
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Mary Adrienne Laborde Parsons, individually
and as trustee of the Trusts established for the
benefit of Madison Laborde Parsons, Hayden
Kastler Parsons, Jackson Lee Parsons and
Anna Merritt Parsons

Case Number: 02-05004

Name of the Respondent

Johnson Rice & Co., L.L.C.

Hearing Site: New Orleans, Louisiana

Name of the Third Party Respondent

John Douglas Parsons

Nature of the Dispute: Customer vs. Member vs. Associated Person.

REPRESENTATION OF PARTIES

For Mary Adrienne Laborde Parsons ("MLP"), individually and as trustee of the Trusts established for the benefit of Madison Laborde Parsons, Hayden Kastler Parsons, Jackson Lee Parsons and Anna Merritt Parsons, hereinafter referred to as "Claimant": John W. Hite, III, Esq., Salley, Hite, Rivera & Mercer, LLC, New Orleans, Louisiana and Max Nathan, Jr., Esq., Sessions Fishman & Nathan LLP, New Orleans, Louisiana.

For Johnson Rice & Co., L.L.C., hereinafter referred to as "Respondent": Duris L. Holmes, Esq. and Robert E. Kerrigan, Jr., Esq, Deutsch, Kerrigan & Stiles, L.L.P., New Orleans, Louisiana.

John Douglas Parsons, hereinafter referred to as "Third Party Respondent", did not appear.

CASE INFORMATION

Statement of Claim filed on or about: August 26, 2002.

Claimant signed the Uniform Submission Agreement: August 22, 2002.

Answer, Counterclaim and Third Party Demand filed by Respondent on or about: October 28, 2002.

Respondent signed the Uniform Submission Agreement: October 25, 2002.

Answer to Counterclaim filed by Claimant MLP on or about: November 5, 2002.

Supplemental Amendment to Statement of Claim filed by Claimant on or about: February 11, 2003.

Response to Supplemental Amendment to Statement of Claim filed by Respondent on or about: May 13, 2004.

Third Party Respondent did not file a Statement of Answer or an executed Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: respondeat superior; violation of Sections 10(b) and 20(a) of the Securities and Exchange Act of 1934, and Rule 10(b)(5) thereunder; breach of fiduciary duty; negligence; failure to supervise; and violation of NASD and New York Stock Exchange rules. The causes of action relate to the alleged misappropriation and conversion from Claimant's accounts of funds and shares of the common stocks, Tidewater, Inc., Walt Disney and Universal Compression.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses. Additionally, Respondent asserted the cause of action of unjust enrichment against Claimant MLP and Third Party Respondent, as well as the cause of action of breach of fiduciary duty against Third Party Respondent.

Unless specifically admitted in her Answer, Claimant MLP denied the allegations made in the Counterclaim and asserted various defenses.

RELIEF REQUESTED

Claimant requested the following:

- (1) compensatory damages of:
 - a. \$154,421.27 on behalf of the Trust for the Benefit of Hayden Kastler Parsons;
 - b. \$156,622.91 on behalf of the Trust for the Benefit of Madison Laborde Parsons;
 - c. \$121,362.88 on behalf of the Trust for the Benefit of Jackson Lee Parsons;
 - d. \$119,768.96 on behalf of the Trust for the Benefit of Anna Merritt Parsons; and
 - e. \$412,900.00 on behalf of Claimant MLP;
- (2) all lost investment income, expenses and fees, including trade expenses and interest charges, charged or deducted as a result of the wrongful actions and omissions, in an amount to be shown at the hearing in this matter;
- (3) punitive damages equal to three (3) times the compensatory damages sought by Claimant;
- (4) reasonable attorney's fees and all costs of these proceedings; and
- (5) all other general and equitable relief to which Claimant may be entitled.

Claimant MLP further requested that Respondent's counterclaim be dismissed.

