

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Eugene S. Eldridge, individually and as Trustee of the Eldridge Family Trust, U.S. Bank of Washington, N.A., as Corporate Co-Trustee of the Eldridge Family Trust, Arthur E. Eldridge and Linden G. Eldridge as designated Beneficiaries and Successor Co-Trustees of the Eldridge Family Trust, and the Eldridge Family Trust, Claimants v. Bruce R. Talley, J. Patrick Flynn, Pamela J. Holtzclaw, John M. Clary, Jr., Victor P. Dhooge, James F. Dlugosch, Steven W. Erickson, Paul R. Ekholm, Edward J. Hentges, James E. Iverson, Kenneth R. Larsen, Nancy Meldon, Jerome A. Tabolich, Roger J. Wickner, Daniel S. Dill, Kenneth J. Halloran, Kenneth E. Dawkins, and Thomas S. Nelson, Respondents

Bruce R. Talley, Cross-Claimant v. James E. Iverson, Jerome A. Tabolich, Edward J. Hentges, Kenneth R. Larsen, Paul R. Ekholm, James F. Dlugosch, Kenneth J. Halloran, John M. Clarey, Victor P. Dhooge, and Daniel S. Dill, Cross-Respondents

Bruce R. Talley, Third-Party Claimant v. MM&S Financial Services and Mary Jo Brendon, Third-Party Respondents

Case Number: 02-05426

Hearing Site: Seattle, Washington

Nature of the Dispute: Customers v. Associated Persons

Nature of the Dispute: Associated Person v. Associated Persons

Nature of the Dispute: Associated Person v. Member Firm and Associated Person

REPRESENTATION OF PARTIES

For Claimants:

Al Van Kampen, Esq.
Rohde & Van Kampen PLLC
Seattle, Washington

For Respondent/Cross-Claimant/Third-Party Claimant
Bruce R. Talley:

Steven M. Green, Esq.
Law Offices of Steven Green
San Diego, California

For Respondent J. Patrick Flynn:

J. Patrick Flynn
Pro Se
Encinitas, California

For Respondent Pamela J. Holtzclaw:

Patrick G. Nelson, Esq.
Stephens, Millirons, Harrison
& Gammons
Huntsville, Alabama

For Respondent Steven W. Erickson,
Respondent/Cross-Respondent Paul R. Ekholm,
Respondent/Cross-Respondent Edward J. Hentges,
Respondent/Cross-Respondent Jerome A. Tabolich,
Respondent /Cross-Respondent Kenneth R. Larsen,
Third-Party Respondent Mary Jo Brenden:

Joseph W. Anthony, Esq.
Anthony, Ostlund & Baer,
P.A.
Minneapolis, Minnesota

For Respondent Roger J. Wickner,
Respondent/Cross-Respondent John M. Clarey, Jr.,
Respondent/Cross-Respondent Kenneth J. Halloran,
Respondent/Cross-Respondent Kenneth E. Dawkins:

Michael S. MacDonald, Esq.
Arthur Chapman
Minneapolis, Minnesota

For Respondent Nancy Meldon:

Nancy Meldon
Pro Se
Escondido, CA

For Respondent/Cross-Respondent Victor P. Dhooge:

G. Patrick Conners, III, Esq.
Hahn & Adema
San Diego, California

For Respondent/Cross-Respondent James F. Dlugosch:

James F. Dlugosch
Pro Se
St. Louis Park, Minnesota

For Respondent/Cross-Respondent James E. Iverson:

Richard D. Gluck, Esq.
Fairbank & Vincent
Los Angeles, California

For Respondent/Cross-Respondent Daniel S. Dill:

Garrett K. Craig, Esq.
Sidley Austin Brown &
Wood, LLP
Los Angeles, California

For Respondent/Cross-Respondent Thomas S. Nelson:

Thomas S. Nelson
Pro Se
Great Falls, Montana

For Third-Party Respondent MM&S Financial Services:

John S. Jagiela, Esq.
The Marshall Group
Minneapolis, Minnesota

CASE INFORMATION

Statement of Claim filed: September 11, 2002

Claimant Eugene S. Eldridge, individually and as Trustee of the Eldridge Family Trust, Uniform Submission Agreement signed: August 12, 2002

