

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Names of Claimants

John Asdigian and JoAnne Asdigian

and

02-05825
Milwaukee, Wisconsin

Name of Respondents

SSI Investments, Inc., and Mick James McDermott

Nature of dispute: customer v. member and associated person.

REPRESENTATION OF PARTIES

John Asdigian and JoAnne Asdigian ("Claimants") were represented by Dennis J. Flynn, Esq., of Schoone, Leuck, Kelley, Pitts & Knurr, SC, located in Racine, Wisconsin.

SSI Investments, Inc. ("SSI") or ("Respondent") was represented by Matthew Tracy, Esq., of Winget, Spadafora & Swartzberg LLP, located in New York, New York.

Mick James McDermott ("McDermott") or ("Respondent") was represented by Nathaniel H. Simpson Mayer of Maddin, Hauser, Wartell, Roth & Heller, located in Southfield, Michigan..

CASE INFORMATION

Claimants filed the Statement of Claim on or about October 10, 2002.

Claimants filed their Uniform Submission Agreements on September 28, 2002.

Respondent SSI filed their Statement of Answer on January 7, 2003.

Respondent SSI filed their Uniform Submission Agreement on September 9, 2002.

Respondent McDermott filed his Statement of Answer on January 7, 2003.

Respondent McDermott filed his Uniform Submission Agreement on August 22, 2003.

Respondents filed a Joint Motion to Dismiss on January 7, 2003.

Claimants file a Motion for Judgment and Response to Respondents' Motion to dismiss on February 12, 2003.

CASE SUMMARY

Claimant alleged that Respondent SSI was negligent in its supervision of Respondent McDermott. Respondent SSI allowed repeated unsuitable investments to be made with respect to Guardian

Annuity Contacts in contravention of Claimants' account form authorization with SSI. Claimants allege that Respondent McDermott failed to follow Claimants' instructions to sell their Guardian Account Contract investments and place the proceeds into a fixed interest investment fund. Claimants further allege that Respondent McDermott engaged in unauthorized and unsuitable trading. In addition, Claimants allege that Respondent McDermott breached his duties as an investment broker and was negligent in his dealings with Claimants.

All of Claimants' causes of action relate to the alleged mishandling of Guardian Annuity Contract 210187799.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated as follows: The statement of claim fails to state a claim upon which relief may be granted; Claimants are barred from recovery by the doctrines of waiver, estoppel and laches; any alleged losses were beyond Respondents' control; there were no misrepresentations which Claimants relied upon; Claimants are barred by their own contributory negligence; Respondents did not act with any negligence or intent to defraud Claimants; Claimants, by and through their own actions, were the direct cause of all damages if any; Claimants failed to mitigate their alleged damages; The Respondents at all times discharged their responsibilities in a professional manner; and, Claimants directed, approved and controlled the execution of all transactions in the accounts complained of.

RELIEF REQUESTED

Claimant requested an award in the amount of \$379,888.00.

Respondents requested that the claims asserted against them be denied in its entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

At the beginning of the hearing on the merits the Panel denied Respondents' Motion To Dismiss. At the beginning of the hearing on the merits the Claimants moved to strike all of Respondents' witnesses and exhibits for failure to comply with the Code of Arbitration Procedure, Rule 10321 (c). The Panel denied the motion as to witnesses and granted the motion as to exhibits, allowing Respondents to use their exhibits for cross-examination and rebuttal only. The panel reserved it's ruling on the request to assess costs against Respondents for failure to comply with discovery.