Respondent requested that Claimant be awarded nothing, and that Respondent be awarded the following from Claimant and Third Party Respondent:

- (1) compensatory damages in the amount of \$1,065,755.70, together with all consequential damages resulting therefrom;
- (2) pre- and post-judgment interest on all damages;
- (3) reasonable attorney's fees; and
- (4) such other equitable and legal relief as deemed appropriate by the Panel.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the Panel determined that Third Party Respondent has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Third Party Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Third Party Respondent's deposition as a material witness was introduced at the evidentiary hearing by stipulation of Claimant and Respondent.

At the evidentiary hearing, Respondent moved to amend its counterclaim to provide that the counterclaim include Claimant in her individual capacity and her capacity as trustee of the Trust accounts at issue. The Panel granted Respondent's motion.

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, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Third Party Respondent was a broker with Respondent who carried out a very simple and systematic scheme of repetitive theft from several customer accounts, including those of Marta Fagot, Kenny McWilliams, and John Parnell ("third party customers"). Claimant MLP, who was married to Third Party Respondent during the period while Third Party Respondent was a broker with Respondent, alleges that Third Party Respondent used the same simple scheme to steal from her individual account with Respondent and from four Trust accounts for which Claimant MLP was trustee with the beneficiary of each Trust being a child of the marriage between Claimant MLP and Third Party Respondent. Each Trust was created and funded by the maternal grandfather of the beneficiary, John P. Laborde. On May 2, 2002, shortly after discovering the alleged thefts by Third Party Respondent, Claimant MLP filed a Petition for Separation of Property Regime Under Louisiana Civil Code Article 2374, and a Judgment was entered on July 30, 2002, "in favor of Adrienne Laborde Parsons (Claimant MLP) and against John Douglas Parsons (Third Party Respondent) terminating the matrimonial regime of community property that has previously existed between them, effective immediately and retroactive to the date of filing of the petition, and decreeing a judgment of separation of property between them." Claimant's Exhibit 58. Claimant MLP and Third Party Respondent subsequently divorced.

The alleged thefts from the customers' accounts occurred over time through a simple scheme through which Third Party Respondent would make unauthorized withdrawals from the customer accounts in amounts of \$25,000 or less and deposit the funds into his own accounts rather than delivering the funds to the customers.

Each of the accounts was a discretionary account, with Third Party Respondent expressly granted limited trading authority by the customer. The discretionary trading authority authorized Third Party Respondent to enter trades in the account without prior consultation with the customer, that is, to buy and sell securities

exercising discretion on behalf of the customer. However, limited trading authority (or discretionary account status) did not authorize the broker to withdraw funds from the account without an express request or instruction to do so from the customer. Therefore, each withdrawal from the accounts not previously expressly requested by the account holder or owner was an unauthorized act.

A. Respondent's Practices

Two independent practices of Respondent, which may not be imprudent independently, were combined by Third Party Respondent in a simple and easily foreseeable way to effect theft from customer accounts.

Respondent has authority to issue checks on the account of its clearinghouse for sums of \$25,000 or less, representing withdrawals from customer accounts. Checks larger than \$25,000 are issued directly by the clearinghouse and mailed by it to the account customer. Although the checks issued by Respondent might be mailed to the customer, there was no requirement (or check control procedure) that the checks be mailed, nor, apparently, were records maintained (such as customer receipts, signed check logs, etc.) to evidence delivery of the individual checks to a customer. Respondent's practice permitted the broker to take custody of the check for subsequent transmittal to the customer. Since each withdrawal from an account results in a confirmation notice being sent to the account customer, and each monthly statement for the customer account sent to the customer also reflects all withdrawals from the account, the customer ordinarily will receive both contemporaneous and monthly written notice of activities in the account with an opportunity to timely challenge any improper activity.

