

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants

Hilda G. Williamson
Mary Ellis Gallucci
Victoria Gallucci
George L. Gallucci
Robert R. Gallucci
Anthony P. Gallucci
Michael D. Gallucci

Case Number: 02-06799

Name of the Respondents

First Union Securities, Inc.
James Hargreaves

Hearing Site: Pittsburgh, PA

Nature of the Dispute: Customers vs. Member and Associated Person.

REPRESENTATION OF PARTIES

Claimants, Hilda G. Williamson, Mary Ellis Gallucci, Victoria Gallucci, George L. Gallucci, Robert R. Gallucci, Anthony P. Gallucci, and Michael D. Gallucci, hereinafter collectively referred to as "Claimants", were represented by Foster S. Goldman, Jr., Esq., Markel, Schafer & Goldman, P.C., Pittsburgh, Pennsylvania.

Respondents, First Union Securities, Inc. (n/ka Wachovia Securities, Inc.) ("First Union") and James Hargreaves ("Hargreaves"), hereinafter collectively referred to as "Respondents", were represented by Todd Ratner, Esq., First Union Securities, Inc., c/o Wachovia Securities, Inc., Richmond, Virginia.

CASE INFORMATION

Statement of Claim filed on: November 4, 2002.

Claimant Hilda Williamson signed the Uniform Submission Agreement on: October 23, 2002.

Claimant Mary Ellis Gallucci signed the Uniform Submission Agreement on: October 25, 2002.

Claimant Victoria Gallucci signed the Uniform Submission Agreement on: October 20, 2002.

Claimant George L. Gallucci signed the Uniform Submission Agreement on: October 21, 2002.

Claimant Robert R. Gallucci signed the Uniform Submission Agreement on: October 25, 2002.

Claimant Anthony P. Gallucci signed the Uniform Submission Agreement on: October 28, 2002.

Claimant Michael D. Gallucci signed the Uniform Submission Agreement on: October 21, 2002.

Statement of Answer filed by Respondents on: February 4, 2003.

Todd Ratner, Vice-President and Counsel for Respondent signed the Uniform Submission Agreement on: February 4, 2003.

Respondent Hargreaves signed the Uniform Submission Agreement on: January 20, 2003.

Respondents filed a Motion to Dismiss the Statement of Claim on: May 13, 2003.

Claimants filed an Objection and Motion to Strike Respondents' Motion to Dismiss the Statement of Claim on: May 22, 2003.

Respondents filed a Response to Claimants' Objection and Motion to Strike Respondents' Motion to Dismiss the Statement of Claim on: June 3, 2003.

Claimants filed a Memorandum in Opposition to Respondents' Motion to Dismiss the Statement of Claim on: July 22, 2003.

Claimants filed a Motion for Sanctions on: December 18, 2003.

Respondents filed a Response to Claimants' Motion for Sanctions on: December 23, 2003.

CASE SUMMARY

Claimants asserted the following causes of action, among others: breach of contract; negligence; failure to supervise; breach of fiduciary duty; misrepresentations and non-disclosures; churning; suitability; and markups. The causes of action relate to the purchase and sale of unspecified common stock, corporate bonds, mutual funds, Government Securities, and Municipal Bonds.

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; the claim is barred by the doctrines of laches, unclean hands and estoppel; waiver; the claim is barred by the doctrine of judicial estoppel; all activity in the accounts was suitable; Respondent First Union maintained adequate supervision; lack of standing; no private right of action exists under NASD Rules; and, the claims are barred by the applicable statutes of limitations.

RELIEF REQUESTED

Claimants in their Statement of Claim requested a total of \$256,105 in compensatory damages; treble damages; attorneys fees; interest at the rate of 6% on all liquidated damages; and, forum fees.

Respondents in their Statement of Answer requested that the Arbitration Panel (the "Panel") reject Claimants' Statement of Claim in its entirety and order that forum fees be borne by Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

The Panel denied Respondents' Motion to Dismiss on August 21, 2003.

In addressing Claimants' Motion for Sanctions filed on December 18, 2003 and all responses thereto, the Panel ordered that all outstanding motions would be heard at the start of the hearings on the merits.