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 remains on file with the NASD Dispute Resolution (the "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. Respondents SSI Investments, Inc., and Mick James McDermott are jointly and severally liable for and shall pay to Claimants John Asdigian and Joanne Asdigian the sum of \$81,550.21 in compensatory damages;
2. Respondents SSI Investments, Inc., and Mick James McDermott are jointly and severally liable for and shall pay to Claimants John Asdigian and Joanne Asdigian the sum of \$400,000.00 in punitive damages. The authority for the punitive damages is Wisconsin case law: Jacque v. Steenberg Homes, Inc., 209 Wis. 2d 605, 563 N. W. 2d 154 (1997) and Management Computer Services, Inc. v. Hawkins, Ash Baptie, Inc., 206 Wis. 2d 158, 557 N.W. 2d 67 (1996);
3. In the event that Respondents SSI Investments, Inc., and Mick James McDermott do not comply with this award within 30 days of the date of service, they shall be jointly and severally liable for interest which shall accrue at the rate of 12% per annum on the unpaid balance from the date of service of the award and shall cease on the date that the award is paid in full;
4. Respondents SSI Investments, Inc., and Mick James McDermott are liable for and shall pay to the NASD the sum of \$25,000.00 for discovery abuses and dilatory practices. The panel orders this sanction pursuant to Notice to Members 03-70. The discovery sanction shall be paid within 30 days of the date of service of this award and is based upon an Order dated August 20, 2003 denying Respondents request for postponement and an oral Order of December 9, 2003 partially granting Claimants' motion to exclude witness and exhibits; The authority for this sanction is Code of Arbitration Procedure Rules 10321 (a) and (c);
5. Respondents SSI Investments, Inc., and Mick James McDermott are liable for and shall pay to Claimants John Asdigian and Joanne Asdigian's attorney the sum of \$5,000.00 as a contribution to the attorneys' fees incurred as a result Respondents' non-compliance with discovery requests throughout the pendency of this case; The authority for this sanction is Code of Arbitration Procedure Rules 10321 (a) and (c);
6. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice; and,
7. Other than the Forum Fees noted below, the parties should each bear all other costs and expenses incurred by them in connection with this proceeding.

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

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 SSI.

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

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, 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 x \$450.00 = \$450.00

Pre-hearing conference: August 19, 2003 1 session

One [1] Pre-hearing session with Panel x \$1,125.00 = \$1,125.00

Pre-hearing conference: May 19, 2003 1 session

Thirteen [13] Hearing sessions x \$1,125.00 = \$14,625.00

Hearing Dates:	December 9, 2003	2 sessions
	December 10, 2003	3 sessions
	December 11, 2003	2 sessions
	December 12, 2003	2 sessions
	January 5, 2003	4 sessions

Total Forum Fees = \$16,200.00

The Arbitration Panel has assessed \$ 16,200.00 of the forum fees to Respondents SSI and McDermott jointly and severally.

Fee Summary

Claimants John Asdigian and JoAnne Asdigian are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Refunded by NASD Dispute Resolution	= \$ 1125.00

Respondent SSI shall be and hereby is liable for:

Member Fees	= \$ 5,200.00
<u>Less payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 00

Respondent SSI and McDermott are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$ 16,200.00</u>
<u>Less payments</u>	<u>= \$.00</u>
Balance Due NASD Dispute Resolution	= \$ 16,200.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

David J. Hase, Esq. - Public Arbitrator, Presiding Chair
P.J. Boylan, Esq.-Public Arbitrator
Robert William Haggarty III -Non-Public Arbitrator

Concurring Arbitrators:

David J. Hase, Esq.
Public Arbitrator, Presiding Chair

Signature Date

P.J. Boylan, Esq.
Public Arbitrator

Signature Date

Robert William Haggarty III
Non-Public Arbitrator

Signature Date

NASD Dispute Resolution, Inc.
Arbitration No. 02-05825
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Date of Service (For NASD Dispute Resolution office use only)

February 4, 2004

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 Arbitration No. 02-05825
Award Page 5 of 5

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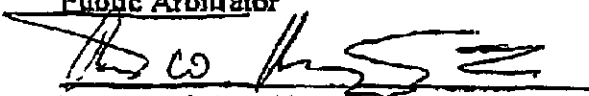
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 David J. Hase, Esq.
 Public Arbitrator, Presiding Chair

 Signature Date

 P.J. Boylan, Esq.
 Public Arbitrator

 Signature Date


 Robert William Haggarty III

2/4/04
 Signature Date

NASD Dispute Resolution, Inc.
Arbitration No. 02-05825
Award Page 5 of 6

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Public Arbitrator, Presiding Chair

February 4, 2004
Signature Date

P.J. Boylan, Esq.
Public Arbitrator

Signature Date

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NASD Dispute Resolution, Inc.
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 Award Page 5 of 6

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 Public Arbitrator, Presiding Chair

Signature Date

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 P.J. Boylan, Esq.
 Public Arbitrator

2-4-04
 Signature Date

Robert William Haggarty III

Signature Date