Clearly, the customer has a duty to review the confirmation notices and statements in a reasonable and timely manner. Therefore, giving the broker custody of the check representing withdrawals from a discretionary account, while not the best practice, would not necessarily make foreseeable substantial theft by systematic unauthorized withdrawals over time; the account holder shares a monitoring responsibility via the duty to review confirmation notices and monthly statements in a reasonably timely manner.

However, despite the procedure of providing customer notice of each withdrawal through contemporaneous written confirmations and monthly account statements, and even though the third party customers were receiving the confirmations and statements, substantial thefts occurred in the accounts of all three third party customers. The procedure to protect the customers did not work because, apparently, they were not reading the notices received or were not questioning the unauthorized transactions. Even though it may have had a "notice and duty to review" defense to the claims of the third party customers, Respondent reimbursed the losses in those accounts voluntarily and relatively expeditiously.

The second practice of Respondent that facilitated the withdrawals at issue in the present Statement of Claim is that of allowing Respondent's offices to be used as the customer account's address of record for notices and monthly statements (or, for all purposes) if the account is for friends or family of the broker. Respondent's principal Douglas Johnson testified that approximately 59 customer accounts use Respondent's office address as the customer's address of record. It is clearly foreseeable that, where the duty of the customer to review notices and statements may provide a reasonable procedural check on unauthorized activity in a discretionary account, that notice procedure (or check on unauthorized activity) has no opportunity to function if the broker being monitored receives the statements and notices rather than the customer. Respondent did not provide duplicate statements or notices to the customer in such instances unless the customer expressly requested

additional, duplicate documents be sent.

Therefore, those two practices, in tandem, allowing the account broker to have custody of checks representing withdrawals from discretionary accounts and allowing Respondent's office to be the only address of record for the accounts, had the foreseeable consequence of permitting a broker unchecked access to the customers' funds. Claimant's individual account and all four Trust accounts listed Respondent's office as the address of record; all confirmation notices and statements were mailed to the broker, Third Party Respondent, at the offices of Respondent.

B. Claimant's Individual Account

Claimant has failed to prove that the withdrawals from the individual account were unauthorized.

(1) Claimant acknowledged that approximately one-third (1/3) of the total amounts withdrawn from the account were specifically authorized and requested by her. Some of the authorized withdrawals were substantially larger in amount than most of the withdrawals she now challenges. It is difficult to perceive of a reasonable supervisory practice that would have allowed Respondent contemporaneously and with certainty to distinguish between those activities that were authorized and those now claimed as unauthorized.

(2) Additionally, throughout the period at issue, Claimant MLP and Third Party Respondent were husband and wife, a fact apparently well known to principals and employees of Respondent. Claimant MLP and Third Party Respondent were subject to Louisiana's community property regime, as evidenced by Claimant MLP's prudent decision to seek a judgment terminating the community shortly after learning of Third Party Respondent's unlawful acts. All property acquired during a marriage is presumed to be community property. La. Civil Code art. 2340. A party claiming that any property is not community property has the burden of proving separate property classification. If the individual account, even though held in Claimant MLP's name alone, was community property, either member of the community, acting alone, was authorized to manage the property. La. Civil Code art. 2346.

Claimant MLP testified that the account was funded initially with the proceeds from the sale of her interest in a family business, Laborde Marine LLC. She also testified that the interest in Laborde Marine had been acquired with the proceeds of a loan from her father. Claimant's Exhibit 57 is a photocopy of a check in the amount of \$62,031.25 drawn on the account of John P. Laborde, Claimant MLP's father, payable to Claimant MLP individually and solely (and not to Claimant MLP and Third Party Respondent). Claimant's Exhibit 56 demonstrates that the loan proceeds were used to acquire the interest in Laborde Marine. Apparently, Claimant's position is that the loan by Claimant MLP's father to Claimant MLP created a separate obligation, rather than a community obligation (the loan was subsequently repaid through a withdrawal from Claimant MLP's individual account specifically authorized by Claimant MLP, which negates any claim that the Laborde Marine interest or the check in the amount of \$62,031.25 was a gift to one spouse alone and thus separate). However, the only other evidence concerning classification of the loan (and, thus, classification of the property acquired with the loan proceeds) in the record is the testimony of Third Party Respondent, submitted by deposition, that he had signed the promissory note for the loan by John P. Laborde. Claimant's Exhibit 57 indicates that a note ("Note No. 21") was executed at the time of the loan.

