

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Shirley J. Smith (Claimant) v. James A. Hawyrliak (Respondent)

Case Number: 02-07094

Hearing Site: Buffalo, New York

Nature of the Dispute: Customer v. Associated Person.

REPRESENTATION OF PARTIES

Claimant Shirley J. Smith ("Smith") hereinafter referred to as "Claimant": Great K. Kolcon, Esq., Woods Oviatt Gilman, LLP, Rochester, NY.

Respondent James A. Hawyrliak ("Hawyrliak") hereinafter referred to as "Respondent": Michael P. Leone, Esq., Harris, Chesworth, O'Brien, Johnstone, Welch & Leone, Attorneys at Law, Rochester, NY. Previously represented by: Theodore N. Pucher, Esq., Rochester, NY.

CASE INFORMATION

Statement of Claim filed on or about: November 18, 2002.

Claimant signed the Uniform Submission Agreement: November 5, 2002.

Statement of Answer filed by Respondent on or about: February 13, 2003.

Respondent signed the Uniform Submission Agreement: February 11, 2003 and February 3, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: violation of federal securities laws, state laws, the sale of unsuitable securities, breach of fiduciary duty, negligence, misrepresentation, fraud, conversion, and violation of New York Unfair Trade Practices and Consumer Protection Act. Claimant's claim involved shares of Unified Commercial Capital, Inc.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$120,000.00; lost income on

her investment from May 2, 1997; punitive damages; interest; costs, including the filing fee, arbitrators' fees, forum fees, and expert witness fees; reasonable attorneys' fees and costs of suit; and any other relief that is just, fair, and equitable.

Respondent requested that Claimant's claim be dismissed and that Respondent be awarded attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

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, and 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 is liable and shall pay to the Claimant compensatory damages in the amount of \$77,000.00, plus interest in the amount of \$46,000.00.
2. Claimant may be entitled to additional payment from the Yacono scheme payout through the Bankruptcy Court of the Western District of New York. If she receives this payout prior to full payment of this Award, the amount of such payout shall be deducted from the Award. If the payout is not received prior to the full payment of this Award, Respondent shall pay to Claimant the full amount listed above in item #1 and, Claimant shall assign all her rights, title and interest in any such payout to Respondent.
3. Respondent shall pay Claimant's attorney's fees of \$25,000.00 in accordance with New York General Business Law Section 349.
4. Any and all relief not specifically addressed herein, including punitive damages, 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
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Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

November 3-4, 2003, adjournment by Respondent = Waived

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 session with Panel @ \$1,125.00 = \$1,125.00
Pre-hearing conference: July 8, 2003 1 session

Two (2) Hearing sessions @ \$1,125.00 = \$2,250.00
Hearing Date: July 28, 2004 2 sessions

Total Forum Fees = \$3,375.00

1. The Panel has assessed \$1687.50 of the forum fees against Claimant.
2. The Panel has assessed \$1687.50 of the forum fees against Respondent.

Fee Summary

1. Claimant is solely liable for:	
Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,687.50
Total Fees	= \$1,987.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,987.50
2. Respondent is solely liable for:	
Forum Fees	= \$1,687.50
Total Fees	= \$1,687.50
<u>Less payments</u>	= \$ 0.00
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.

NASD Dispute Resolution
Arbitration No. 02-07094
Award Page 4 of 4

ARBITRATION PANEL

Donald G. McGrath, Esq.	-	Public Arbitrator, Presiding Chairperson
Robert J. Lane, Jr., Esq.	-	Public Arbitrator
Anthony Vitanza	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument is which is my award.



Donald G. McGrath, Esq.
Public Arbitrator, Presiding Chairperson

8-25-04
Signature Date

Robert J. Lane, Jr., Esq.
Public Arbitrator

Signature Date

Anthony Vitanza
Non-Public Arbitrator

Signature Date

August 26, 2004
Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution
Arbitration No. 02-07094
Award Page 4 of 4

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Donald G. McGrath, Esq.
Public Arbitrator, Presiding Chairperson


Signature Date

Robert J. Lane, Jr., Esq.
Public Arbitrator

Signature Date



Anthony Vitanza
Non-Public Arbitrator



Signature Date

August 26, 2004
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Donald G. McGrath, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Robert J. Lane, Jr., Esq.
Public Arbitrator

8/24/04

Signature Date

Anthony Vitanza
Non-Public Arbitrator

Signature Date

August 26, 2004

Date of Service (For NASD Dispute Resolution use only)