Claimant U.S. Bank of Washington, N.A., as corporate co-trustee of the Eldridge Family Trust, Uniform Submission Agreement signed: August 19, 2002

Claimant Arthur E. Eldridge, as the designated Beneficiary and Successor Co-Trustee of the Eldridge Family Trust, Uniform Submission Agreement signed: August 14, 2002

Claimant Linden G. Eldridge, as the designated Beneficiary and Successor Co-Trustee of the Eldridge Family Trust, Uniform Submission Agreement signed: August 4, 2002

Amended Statement of Claim filed: August 1, 2003

Statement of Answer filed by Respondent John M. Clarey, Jr.: December 6, 2002

Statement of Answer filed by Respondent Victor P. Dhooge: December 6, 2002

Respondent Victor P. Dhooge's Uniform Submission Agreement signed: December 4, 2002

Statement of Answer filed by Respondent James F. Dlugosch: December 6, 2002

Respondent James F. Dlugosch's Uniform Submission Agreement signed: June 12, 2003

Statement of Answer filed by Paul R. Ekholm: December 9, 2002

Respondent Paul R. Ekholm's Uniform Submission Agreement signed: December 10, 2002

Statement of Answer filed by Steven W. Erickson: December 9, 2002

Respondent Steven W. Erickson's Uniform Submission Agreement signed: December 6, 2002

Statement of Answer filed by Respondent Edward J. Hentges: December 9, 2002

Respondent Edward J. Hentges' Uniform Submission Agreement signed: December 3, 2002

Amended Statement of Answer filed by Respondent Edward J. Hentges: December 9, 2002

Statement of Answer filed by Respondent Kenneth R. Larsen: December 9, 2002

Respondent Kenneth R. Larsen's Uniform Submission Agreement signed: December 3, 2002

Statement of Answer filed by Respondent Pamela J. Holtzclaw: December 9, 2002

Respondent Pamela J. Holtzclaw's Uniform Submission Agreement signed: December 2, 2002

Statement of Answer filed by Respondent James E. Iverson: December 12, 2002

Statement of Answer filed by Roger J. Wickner: March 24, 2003

Third Party Respondent Daniel S. Dill's Uniform Submission Agreement signed: December 25, 2003

Statement of Answer filed by Respondent Bruce R. Talley: November 25, 2002

Respondent Bruce R. Talley's Uniform Submission Agreement signed: October 23, 2002

Third-Party Claim and Cross-Claim filed by Respondent Bruce R. Talley: November 25, 2002

Statement of Answer to Cross-Claim filed by Cross-Respondent John M. Clarey, Jr.: January 13, 2003

Statement of Answer to Cross-Claim filed by Cross-Respondent Paul R. Ekholm: January 13, 2003

Statement of Answer to Cross-Claim filed by Cross-Respondent Steven W. Erickson: January 13, 2003

Statement of Answer to Cross-Claim filed by Cross-Respondent Edward J. Hentges: January 13, 2003

Statement of Answer to Cross-Claim filed by Cross-Respondent Kenneth R. Larsen: January 13, 2003

Statement of Answer to Cross-Claim filed by Cross-Respondent James E. Iverson: January 10, 2003

Statement of Answer to Cross-Claim filed by Cross-Respondent James F. Dlugosch: January 13,

2003

Statement of Answer to Third-Party Claim filed by Third-Party Respondent Kenneth J. Halloran:
January 13, 2003

Statement of Answer to Third-Party Claim filed by Third-Party Respondent Kenneth E.
Dawkins: January 13, 2003

CASE SUMMARY

Claimants' Statement of Claim alleged breach of securities regulatory requirements, negligence, negligent supervision, misrepresentation, securities fraud, common law fraud, breach of fiduciary duty, unfair and deceptive business practices, and unjust enrichment. Claimants' allegations involved Heritage Housing Development Corporation bonds and bonds issued by Illinois and Indiana's housing development authorities.

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

Claimant's Amended Statement of Claim named Respondents Kenneth E. Dawkins, Kenneth J. Halloran, Daniel S. Dill and Thomas S. Nelson in addition to the Respondents who had been named in the initial Statement of Claim and added an allegation of elder abuse.