Therefore, since Claimant has failed to overcome the presumption that property acquired during marriage is

community property, and since both parties to the marriage have equal management of community property, Claimant has failed to demonstrate that the withdrawals from Claimant MLP's individual account were unauthorized, either directly by her or through the agency of equal management of community property. The claim of Claimant MLP, individually, is denied.

C. The Trust Accounts

The analysis is entirely different for the four Trust accounts. Claimant MLP was the trustee and, as such, the only person with authority to withdraw funds from the Trust accounts. Third Party Respondent had no authority to withdraw funds from the account, either by virtue of his limited trading authority for the discretionary accounts or as a parent of the Trust beneficiaries. Respondent was aware that the accounts were held in Trust. While this knowledge, obtained by requiring a copy of the Trust instrument for its records, does not impose a duty upon Respondent to monitor or oversee application of funds withdrawn from the accounts (that is the trustee's duty), it does impose a duty on Respondent to assure that any withdrawals were authorized by the trustee. For these accounts, the two practices of Respondent, allowing the broker unsupervised control of withdrawal checks and allowing the broker to receive the only notifications and statements relating to the accounts, foreseeably facilitated theft from the accounts. The duty and resulting liability to the Trust accounts customers is, thus, greater than the duty that was owed to the three third party customers, who were receiving written notices and failed in the customer's duty to review the statements. The only evidence concerning whether withdrawals from the Trust accounts were authorized was the direct and unequivocal testimony of Claimant MLP, as trustee, to the negative, and the Affidavit of Third Party Respondent dated June 23, 2002, stating that he misappropriated funds from the Trust accounts of his children and "That I acted alone and concealed my activities from everyone, including Mary Adrienne Laborde Parsons (Claimant MLP)." Claimant's Exhibit 49. Claims of the trustee against Respondent should be recognized in the amounts of the unauthorized withdrawals, plus interest from date of the Statement of Claim.

Respondent shall pay (a) Claimant, as trustee of the Madison Laborde Parsons Trust, the sum of \$136,622.91, (b) Claimant, as trustee of the Jackson Lee Parsons Trust, the sum of \$121,362.88, (c) Claimant, as trustee of the Anna Merritt Parsons Trust, the sum of \$119,768.96, and (d) Claimant, as trustee of the Hayden Kastler Parsons Trust, the sum of \$134,421.27, with interest at the rate of 5.75% commencing August 22, 2002, the date of filing of the Statement of Claim, and continuing until paid.

D. \$20,000 gifts.

The claims relating to Third Party Respondent's misappropriation of the two \$20,000 gift checks (by not depositing them in Claimant's accounts) should be, and is, denied. There was no proof that Respondent ever had custody of those funds.

E. Counterclaim and Third Party Demand

Respondent's counterclaim against Claimant MLP, individually, for the amounts Respondent reimbursed to the three third party customers (\$1,065,755.70) should be denied. Respondent presumes that its claim constitutes an obligation of the community that formerly existed between Claimant MLP and Third Party Respondent. The former community property regime was terminated by Judgment of July 30, 2002, retroactively effective as of May 2, 2002. Any obligation owed by Third Party Respondent arising from Respondent's decision to pay

the third party customers rather than ameliorate its liability by asserting available defenses, arose when the reimbursement payments were made, well after the community had terminated. Any obligation arising would constitute a separate obligation of Third Party Respondent. Further, to the extent that Respondent may seek to claim the rights and status of the defrauded customers, any obligation Third Party Respondent may have owed to those customers was a separate obligation, not a community obligation, under Civil Code art. 2363. An obligation resulting from an intentional wrong not perpetrated for the benefit of the community is a separate obligation. Factually, in this case, it seems clear that Third Party Respondent intended to benefit himself, his hobbies, his interests, and his ego, with little regard for the impact or effect on the community.

