

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 02-05742

Ralph C. Sanders Irrevocable Inter-Vivos Trust

Name of the Respondents

Hearing Site: Charlotte, North Carolina

Frederick R. Phillips, and
Park Avenue Securities, LLC

Name of the Third-Party Respondent

Sylvia B. Hayes

REPRESENTATION OF PARTIES

Claimant Ralph C. Sanders Irrevocable Inter-Vivos Trust, hereinafter referred to as "Claimant", was represented by Mathew E. Bates, Esq., Mathew E. Bates, PA, Greensboro, North Carolina.

Respondents Frederick R. Phillips ("Phillips") and Park Avenue Securities, LLC ("Park Avenue"), hereinafter collectively referred to as "Respondents", were represented by Jennifer E. Marsh, Esq. and Michael Malloy, Esq., Parker, Poe, Adams & Bernstein, LLP, Charlotte, North Carolina.

Third-Party Respondent Sylvia B. Haynes ("Haynes") was represented by Daniel S. Bullard, Esq., Walker & Bullard, Gibsonville, North Carolina.

CASE INFORMATION

Statement of Claim filed on September 24, 2002.

Beulah B. Sanders and Sylvia B. Hayes, Co-Trustees, signed Claimant's Uniform Submission Agreement on September 19, 2002.

Statement of Answer filed by Respondents on December 20, 2002.

Respondent Phillips signed the Uniform Submission Agreement on December 18, 2002.

A representative of Respondent Park Avenue executed the Uniform Submission Agreement on December 19, 2002.

Third-Party Statement of Claim filed on December 20, 2003.

Statement of Answer of Third-Party Respondent Hayes filed on February 1, 2003.

Third-Party Respondent Hayes did not file a Uniform Submission Agreement.

Third-Party Respondent Hayes's Motion to Dismiss filed on June 2, 2003.

Respondents' Response to Third-Party Respondent Hayes Motion to Dismiss filed on June 26, 2003.

CASE SUMMARY

Claimant asserted the following causes of action, among others: unsuitability; misrepresentation; unauthorized trades; unfair and deceptive trade practices; violation of North Carolina law; failure to supervise; *respondeat superior*; violation of Section 20 of the Securities Exchange Act of 1934; and, breach of fiduciary duty. The causes of action relate to the following mutual funds: Alliance Premier Growth Class A; Alliance Technology Class A; Fidelity Advisor Technology Class A; MFS Mass Investor Growth Stock A; Oppenheimer Global Class A; and, Guardian Park Avenue Class A.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; ratification; waiver; estoppel; assumption of risk; contributory or comparative negligence; failure to mitigate; failure to exercise reasonable diligence; and, lack of proximate cause.

Respondents asserted a cause of action against Third-Party Respondent Hayes for indemnification.

Unless specifically admitted in her Answer, Third-Party Respondent Hayes denied the allegations made in the Third-Party Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; lack of proper service of the Third-Party Statement of Claim; and, waiver and/or estoppel.

RELIEF REQUESTED

Claimant in its Statement of Claim requested:

Compensatory Damages	\$148,730.39
Punitive/Treble Damages	amount unspecified
Interest	8% per annum
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified
A specified finding of fraud against Respondent Phillips	
Rescission	

Respondents in their Statement of Answer requested that all claims be dismissed; that an award be entered in Respondents favor; that Respondents be awarded their costs of arbitration; and, that Respondents be awarded such other and further relief as the Panel deems just and appropriate.

Respondents in their Third-Party Statement of Claim requested Third-Party Respondent Hayes be required to indemnify Respondents for any liability to Claimant.

Third-Party Respondent Hayes in her Statement of Answer requested that the Third-Party Claim be dismissed; that an award be entered in favor of Claimant and herself; that she be awarded her costs and attorneys' fees; and, that she be awarded such other and further relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Third-Party Respondent Hayes did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

By order dated July 16, 2003, the Panel granted Third-Party Respondent Hayes's Motion to Dismiss.

After the completion of Claimant's case in chief, Respondents made a Motion to Dismiss. The Panel denied said motion.

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. Respondents Park Avenue and Phillips are jointly and severally liable to and shall pay to Claimant compensatory damages of \$102,115.00, plus simple interest at a rate of 6% per annum from March 31, 2001 until the date of service of this award;
2. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and,
3. Any and all relief not specifically addressed herein, including punitive and treble damages, is denied in its entirety.

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	= \$ 300.00
Third-Party Claim filing fee	= \$1,000.00

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 person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Park Avenue is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the 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 @ \$1,125.00	= \$1,125.00
Pre-hearing conference: May 12, 2003 1 session	
Four (4) Hearing sessions @ \$1,125.00	= \$4,500.00
Hearing Dates: August 14, 2003 2 sessions	
August 15, 2003 2 sessions	

Total Forum Fees = \$5,625.00

1. The Panel has assessed \$2,812.50 of the forum fees to Claimant.
2. The Panel has assessed \$2,812.50 of the forum fees jointly and severally to Respondents Park Avenue and Phillips.

EEE SUMMARY

1. Claimant is assessed the following fees:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$2,812.50</u>
Total Fees	= \$3,112.50
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$1,687.50

2. Respondent Park Avenue is assessed the following fees:

<u>Member Fees</u>	<u>= \$5,200.00</u>
Total Fees	= \$5,200.00
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Park Avenue and Phillips are jointly and severally assessed the following fees:

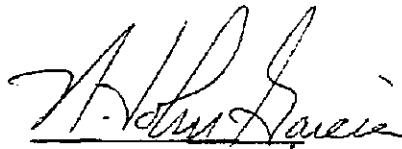
Filing Fee	= \$1,000.00
Forum Fees	= \$2,812.50
Total Fees	= \$3,812.50
Less payments	= \$2,125.00
Balance Due NASD Dispute Resolution	= \$1,687.50

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

ARBITRATION PANEL

N. John Garcia	-	Public Arbitrator, Presiding Chairperson
John H. Griffing	-	Public Arbitrator, Panelist
Landrum H. Henderson, Jr.	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



N. John Garcia
Public Arbitrator, Presiding Chairperson

8-26-03

Signature Date

John H. Griffing
Public Arbitrator, Panelist

Signature Date

Landrum H. Henderson, Jr.
Non-Public Arbitrator, Panelist

Signature Date

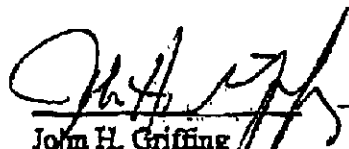
September 2, 2003
Date of Service (For NASD Dispute Resolution office use only)

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Concurring Arbitrators' Signatures

N. John Garcia
Public Arbitrator, Presiding Chairperson

Signature Date


John H. Griffing
Public Arbitrator, Panelist

8-26-03
Signature Date

Landrum H. Henderson, Jr.
Non-Public Arbitrator, Panelist

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Concurring Arbitrators' Signatures

N. John Garcia

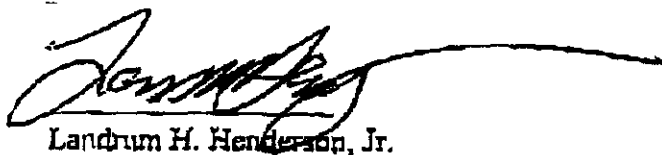
Public Arbitrator, Presiding Chairperson

Signature Date

John H. Griffing

Public Arbitrator, Panelist

Signature Date



Landrum H. Henderson, Jr.
Non-Public Arbitrator, Panelist

9/1/03
Signature Date

September 2, 2003
Date of Service (For NASD Dispute Resolution office use only)