

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

J. Sheridan Stewart

and

Case Number: 02-05734  
Hearing Site: Troy, Michigan

Names of Respondents

J.J.B. Hilliard, W.L. Lyons, Inc. and  
Carol Metz

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**NATURE OF DISPUTE**

Customer v. Member and Associated Person

**REPRESENTATION OF PARTIES**

J. Sheridan Stewart ("Stewart") was represented by Kevin J. Kenney, Esq., and Christopher J. Hensien, Esq., Kenney & Niehaus, Ltd., Sylvania, Ohio.

J.J.B. Hilliard, W.L. Lyons, Inc. ("HL") and Carol Metz ("Metz"), hereinafter collectively referred to as "Respondents," were represented by Michael N. Ungar, Esq., and Norman S. Buckvar, Esq., Ulmer & Berne LLP, Cleveland, Ohio. Respondents were represented by Dennis Egan, Esq., Butzel Long, Bloomfield Michigan, until on or about June 13, 2003.

**CASE INFORMATION**

The Statement of Claim was filed on or about September 26, 2002. The Submission Agreement of J. Sheridan Stewart was signed on or about September 20, 2002, by Bruce Thompson, as agent and authorized representative.

The Statement of Answer was filed jointly by HL and Metz on or about January 15, 2003. The Submission Agreement of HL was signed on or about October 23, 2002, by James Rabenstein. The Submission Agreement of Metz was signed on or about July 10, 2003.

**CASE SUMMARY**

Claimant asserted causes of action including the following: mismanagement, misrepresentation, breach of contract, breach of fiduciary duty, fraud, failure to supervise, and negligence. The causes of action related to the sale of various stocks including AT&T, Alltel Corp., Chrysler Corp., Comerica, Inc., General Motors Corp., and Lucent

Technologies, Inc., and the purchase of two Hartford Life annuities with the proceeds from the sale of the stocks.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Respondents had no obligation to clear any trades through Bruce Thompson; Respondents did not breach any account agreement; Respondents committed no fraud or misrepresentation, all transactions recommended by Metz were suitable; and the account was not churned.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$1,100,000.00 plus \$250,000.00 in punitive damages, costs, attorney fees, and any other relief the panel deemed just and equitable.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs, attorneys' fees, sanctions, and an expungement of all references to this matter from Respondent Metz's CRD record.

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

In or around July, 2003, Claimant, J. Sheridan Stewart, died. Pursuant to the terms of Claimant's will, Virginia Allison has been appointed as his Personal Representative. Claimant's counsel requested that Ms. Allison be substituted as the representative in place of Bruce Thompson.

At hearing on August 17, 2004, Respondents requested an adjournment of the remainder of the hearing dates scheduled that week as a result of discovery recently provided by Claimants. The panel assessed the adjournment fee and all related costs to Claimant.

At the hearing on March 2, 2006, the parties advised the panel that the Claimant had reached a settlement of the claims against J.J.B. Hilliard, W.L. Lyons, Inc. and had withdrawn the claims against Carol Metz with prejudice. Ms. Metz requested that the panel enter an order recommending the expungement of all references to this matter from Carol Metz's CRD record. Claimant did not object to the request.

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.) Claimant's claims, having been withdrawn, are hereby dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Carol Metz's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Carol Metz must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
- 4.) 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 = \$ 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. In this matter, the member firm is J.J.B. Hilliard, W.L. Lyons, Inc.

Member surcharge = \$ 2,800.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 5,000.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

April 20-23, 2004, adjournment requested jointly	= \$ 1,200.00
August 18-20, 2004, adjournment requested by Respondents (fee assessed against Claimant)	= \$ 1,200.00
July 11-14, 2005, adjournment requested by Respondents	= \$ 1,500.00

### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

On August 17, 2004, Respondents requested an adjournment of the hearings scheduled on August 18-19, 2004 (fee assessed against Claimant) = \$ 300.00

### **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 Panel x \$1,200.00	= \$ 1,200.00
Pre-hearing conference: July 9, 2003 1 session	

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: February 24, 2006 1 session	

Fifteen (15) Hearing sessions x \$1,200.00	= \$ 18,000.00
Hearing Dates:	
August 17, 2004	1 session
December 14, 2004	2 sessions
December 15, 2004	1 session
December 16, 2004	2 sessions
December 17, 2004	2 sessions
February 27, 2006	2 sessions
February 28, 2006	2 sessions
March 1, 2006	2 sessions
March 2, 2006	1 session

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Total Forum Fees	= \$ 19,650.00
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Pursuant to the parties' agreement, the Arbitration Panel has assessed \$1,200.00 of the forum fees to J. Sheridan Stewart.

Pursuant to the parties' agreement, the Arbitration Panel has assessed \$18,450.00 of the forum fees to J.J.B. Hilliard, W.L. Lyons, Inc.

### **FEE SUMMARY**

Claimant, J. Sheridan Stewart, is liable for:

Initial Filing Fee	= \$ 500.00
Adjournment Fees	= \$ 1,800.00
Three-Day Cancellation Fee	= \$ 300.00
Forum Fees	= \$ 1,200.00
<u>Total Fees</u>	<u>= \$ 3,800.00</u>
<u>Less payments</u>	<u>= \$ 3,800.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent, J.J.B. Hilliard, W.L. Lyons, Inc., is liable for:

Member Fees	= \$ 8,550.00
Adjournment Fee	= \$ 1,500.00
Forum Fees	= \$ 18,450.00
<u>Total Fees</u>	<u>= \$ 28,500.00</u>
<u>Less payments</u>	<u>= \$ 8,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 19,950.00

Respondents, J.J.B. Hilliard, W.L. Lyons, Inc. and Carol Metz, are jointly and severally liable for:


<u>Adjournment Fee</u>	<u>= \$ 600.00</u>
<u>Total Fees</u>	<u>= \$ 600.00</u>
<u>Less payments</u>	<u>= \$ 0.00</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**

Timothy J. Currier, Esq. - Public Arbitrator, Presiding Chair  
Kenneth J. Safran, Esq. - Public Arbitrator  
James Richter - Non-Public Arbitrator

**Concurring Arbitrators:**

  
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Timothy J. Currier, Esq.  
Public Arbitrator, Presiding Chair

3-22-06  
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Signature Date

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Kenneth J. Safran, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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James Richter  
Non-Public Arbitrator

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Signature Date

3/28/06  
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Date of Service (For NASD office use only)

**ARBITRATION PANEL**

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Kenneth J. Safran, Esq.  
Public Arbitrator

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Signature Date

3-22-2006  
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Signature Date

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James Richter  
Non-Public Arbitrator

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Signature Date

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Date of Service (For NASD office use only)

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Kenneth J. Safran, Esq.  
Public Arbitrator

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Signature Date

  
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James Richter  
Non-Public Arbitrator

March 23, 2006  
Signature Date

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Date of Service (For NASD office use only)