

**Stipulated Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:
William L. Stevens and Donna M. Stevens,
Claimants

Case Number: - 02-07385

v.

Robert M. Rose, Sarah Z. Burger and
Financial Planning Consultants, Inc.,
Respondents

Hearing Site: St. Louis, Missouri

NATURE OF THE DISPUTE

Customer vs. Member Firm and Associated Persons

REPRESENTATION OF PARTIES

Claimants, William L. Stevens and Donna M. Stevens ("Stevens") hereinafter collectively referred to as "Claimants": Albert S. Watkins, Esq. of the law firm, Kodner, Watkins, Muchnick & Dunne, L.C., located in Clayton, Missouri.

Respondents, Robert M. Rose ("Rose"), Sarah Z. Burger ("Burger") and Financial Planning Consultants ("FPC"), hereinafter collectively referred to as "Respondents": Richard B. Fosher, Esq. of the law firm, Oakes & Fosher, located in St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on or about December 9, 2002. Claimants, Stevens, jointly signed the Uniform Submission Agreement on November 29, 2003.

Statement of Answer filed by Respondents FPC, Rose and Burger on or about January 31, 2003. Respondents Rose, Burger and FPC each signed a Uniform Submission Agreement on January 31, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty, omission of facts, suitability, misrepresentations and failure to supervise. The causes of action relate to variable annuities and AIM funds. Claimants asserted that these were unsuitable investments and did not meet their investment objectives.

Unless specifically admitted in its Answer, Respondents Rose, Burger and FPC denied the allegations made in the Statement of Claim and asserted the following defenses: (1) Statement of Claim fails to state a claim upon which relief can be granted; (2) claims are barred by the statute of limitations; (3) Claimants' claims are barred by their own authorization and ratification; (4) claims are barred by the defenses of waiver, estoppel and laches; (5) FPC reasonably discharged the duties and obligations incumbent upon it by reason of such procedures, without reasons or cause to be believe that such procedures and systems were not being complied with; (6) Respondents acted at all times in good faith; (7) Claimants' losses were caused by

intervening events over which Respondents had no control and for which Respondents are not responsible; (8) claims are barred and must be reduced by their failure to mitigate damages; (9) failure to plead with particularity; and (10) Claimants have not alleged any basis for entitlement to attorney's fees.

RELIEF REQUESTED

Claimants requested \$120,000.00 in compensatory damages, \$120,000 in punitive damages, plus interest, cost, attorney's fees and other relief as is deemed fair, just and appropriate.

Respondents, Rose, Burger and FPC requested dismissal of all claims in their entirety, cost and attorney's fees, expungement of this matter from the Central Registration Depository (CRD) records of Respondents Robert M. Rose and Sarah Z. Burger and for further relief the Panel deems appropriate.

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

The parties entered into an agreement to present to the Panel a Stipulated Award. In lieu of a hearing and upon motion of Respondents for entry of an Award, the written stipulation thereto, the Panel hereby grants the Motion and enters this Award. After considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

- 1.) Respondent Financial Planning Consultants, Inc. is dismissed with prejudice. Claimants and Respondent Financial Planning Consultants, Inc. have entered into a confidential settlement agreement.
- 2.) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Robert M. Rose and Sarah Z. Burger's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondents Rose and Burger must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3.) Each party shall bear its own costs and expenses associated with the above-referenced arbitration.
- 4.) That any relief not specifically enumerated, including punitive damages is hereby denied with prejudice.

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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 x \$1,125.00 = \$1,125.00

Pre-hearing Conference: July 29, 2003 1 session

Total Forum Fees = \$1,125.00

The parties have agreed to pay forum fees as follows:

Claimant shall pay 50% of the total forum fees in the amount of \$562.50.

Respondent shall pay 50% of the total forum fees in the amount of \$562.50.

FEE SUMMARY

Claimants William L. Stevens and Donna M. Stevens, are hereby jointly and severally liable for:

Initial Filing Fee = \$ 300.00

Forum Fees = \$ 562.50

Total Fees = \$ 862.50

Less payments = \$1,425.00

Refund Due from NASD Dispute Resolution = \$ 562.50

Respondent, Financial Planning Consultants, Inc. is hereby solely liable for:

Member Fees = \$5,200.00

Less payments = \$5,200.00

Balance Due NASD Dispute Resolution = \$ 0.00

Respondents, Robert M. Rose, Sarah Z. Burger and Financial Planning Consultants, Inc. are hereby jointly and severally liable for:

Forum Fees = \$ 562.50

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$ 562.50

All balances are due to NASD Dispute Resolution.

ARBITRATION PANEL

David P. Oetting, Esq.	-	Public Arbitrator, Presiding Chairperson
Richard H. Potter	-	Public Arbitrator
Carl W. Zeidler, CFP	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

David P. Oetting, Esq.
Public Arbitrator, Presiding Chair

11/01/04
Signature Date

Richard H. Potter
Public Arbitrator

10/29/04
Signature Date

Carl W. Zeidler, CFP
Non-Public Arbitrator

10/28/04
Signature Date

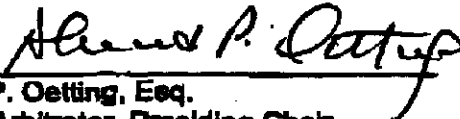
11/08/04
Date of Service (For NASD office use only)

ARBITRATION PANEL

David P. Oetting, Esq.
Richard H. Potter
Carl W. Zeidler, CFP

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

Concurring Arbitrators' Signatures



David P. Oetting, Esq.
Public Arbitrator, Presiding Chair

11.1.04

Signature Date

Richard H. Potter
Public Arbitrator

Signature Date

Carl W. Zeidler, CFP
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

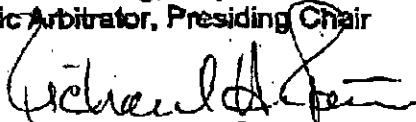
NASD Dispute Resolution
Arbitration 02-07385
Award Page 4 of 5

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Public Arbitrator, Presiding Chair



Richard H. Potter
Public Arbitrator

Signature Date

10.29.04

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Award Page 4 of 5

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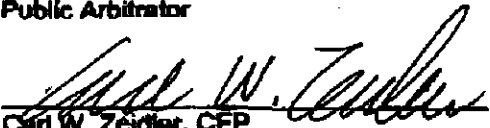
Concurring Arbitrators' Signatures

David P. Oetting, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Richard H. Potter
Public Arbitrator

Signature Date



Carl W. Zeidler, CFP
Non-Public Arbitrator

10/28/2004

Signature Date

Date of Service (For NASD office use only)

PARTIES SIGNATURES

William L. Stevens

Signature Date

Donna M. Stevens

Signature Date

Robert M. Rose

Signature Date

Sarah Z. Burger

Signature Date

Financial Planning Consultants, Inc.

Signature Date