Cross-Claimant/Third-Party Claimant Bruce R. Talley's Cross-Claim and Third Party Claim alleged a conspiracy to defraud, fraudulent conveyance, misrepresentations and omissions. Talley's allegations involved Heritage Housing Development Corporation bonds and other bonds, such as Boston Chicken, Jackson County, Service Merchandise, Globalstar, Beech Grove, Housing Authority of City of Tupelo, Dakota Colorado, and Tillman Co. bonds.

Cross-Respondents and Third-Party Respondents denied the allegations of wrongdoing set forth in Cross-Claimant/Third-Party Claimant Bruce R. Talley's Cross-Claim and Third-Party Claim.

RELIEF REQUESTED

Claimants' Statement of Claim requested \$1,563,158.00 in compensatory damages, unspecified punitive damages, pre- and post-judgment interest, reimbursement of NASD filing and hearing fees, costs, and attorney's fees.

Claimants' Amended Statement of Claim requested \$1,568,371.00 in compensatory damages, unspecified punitive damages, pre- and post-judgment interest, reimbursement of NASD filing and hearing fees, costs, and attorney's fees.

Respondent John M. Clarey, Jr. requested dismissal of Claimants' Statement of Claim in its entirety, costs, and attorney's fees.

Respondent Victor P. Dhooge requested dismissal of Claimants' Statement of Claim in its entirety, costs, attorney's fees, and forum fees.

Respondent Pamela J. Holtzclaw requested dismissal of Claimants' Statement of Claim in its entirety, costs, and attorney's fees.

Respondent James E. Iverson requested dismissal of Claimants' Statement of Claim in its entirety, costs, attorney's fees, and forum fees.

Respondent James F. Dlugosch requested dismissal of Claimants' Statement of Claim in its entirety, costs, and attorney's fees.

Respondent Paul R. Ekholm requested dismissal of Claimants' Statement of Claim in its entirety, costs, and attorney's fees.

Respondent Steven W. Erickson requested dismissal of Claimants' Statement of Claim in its entirety, costs, and attorney's fees.

Respondent Edward J. Hentges requested dismissal of Claimants' Statement of Claim in its entirety, costs, and attorney's fees.

Respondent Kenneth R. Larsen requested dismissal of Claimants' Statement of Claim in its entirety, costs, and attorney's fees.

Respondent Roger J. Wickner requested dismissal of Claimants' Statement of Claim in its entirety, costs, and attorney's fees.

Respondent Bruce R. Talley requested dismissal of Claimants' Statement of Claim in its entirety, attorney's fees, and forum fees.

Cross-Claimant/Third-Party Claimant Bruce R. Talley requested \$1,563,158.00 in indemnity, declaratory relief, costs, and attorney's fees.

Cross-Respondent James F. Dlugosch requested dismissal of Respondent Bruce R. Talley's Cross-Claim, costs, and attorney's fees.

Cross-Respondent Paul R. Ekholm requested dismissal of Respondent Bruce R. Talley's Cross-Claim, costs, and attorney's fees.

Cross-Respondent Edward J. Hentges requested dismissal of Respondent Bruce R. Talley's Cross-Claim, costs, and attorney's fees.

Cross-Respondent Kenneth R. Larsen requested dismissal of Respondent Bruce R. Talley's Cross-Claim, costs, and attorney's fees.

Cross-Respondent Steven W. Erickson requested dismissal of Respondent Bruce R. Talley's Cross-Claim, costs, and attorney's fees.

Cross-Respondent James E. Iverson requested dismissal of Respondent Bruce R. Talley's Cross-Claim, costs, forum fees, and attorney's fees.

Cross-Respondent James R. Clarey requested dismissal of Respondent Bruce R. Talley's Cross-Claim, costs, and attorney's fees.

Third-Party Respondent Kenneth Halloran requested dismissal of Respondent Bruce R. Talley's Cross-Claim, costs, and attorney's fees.

Third-Party Respondent Kenneth Dawkins requested dismissal of Respondent Bruce R. Talley's Cross-Claim, costs, and attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents J. Patrick Flynn, Nancy Meldon, Jerome A. Tabolich and Thomas S. Nelson did not file with NASD Dispute Resolution properly executed submission agreements; however, all said Respondents are required to submit to arbitration pursuant to the Code of Arbitration Procedure (the "Code"), and they are bound by the determination of the Panel on all issues submitted.

