

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

John Booker, Booker Gery Hickman 401(k) Profit Sharing Plan, Gary J. Gery, James E. Hickman and Bonnie Booker, Claimants vs. Naomi Monschein and Monschein and Associates LLC, Respondents

Case Number: 02-06032

Hearing Site: San Francisco, California

Nature of the Dispute: Customers v. Associated Person and Non-Member

REPRESENTATION OF PARTIES

For Claimants:

John E. Cassinat, Esq.
Cassinat Law Corporation
Elk Grove, California

For Respondents:

Gilda R. Turitz, Esq.
Sideman & Bancroft, LLP
San Francisco, California

CASE INFORMATION

Statement of Claim filed: October 8, 2002

Claimants' Joint Uniform Submission Agreement signed: November 7, 2002

Joint Statement of Answer filed by Respondents: February 3, 2003

Respondent Naomi Monschein's Uniform Submission Agreement signed: January 8, 2003

Respondent Monschein and Associates LLC's Uniform Submission Agreement signed: January 8, 2003

CASE SUMMARY

Claimants alleged breach of fiduciary duty, prohibited transactions, negligence, and misrepresentation. Claimants' allegations involved transactions in unspecified securities in 401(k), IRA, and other accounts.

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

RELIEF REQUESTED

Claimants requested compensatory damages in an amount according to proof, but in no event less than \$800,000.00, unspecified punitive damages, disgorgement of gains, pre-judgment interest and costs, including attorney's fees.

Respondents requested dismissal with prejudice of the Claimants' Statement of Claim in its entirety, and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

The parties mutually agreed to have Arbitrator William S. Mailliard, Esq., serve as the chair of the arbitration panel.

On January 13, 2003, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On January 30, 2003, Respondents' counsel signed a Waiver Agreement on Respondents' behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

At the hearing, Claimants withdrew their second cause of action alleging prohibited transactions. Furthermore, Claimant James E. Hickman withdrew all of his claims as an individual.

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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are denied in their entirety.
- 2) Claimants' request for punitive damages is denied.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) 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 = \$ 375.00

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:

(2) Pre-hearing conference sessions with a single arbitrator @ \$450.00/session = \$ 900.00

Pre-hearing conferences: December 4, 2003 1 session
May 6, 2004 1 session

(1) Pre-hearing conference session with the Panel @ \$1200.00/session = \$ 1,200.00

Pre-hearing conference: November 10, 2003 1 session

(7) Hearing sessions @ \$1200.00/session = \$ 8,400.00

Hearings: June 1, 2004 2 sessions
June 2, 2004 2 sessions
June 3, 2004 2 sessions
June 4, 2004 1 session

Total Forum Fees = \$10,500.00

1. The Panel assessed \$5,250.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$5,250.00 of the forum fees jointly and severally to Respondents.

Fee Summary

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

Initial Claim Filing Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$ 5,250.00</u>
Total Fees	= \$ 5,625.00
Less Payments	= \$(1,575.00)
<u>Less unused Mediation Deposit</u>	<u>= \$ (179.00)</u>
Balance Due NASD Dispute Resolution	= \$ 3,871.00

2. Respondents are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 5,250.00
<u>Less unused Mediation Deposit</u>	<u>= \$ (179.00)</u>
Balance Due NASD Dispute Resolution	= \$ 5,071.00

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

William S. Mailliard, Esq.	-	Non-Public Arbitrator, Presiding Chair
Richard A. Ardoin, Esq.	-	Public Arbitrator
David J. Meadows, Esq.	-	Public Arbitrator

Concurring Arbitrators' Signatures

William S. Mailliard, Esq.
Chair, Non-Public Arbitrator

Signature Date

Richard A. Ardoin, Esq.
Public Arbitrator

Signature Date

David J. Meadows, Esq.
Public Arbitrator

Signature Date

6/14/04
Date of Service

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Concerning Arbitrators' Signatures



William S. Mailliard, Esq.
Chair, Non-Public Arbitrator

6/10/04

Signature Date

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Public Arbitrator

Signature Date

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David J. Meadows, Esq.
Public Arbitrator

6-10-04

Signature Date

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