

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Diana L. Williams

Case Number: 02-06218

Name of the Respondents

John L. Schutz and

J.J.B. Hilliard, W.L. Lyons

Hearing Site: Indianapolis, Indiana

REPRESENTATION OF PARTIES

Mark E. Maddox, Esq. of the firm Maddox Hargett & Caruso, P.C. in Fishers, Indiana represented Claimant Diana L. Williams hereinafter referred to as "Claimant."

Kenneth F. Berg, Esq. of the firm Ulmer & Berne, LLC located in Chicago, Illinois represented Respondents John L. Schutz ("Schutz") and J.J. B. Hilliard, W.L. Lyons ("Hilliard-Lyons") hereinafter collectively referred to as "Respondents."

CASE INFORMATION

Statement of Claim filed on or about: October 17, 2002. Claimant signed the Uniform Submission Agreement: October 2, 2002.

Joint Statement of Answer filed by Respondents on or about: December 27, 2002. Respondents each signed the Uniform Submission Agreement on December 27, 2002.

CASE SUMMARY

Claimants asserted the following causes of action: suitability, failure to supervise, misrepresentations, breach of contract, breach of fiduciary duty and constructive fraud, negligence and violation of the Indiana Securities Act and NASD Conduct Rules and NYSE rules.

The causes of action relate to annuities in Fidelity Advisor Equity Growth Retail-T and Janus Capital Growth Funds. Claimant alleged that these investments were high risk and did not meet Claimant's needs and investment objectives.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Respondents deny they violated the Indiana Securities Act because all risks of investments were disclosed accurately.

2. Respondents deny they breached a contract with Claimant because they executed all orders in accordance with the terms of parties' agreement.
3. Respondents deny they owed Claimant a fiduciary duty other than to execute her orders faithfully because this was a self-directed and non-discretionary account.
4. Respondents deny they violated any NASD rules. Moreover, Claimant lacks standing to sue for a violation of NASD rules.
5. Respondents deny it is liable under principles of Respondeat Superior because Respondent Schutz did not breach any duty to Claimant.
6. Respondents deny that they failed to use reasonable care in servicing Claimant's account or in the supervision of Respondent Schutz.

RELIEF REQUESTED

Claimant requested \$118,598.32 as compensatory damages, pre and post judgment interest at 8% interest per year per the Indiana Securities Act, cost of arbitration, including NASD filing fees, expert witness fees, reasonable attorney's fees, arbitrator fees and expenses pursuant to the Indiana Securities Act; and punitive damages.

Respondent requested dismissal of all claims.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing, Claimant orally withdrew her claim for punitive damages.

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. Respondent J.J.B. Hilliard, W.L. Lyons is solely liable for and shall pay to Claimant Diana L. Williams the sum of \$1,000.00 as compensatory damages.
2. Respondent J.J.B. Hilliard, W.L. Lyons is solely liable for and shall pay to Claimant Diana L. Williams the sum of \$10,000.00 in attorney's fees. In deciding to award attorney's fees, the Panel considered the pleadings filed by counsel, as well as the arguments presented on behalf of the parties, and determined that authority existed for an award of attorney's fees to the Claimant.
3. Respondent J.J.B. Hilliard, W.L. Lyons is solely liable for and shall pay to Claimant Diana L. Williams the sum of \$300.00 as reimbursement for the non-refundable NASD Dispute Resolution filing fee.
4. Respondent J.J.B. Hilliard, W.L. Lyons is solely liable for and shall pay to Claimant Diana L. Williams the sum of \$3,500.00 for out of pocket expenses associated with this hearing.
5. Parties shall bear their own costs, including attorney's fees, except as specified herein.

6. Any and all relief, including punitive damages, not specifically addressed herein is denied.

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. Accordingly, J.J.B. Hilliard, W.L. Lyons is assessed the following fees:

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total	= \$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 arbitrators, 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 sessions with 3-member Panel at \$1,125.00	= \$1,125.00
Pre-hearing conferences: May 7, 2003 1 session	
One (1) Pre-hearing session with single arbitrator at \$ 450.00	= \$ 450.00
Pre-hearing conference: July 15, 2003 1 session	
Four (4) Hearing sessions at \$1,125.00	= \$4,500.00
Hearing Dates: July 29, 2003 2 sessions	
July 30, 2003 2 sessions	
<u>Total Forum Fees</u>	<u>= \$6,075.00</u>

1. The Panel has assessed \$6,750.00 of the forum fees solely to J.J.B. Hilliard, W.L. Lyons.

FEE SUMMARY

1. Claimant, Diana L. Williams, is solely liable for:
- | | |
|---------------------------|--------------------|
| <u>Initial Filing Fee</u> | <u>= \$ 300.00</u> |
| Total Fees | = \$ 300.00 |

<u>Less Payments</u>	= \$ 1,425.00
Refund Due from the NASD	= \$ 1,125.00

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

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 6,075.00
Total Fees	= \$11,275.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 6,075.00

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

ARBITRATION PANEL

Richard H. Potter	-	Public Arbitrator, Presiding Chairperson
Judy Estabrook Sheppard	-	Public Arbitrator
G. Donald Steel	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Richard H. Potter
Public Arbitrator, Presiding Chairperson

9/26/03
Signature Date

G. Donald Steel
Non-Public Arbitrator

9/26/03
Signature Date

Dissenting Arbitrator's Signature

Judy Estabrook Sheppard
Public Arbitrator

9/26/03
Signature Date

9/26/03
Date of Service (For NASD Dispute Resolution office use only)

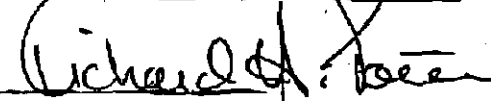
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Richard H. Potter
Public Arbitrator, Presiding Chairperson

9.26.03
Signature Date

G. Donald Steel
Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

Judy Estabrook Sheppard
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

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Arbitration No. 02-4218
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Judy Estabrook Sheppard	-	Public Arbitrator
G. Donald Steel	-	Non-Public Arbitrator

Consenting Arbitrators' Signatures

Richard H. Porter
Public Arbitrator, Presiding Chairperson



G. Donald Steel
Public Arbitrator

Judy Steel

Dissenting Arbitrator's Signature

Judy Estabrook Sheppard
Non-Public Arbitrator

Signature Date

9-26-2003

Signature Date

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

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Concurring Arbitrators' Signatures

Richard H. Potter
Public Arbitrator, Presiding Chairperson

Signature Date

G. Donald Steel
Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

Judy Estabrook Sheppard

Judy Estabrook Sheppard
Non-Public Arbitrator

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