>	= \$ 250.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 250.00

Respondents, Sigma Financial Corp. Key Concerns, Inc. Sue Waterhouse, are jointly and severally liable for:

<u>Forum Fees</u>	= \$3,825.00
<u>Total Fees</u>	= \$3,825.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$3,825.00

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

ARBITRATION PANEL

Matthew W. Schlegel, Esq. - Public Arbitrator, Presiding Chair
Harvey Burdick, Ph.D. - Public Arbitrator
Timothy D. Wasson - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Matthew W. Schlegel
Matthew W. Schlegel, Esq.
Public Arbitrator, Presiding Chair

December 18, 2003
Signature Date

/s/ Harvey Burdick
Harvey Burdick, Ph.D.
Public Arbitrator

December 18, 2003
Signature Date

/s/ Timothy D. Wasson
Timothy D. Wasson
Non-Public Arbitrator

December 18, 2003
Signature Date

December 19, 2003
Date of Service (For NASD office use only)

ARBITRATION PANEL

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Harvey Burdick, Ph.D. - Public Arbitrator
Timothy D. Wasson - Non-Public Arbitrator

Concurring Arbitrators:

Matthew W. Schlegel

Matthew W. Schlegel, Esq.
Public Arbitrator, Presiding Chair

12/18/03

Signature Date

Harvey Burdick, Ph.D.
Public Arbitrator

Signature Date

Timothy D. Wasson
Non-Public Arbitrator

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Public Arbitrator

12/18/03

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