At the hearing on the merits, Claimants moved for Sanctions against Respondents for alleged failure to produce information requested via discovery requests. Respondents denied any intention to not provide information, but claimed difficulties in doing so.

The Panel denied Claimants' Motion for Sanctions.

At the hearing on the merits, Respondents moved to dismiss the Statement of Claim on two grounds: 1) lack of standing by Claimants to bring the action; and, 2) that Claimants failed to meet the Statute of Limitations by failing to file the Statement of Claim in a timely manner. Claimants responded that they were the aggrieved parties and that the Trust in question was for their benefit. As to the issue of the Statute of Limitations, Claimants countered that they had brought the action within the applicable time period.

The Panel denied Respondents' Motion to Dismiss the Statement of Claim.

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.

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 First Union and Hargreaves are jointly and severally liable to and shall pay to Claimants compensatory damages in the amount of ninety-eight thousand dollars and zero cents (\$ 98,000.00), plus interest at the rate of 6% on that amount. Interest shall accrue from December 1, 2001 through the date the Award is paid in full;
2. Respondents First Union and Hargreaves are jointly and severally liable to and shall pay to Claimants three-hundred and seventy-five dollars and zero cents (\$375.00) as reimbursement for the filing fees paid by Claimants;
3. All claims for treble damages and attorney's fees are denied in their entirety;
4. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and,
5. Any and all relief not specifically addressed herein 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 = \$ 375.00

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 First Union is a party.

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 4,000.00</u>
Total Member Fees	= \$ 7,000.00

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:

Two (2) Pre-hearing sessions with Panel @ \$ 1,200	= \$ 2,400.00
Pre-hearing conferences: June 16, 2003 1 session	
August 20, 2003 1 session	

Eight (8) Hearing sessions @ \$ 1,200.00	= \$ 9,600.00
Hearing Dates: January 13, 2004 2 sessions	
January 14, 2004 2 sessions	
January 15, 2004 2 sessions	
January 16, 2004 2 sessions	

Total Forum Fees	= \$ 12,000.00
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The Panel has assessed \$ 12,000.00 of the forum fees jointly and severally to Respondents.

FEE SUMMARY

1. Claimants are assessed and shall pay the following fees:

Initial Filing Fee	= \$ 375.00
Total Fees	= \$ 375.00
<u>Less payments</u>	<u>= \$ 1,575.00</u>
Refund owed to Claimants	= \$ 1,200.00

2. Respondent, First Union, is assessed and shall pay the following fees:

Member Fees	= \$ 7,000.00
Total Fees	= \$ 7,000.00
<u>Less payments</u>	<u>= \$ 7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 00.00

3. Respondents, First Union and Hargreaves, are jointly and severally assessed and shall pay the following fees:

Forum Fees	= \$ 12,000.00
Balance Due NASD Dispute Resolution	= \$ 12,000.00


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

ARBITRATION PANEL

Marshall S. Galinsky, Esq.	-	Public Arbitrator, Presiding Chairperson
Caleb Nichols, Esq.	-	Public Arbitrator, Panelist
Timothy Shay Davis	-	Non-Public Arbitrator, Panelist

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Concurring Arbitrators' Signatures



Marshall S. Galinsky, Esq.
Public Arbitrator, Presiding Chairperson

1/31/04
Signature Date

Caleb Nichols, Esq.
Public Arbitrator, Panelist

Signature Date

Timothy Shay Davis
Non-Public Arbitrator, Panelist

Signature Date

February 2, 2004
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Marshall S. Galinsky, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Caleb Nichols
Caleb Nichols, Esq.
Public Arbitrator, Panelist

1/30/04
Signature Date

Timothy Shay Davis
Non-Public Arbitrator, Panelist

Signature Date

February 2, 2004
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Marshall S. Galinsky, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Caleb Nichols, Esq.
Public Arbitrator, Panelist

Signature Date



Timothy Shay Davis
Non-Public Arbitrator, Panelist

2.2.04
Signature Date

February 2, 2004
Date of Service (For NASD Dispute Resolution office use only)