Therefore, the counterclaim of Respondent against Claimant MLP, individually, should be, and is, denied.

Any counterclaim against Claimant MLP as trustee is unsupportable, since the Trusts received no benefit from the acts of Third Party Respondent in the thefts from the third party accounts.

The Third Party Demand of Respondent against Third Party Respondent should be, and is hereby, recognized, as the separate, sole, and individual obligation and liability of Third Party Respondent. Third Party Respondent shall pay to Respondent the sum of \$1,065,755.70, plus interest at the rate of 5.75% commencing October 25, 2002, the date of filing of the Third Party Demand against him in this matter, and continuing until paid, as the separate, sole, and individual obligation of Third Party Respondent, arising subsequent to termination of the community property regime existing between Third Party Respondent and Claimant MLP by Judgment of the 22nd Judicial District Court, State of Louisiana, entered July 30, 2002, effective as of May 2, 2002, in Case No. 2002-12135.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are 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	= \$ 600.00
Counterclaim/Third Party Claim Filing Fee	= \$2,000.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent is a member firm and a party.

Member Surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$5,000.00</u>
Total Member Fees	= \$8,550.00

Adjournment Fees

No adjournments were requested in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

Injunctive relief fees were not assessed in this matter.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with the Panel @ \$1,200.00/session	= \$2,400.00
Pre-hearing conferences:	
May 1, 2003 1 session	
May 9, 2003 1 session	
Two (2) Hearing sessions @ \$1,200.00/session	= \$2,400.00
Hearing Dates:	
May 18, 2004 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$4,800.00

The Panel has waived the \$1,200.00 forum fee assessed by NASD in connection with the pre-hearing conference conducted on May 1, 2003.

The Panel has assessed forum fees of \$1,800.00 to Claimant.

The Panel has assessed forum fees of \$1,800.00 to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred in this matter.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$ 1,800.00</u>

Total Fees	= \$ 2,400.00
<u>Less Payments</u>	<u>= \$ 1,800.00</u>
Balance Due NASD Dispute Resolution	= \$ 600.00

Respondent is solely liable for:

Counterclaim/Third Party Claim Filing Fee	= \$ 2,000.00
Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	<u>= \$ 1,800.00</u>
Total Fees	= \$12,350.00
<u>Less Payments</u>	<u>= \$11,750.00</u>
Balance Due NASD Dispute Resolution	= \$ 600.00

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

ARBITRATION PANEL

Clinton W. Shinn, Esq.	-	Public Arbitrator, Presiding Chairperson
Ashley L. Belleau, Esq.	-	Public Arbitrator
George Denegre, Jr., Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

_____/s/_____
Clinton W. Shinn, Esq.
Public Arbitrator, Presiding Chairperson

June 8, 2004
Signature Date

Ashley L. Belleau, Esq.
Public Arbitrator

Signature Date

_____/s/_____
George Denegre, Jr., Esq.
Non-Public Arbitrator

June 9, 2004
Signature Date

June 10, 2004
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

Arbitration No. 02-05004

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Total Fees	= \$ 2,400.00
Less Payments	= \$ 1,800.00
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Ashley L. Belleau, Esq.
George Denegre, Jr., Esq.

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

June 8, 2004
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NASD Dispute Resolution
Arbitration No. 02-05004
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Member Fees	= \$ 8,550.00
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Total Fees	= \$12,350.00
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- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

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Clinton W. Shinn, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Ashley L. Belleau, Esq.
Public Arbitrator

Signature Date



George Denegre, Jr., Esq.
Non-Public Arbitrator



Signature Date

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