Respondents John M. Clarey, Jr., James E. Iverson, and Roger J. Wickner did not file with NASD Dispute Resolution properly executed submission agreements; however, all said Respondents are required to submit to arbitration and, having answered the claim, all said Respondents are bound by the determination of the Panel on all issues submitted.

Respondents Kenneth J. Halloran and Kenneth E. Dawkins did not file with NASD Dispute Resolution properly executed submission agreements; however, said Respondents are required to submit to arbitration and, having answered the Third-Party Claim, said Respondents are bound by the determination of the Panel on all issues submitted.

At the initial pre-hearing conference on December 1, 2003, Respondent James F. Dlugosch informed the Panel that he had filed for bankruptcy protection. In addition, on February 19, 2004, NASD Dispute Resolution received notice that Respondent James F. Dlugosch filed Chapter 7 Bankruptcy Proceedings. Accordingly, this matter is stayed as to Respondent Dlugosch.

On December 9, 2002, Respondent Edward J. Hentges filed an Amended Statement of Answer pursuant to NASD Code of Arbitration Procedure Rule 10328(a).

On August 1, 2003, Claimants filed an Amended Statement of Claim pursuant to NASD Code of Arbitration Procedure Rule 10328(a).

On December 9, 2002, Respondent Edward J. Hentges filed a Motion to Dismiss. On March 11, 2004, the Panel denied the motion.

On December 9, 2002, Respondent Paul R. Ekholm filed a Motion to Dismiss. On March 11, 2004, the Panel denied the motion.

On December 9, 2002, Respondent Kenneth R. Larsen filed a Motion to Dismiss. On March 11, 2004, the Panel denied the motion.

By documents dated December 4, 2002, January 13, 2003 and January 20, 2004, Respondent Jerome A. Tabolich moved the Panel to dismiss the case against him for lack of arbitrability. On March 11, 2004, the Panel denied the motion.

In an Order dated March 11, 2004, the Panel ordered that the claim against J. Patrick Flynn be severed from this case and that NASD establish a separate case as it relates to Claimants and J. Patrick Flynn.

In an Order dated March 11, 2004, the Panel acknowledged receipt of Third-Party Claimant Bruce R. Talley's notice of withdrawal of Third-Party claim and stated that such withdrawal has the effect of dismissing Third-Party Respondents Mary Jo Brendon and Marshall Financial.

By letter dated February 6, 2004, Claimants dismissed with prejudice Respondents James E. Iverson, John M. Clarey, Jr., Kenneth E. Dawkins, Kenneth J. Halloran, Thomas S. Nelson, Steven W. Erickson, Roger J. Wikner, Bruce R. Talley, Victor P. Dhooge, Daniel S. Dill and Pamela J. Holtzclaw.

By letter dated June 8, 2004, Claimants dismissed with prejudice Respondents Nancy Meldon, Jerome A. Tabolich, Edward J. Hentges, Paul R. Ekholm and Kenneth R. Larsen.

On May 10, 2004, Claimants filed a Request for Award Against J. Patrick Flynn. On July 26, 2004, the Panel issued an Order in which it (a) consolidated this case (02-05426) with case 04-02962, which had been established to address the claims of Claimants against J. Patrick Flynn and (b) requested additional information from Claimants with respect to Claimants' Request for an Award Against J. Patrick Flynn. By this Order, the Panel granted Claimants' request to decide the case on the papers submitted, without a formal hearing. On July 29, 2004, Claimants submitted a Response to Panel's Order. On August 3, 2004, the Panel issued an Order requesting additional information from Claimants. On August 18, 2004, Claimants submitted a Response to Panel's Order. After due deliberation, the Panel granted the motion in part and denied the motion in part.

