

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants/Counter Respondents

J.D. and Catherine A. Johnson as trustees
to the J.D. Johnson Trust and

J.D. and Catherine A. Johnson as trustees
to the Catherine A. Johnson Trust

Case Number: 02-04919

Name of the Respondents/Counter Claimants

First Heartland Capital, Inc. and Dean J. Callison

Hearing Site: Kansas City, Missouri

REPRESENTATION OF PARTIES

Roger N. Walter, Esq. of the firm Morris Laing Evans & Kennedy located in Topeka, Kansas represented Claimants/Counter Respondents J.D. and Catherine A. Johnson as trustees to the J.D. Johnson Trust and J.D. and Catherine A. Johnson as trustees to the Catherine A. Johnson Trust, hereinafter collectively referred to as "Johnson Trustees."

Paul F. Donahue, Esq. of the firm Bell Boyd & Lloyd LLC located in Chicago, Illinois represented Respondents/Counter Claimants First Heartland Capital, Inc. ("First Heartland") and Dean J. Callison ("Callison").

CASE INFORMATION

Statement of Claim filed on or about: August 21, 2002.

J.D. Johnson signed the Uniform Submission Agreement: August 10, 2002.

Catherine A. Johnson signed the Uniform Submission Agreement: August 10, 2002.

First Heartland and Callison filed a Joint Statement of Answer and Counterclaim on or about: December 6, 2002.

First Heartland signed the Uniform Submission Agreement: December 23, 2002.

Callison signed the Uniform Submission Agreement: December 23, 2002.

CASE SUMMARY

The causes of action relate to the sale of fixed income debt securities, government bonds, municipal bond and equities in the J.D. Johnson Trust Account to make investments in SEI Growth and Income Portfolio. They further relate to the use of allegedly unauthorized margin in the J.D. Johnson Trust Account.

Initial Claim

They causes of action also relate to the sale of government, municipal and corporate bonds, in the Catherine A. Johnson Trust Account the proceeds of which were used to make investments in money market funds. The causes of action also relate to the sale of Eaton Vance mutual funds from the Catherine A. Johnson Trust Account.

The Johnson Trustees asserted First Heartland and Callison violated NASD Conduct Rule 2310, Rule 5 10b-5 of the Securities and Exchange Act of 1934, K.S.A. 17-1253 under the Kansas Securities Act, and NYSE Rule 405 by making recommendations unsuitable to investment objectives and overall circumstances of the Johnson Trustees. They further allege First Heartland and Callison executed a transaction without authorization, exercised discretionary power in effecting a transaction for a customer without first obtaining written discretionary authority, and executed a transaction in a margin account without securing a properly executed margin agreement, making them liable pursuant to K.S.A. 17-1268(a) and (b). The Johnson Trustees further assert First Heartland and Callison breached their fiduciary duty owed to them and were negligent. With respect to First Heartland, the Johnson Trustees alleged it failed to supervise Callison and was negligent that with respect to supervision of its employees.

Unless specifically admitted in their Answer First Heartland and Callison denied the allegations made in the Statement of Claim and asserted the following affirmative defenses: the claims of federal securities laws are barred pursuant to applicable statutes of limitation; the Johnson Trustees failed to promptly complain and as a consequence ratified the allegedly unauthorized transactions; and estoppel.

Counterclaim

First Heartland and Callison assert breach of the Advisory Services Agreement signed by Catherine A. Johnson on September 25, 2000.

RELIEF REQUESTED

The Johnson Trustees requested \$32,000.00 as compensation for loss of investment principle and penalties for early redemption of debt securities; loss of investment opportunity or income based on the well-managed portfolio theory, and/or interest rate of 15% per annum; attorney's fees; and such other relief as deemed fair and equitable under the circumstances.

Respondents requested damages to be determined at hearing, attorney's fees, costs, other expenses, expungement of Callison's CRD record, and dismissal of all claims asserted by the Johnson Trustees.

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. Any and all claims asserted by Claimant/Counter Respondents J.D. and Catherine A. Johnson as trustees to the J.D. and Catherine A. Johnson Trusts against Respondents/ Counter Claimants First Heartland Capital and Dean J. Callison are denied.
2. That Panel recommends NASD expunge all references this arbitration from Dean J. Callison's registration records maintained by the CRD with the understanding that pursuant to the NASD Notice to Members 99-09, Callison must obtain confirmation from a court of competent jurisdiction before the NASD will execute this expungement directive.
3. Any and all claims asserted by Respondents/Counter Claimants First Heartland Capital and Dean J. Callison against Claimant/Counter Respondents J.D. and Catherine A. Johnson as trustees to the J.D. and Catherine A. Johnson Trusts are denied.
4. Except as specified herein, parties shall bear their own costs, including attorney's fees.
5. Any and all relief not specifically addressed herein is 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	= \$ 175.00
Counterclaim filing fee	= \$ 500.00

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. Accordingly, First Heartland Capital, Inc. is assessed the following fees:

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00
Total	= \$2,625.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 a single arbitrator at \$450.00 = \$ 450.00

Pre-hearing conference: March 12, 2003 1 session

Four (4) Hearing sessions at \$450.00 = \$1,800.00

Hearing Dates: August 28, 2003 2 sessions

August 29, 2003 2 sessions

Total Forum Fees = \$2,250.00

1. The Panel has assessed \$450.00 of the forum fees to J.D. and Catherine A. Johnson as trustees to the J.D. and Catherine A. Johnson Trusts.
2. The Panel has assessed \$1,800.00 of the forum fees jointly and severally to First Heartland Capital, Inc. and Dean J. Callison.

FEE SUMMARY

1. J.D. and Catherine A. Johnson as trustees to the J.D. and Catherine A. Johnson Trusts are jointly and severally liable for:

Initial Filing Fee = \$ 175.00

Forum Fees = \$ 450.00

Total Fees = \$ 625.00

Less payments = \$ 625.00

Balance Due NASD Dispute Resolution = \$ 0.00

2. First Heartland Capital, Inc. is solely liable for:

Member Fees = \$2,625.00

Total Fees = \$2,625.00

Less payments = \$2,625.00

Balance Due NASD Dispute Resolution = \$ 0.00

3. First Heartland Capital, Inc. and Dean J. Callison, are jointly and severally liable for:

Counterclaim Filing Fee = \$ 500.00

Forum Fees = \$1,800.00

Total Fees = \$2,300.00

Less payments = \$1,500.00

Balance Due NASD Dispute Resolution = \$ 800.00

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

ARBITRATOR

H. Todd Iveson, Esq.

Public Arbitrator, Presiding Chairperson

Arbitrator's Signature



H. Todd Iveson, Esq.

Public Arbitrator, Presiding Chairperson

10/21/03

Signature Date

10/22/03

Date of Service (For NASD Dispute Resolution office use only)