
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Vincent J. and Dorothy H. McInerney

Case Number: 02-07299

Name of the Respondent
SII Investments, Inc.

Hearing Site: Tampa, Florida

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

For Vincent J. and Dorothy H. McInerney, referred to as "Claimant": James D. Keeney, Esq., James D. Keeney, P.A., Sarasota, Florida.

For SII Investments, Inc., referred to as "Respondent SII": Dale T. Golden, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, Tampa, Florida.

CASE INFORMATION

Statement of Claim filed on or about: November 27, 2002.

Amendment to Statement of Claim filed on or about July 22, 2003 and accepted by the Panel on or about: August 22, 2003.

Claimant signed the Uniform Submission Agreement on: November 11, 2002.

Statement of Answer, Motion to Dismiss and Affirmative Defenses filed by Respondent SII on or about: December 23, 2002.

Respondent SII signed the Uniform Submission Agreement on: December 16, 2002.

CASE SUMMARY

Claimant alleged the following causes of action: 1) violation of Section 517.07, Florida Statutes; 2) violation of Section 517.301, Florida Statutes; 3) negligence and gross negligence for recommending unsuitable investments; 4) violation of Rule 405 of the NYSE; 5) unsuitable recommendations in violation of Sections 517.301 and 517.211, Florida Statutes; 6) breach of fiduciary duty; and 7) failure to supervise. The causes of action relate to investments in variable annuities in American Skandia and Allmerica.

Respondent SII denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant requested: 1) statutory damages in the amount of \$220,618.18; 2) disgorgement of all commissions and fees paid; 3) other compensatory damages in excess of \$15,000.00; 4) punitive damages; 5) interest; 6) costs; 7) attorneys' fees in an amount to be determined by a court of competent jurisdiction; and 8) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondent SII requested dismissal of the Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On or about July 22, 2003, Claimant filed a Motion for Leave to Amend the Statement of Claim. Claimant requested leave of the Panel to assert a cause of action under Section 517.07, Florida Statutes. On or about August 8, 2003, Respondent SII filed its Response wherein Respondent SII requested the Panel to deny the motion. On or about August 13, 2003, Claimant filed a Reply to Respondent SII's Response. On or about August 22, 2003, the Panel granted Claimant's motion and accepted Claimant's Amendment to Statement of Claim.

At the evidentiary hearing, the Panel denied: 1) Claimant's motion to exclude expert witness Neal Tourdo for non-production of his resume; and 2) Claimant's motion for sanctions for Respondent SII's failure to produce commission runs.

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, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent SII is liable and shall pay to Claimant compensatory damages in the amount of \$104,500.00, plus interest at the Florida statutory interest rate from October 1, 2003 until the date the Award is paid in full. The Panel finds Respondent SII liable for violation of Section 517.301, Florida Statutes, breach of fiduciary duty, and negligence for unsuitable recommendations by Respondent SII's agents and/or employees as to the Skandia and Allmerica annuities purchased by Claimant.
2. Respondent SII is liable and shall pay to Claimant attorneys' fees in an amount to determined by a court of competent jurisdiction. Attorneys' fees are awarded pursuant to Chapter 517, Florida Statutes.
3. Respondent SII is liable and shall pay to Claimant expert witness fees in an amount not to exceed \$5,000.00.
4. Respondent SII is liable and shall pay to Claimant the travel expenses of Mark Oswald, former

Compliance Director of Respondent SII, to the extent Claimant has paid Mr. Oswald's travel expenses.

5. Respondent SII is liable and shall reimburse Claimant \$300.00 which represents the claim filing fee previously paid by Claimant to NASD Dispute Resolution.
6. The parties shall each bear all remaining costs and expenses, excluding the Panel's allocation of forum fees addressed below, incurred by them in connection with this arbitration proceeding.
7. Claimant's request for punitive damages is denied.
8. Any and all claims for relief not specifically addressed herein are denied and dismissed with prejudice.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300.00
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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, Respondent SII is a member firm and a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

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 per session	= \$1,125.00
Pre-hearing conference: May 21, 2003 1 session	

Seven (7) Hearing sessions @ \$1,125.00 per session	= \$7,875.00
Hearing Dates: September 22, 2003 2 sessions	
September 23, 2003 2 sessions	
September 24, 2003 3 sessions	

Total Forum Fees	= \$9,000.00
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The Panel has assessed the total forum fees in the amount of \$9,000.00 to Respondent SII.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$ 300.00
Balance Due NASD	= \$ 0.00

Respondent SII is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 9,000.00
Total Fees	= \$14,200.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD	= \$ 9,000.00

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

ARBITRATION PANEL

<i>Nicholas John Taldone, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Alun Hywel Jones</i>	-	<i>Public Arbitrator</i>
<i>Audrey Belitz Rauchway, Esq.</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

 /s/
Nicholas John Taldone, Esq.
Public Arbitrator, Presiding Chairperson

October 1, 2003
Signature Date

 /s/
Alun Hywel Jones
Public Arbitrator

October 2, 2003
Signature Date

 /s/
Audrey Belitz Rauchway, Esq.
Non-Public Arbitrator

October 6, 2003
Signature Date

October 7, 2003
Date of Service (For NASD use only)


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ARBITRATION PANEL

Nicholas John Taldone, Esq.
Alun Hywel Jones
Audrey Belitz Rauchway, Esq.

- *Public Arbitrator, Presiding Chairperson*
- *Public Arbitrator*
- *Non-Public Arbitrator*

Concurring Arbitrators' Signatures



Nicholas John Taldone, Esq.
Public Arbitrator, Presiding Chairperson

10/1/03
Signature Date

Alun Hywel Jones
Public Arbitrator

Signature Date

Audrey Belitz Rauchway, Esq.
Non-Public Arbitrator

Signature Date

Date of Service (For NASD use only)

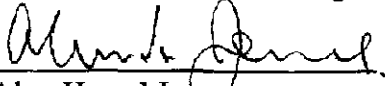
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<i>Alun Hywel Jones</i>	-	<i>Public Arbitrator</i>
<i>Audrey Belitz Rauchway, Esq.</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Nicholas John Taldone, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Alun Hywel Jones
Public Arbitrator

October 2, 2003,

Signature Date

Audrey Belitz Rauchway, Esq.
Non-Public Arbitrator

Signature Date

Date of Service (For NASD use only)

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<i>Alun Hywel Jones</i>	-	<i>Public Arbitrator</i>
<i>Audrey Belitz Rauchway, Esq.</i>	-	<i>Non-Public Arbitrator</i>

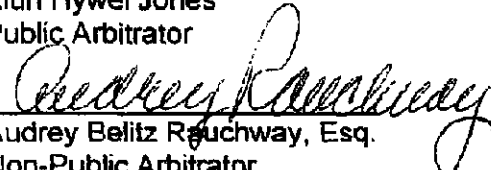
Concurring Arbitrator's Signatures

Nicholas John Taldone, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Alun Hywel Jones
Public Arbitrator

Signature Date



Audrey Belitz Rauchway, Esq.
Non-Public Arbitrator

10/6/03

Signature Date

Date of Service (for NASD use only)