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 Request for Award Against J. Patrick Flynn, and Claimants' responses to the Panel's Orders, the Panel decided in full and final resolution of the issues submitted for determination on the papers as follows:

- 1) Respondent J. Patrick Flynn is liable to and shall pay Claimants the sum of \$151,260.00 in compensatory damages.
- 2) Respondent J. Patrick Flynn is liable to and shall pay Claimants interest at the rate of 8% per annum on \$49,379.00 from January 25, 2002 until the date of service of this Award.
- 3) Respondent J. Patrick Flynn is liable to and shall pay Claimants interest at the rate of 8% per annum on \$101,930.00 from February 11, 2003 until the date of service of this Award.
- 4) Respondent J. Patrick Flynn is liable to and shall pay Claimants the sum of \$622.66 as reimbursement for costs.
- 5) Respondent J. Patrick Flynn is liable to and shall pay Claimants the sum of \$25,000.00 in attorney's fees.
- 6) The Cross-Claim filed by Cross-Claimant Bruce R. Talley is hereby dismissed.
- 7) 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	= \$ 500.00
Respondent Bruce R. Talley's Cross-Claim and Third-Party Claim	= \$ 500.00

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 Marshall Financial, Inc. (formerly known as MM&S Financial, Inc.) is a party, and the following fees are assessed:

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

The following adjournment fees are assessed:

April 26-29, 2004, adjournment requested by Claimants	= \$ 1,200.00
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The Panel assessed \$1,200.00 of the adjournment fees jointly and severally to Claimants.

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 Chair or the parties and the Panel. The following fees are assessed:

One (1) pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
<u>Pre-hearing conference: December 1, 2003 1 session</u>	<u></u>
Total Forum Fees	= \$ 1,200.00

1. The Panel assessed \$ 600.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$ 600.00 of the forum fees jointly and severally to Bruce R. Talley, Patricia Holtzclaw, John M. Clarey, Jr., Victor Dhooge, Paul R. Ekholm, Edward J. Hentges, Kenneth R. Larsen, Daniel Dill, James Iverson, Kenneth Halloran, Kenneth Dawkins, Roger Wickner, Marshall Financial, Inc., and Nancy Meldon.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Adjournment Fee	= \$ 1,200.00
<u>Forum Fees</u>	= \$ 600.00
Total Fees	= \$ 2,300.00
<u>Less payments</u>	= \$(1,700.00)
Balance Due NASD Dispute Resolution	= \$ 600.00

2. Respondent Bruce R. Talley is charged with the following fees and costs:

Cross-Claim and Third Party Claim Filing Fee	= \$ 500.00
<u>Less payments</u>	= \$(0.00)
Balance Due NASD Dispute Resolution	= \$ 500.00

3. Third-Party Respondent Marshall Financial, Inc. is charged with the following fees and costs:

<u>Member Fees</u>	= \$ 8,550.00
<u>Less payments</u>	= \$ (8,550.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Bruce R. Talley, Patricia Holtzclaw, John M. Clarey, Jr., Victor Dhooge, Paul R. Ekholm, Edward J. Hentges, Kenneth R. Larsen, Daniel S. Dill, James E. Iverson, Kenneth J. Halloran, Kenneth E. Dawkins, Roger J. Wickner, Marshall Financial, Inc. and Nancy Meldon are charged jointly and severally with the following fees and costs:

<u>Forum Fees</u>	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 600.00

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

Peter L. Sill
Laurie E. Law, Esq.
George E. Casperson

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Peter Sill

Peter L. Sill
Chair, Public Arbitrator

September 1, 2004

Signature Date

Laurie E. Law
Public Arbitrator

Signature Date

George E. Casperson
Non-Public Arbitrator

Signature Date

9/2/04

Date of Service

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ARBITRATION PANEL

Peter L. Sill
Laurie E. Law, Esq.
George E. Casperson

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Peter L. Sill
Chair, Public Arbitrator

Signature Date

Laurie E. Law
Laurie E. Law
Public Arbitrator

September 1, 2004
Signature Date

George E. Casperson
Non-Public Arbitrator

Signature Date

9/2/04
Date of Service

NASD Dispute Resolution
Arbitration No. 02-05426
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ARBITRATION PANEL

Peter L. Sill
Laurie E. Law, Esq.
George E. Casperson

- *Public Arbitrator, Presiding Chair*
- *Public Arbitrator*
- *Non-Public Arbitrator*

Concurring Arbitrators' Signatures

Peter L. Sill
Chair, Public Arbitrator

Signature Date

Laurie E. Law
Public Arbitrator

Signature Date

George E. Casperson
George E. Casperson
Non-Public Arbitrator

Sept. 1, 2004
Signature Date

9/2/04
Date of Service