

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Nancy M. Kepner (Claimant) v. Lawrence Brockman and Robert S. Bagby (Respondents)

Case Number: 02-07533

Hearing Site: Cleveland, Ohio

Nature of the Dispute: Customer vs. Associated Persons.

REPRESENTATION OF PARTIES

Claimant Nancy M. Kepner ("Kepner") hereinafter referred to as "Claimant": C. William Brownfield, Esq., Columbus, OH. Previously *pro se*.

Respondents Lawrence Brockman ("Brockman") and Robert S. Bagby ("Bagby") hereinafter collectively referred to as "Respondents": Ellen M. Kramer, Esq., Cohen Rosenthal & Kramer, LLP, Cleveland, OH.

CASE INFORMATION

Statement of Claim filed on or about: December 12, 2002.

Memorandum in Opposition to Respondents' Motion to Dismiss filed by Claimant on or about: March 27, 2003.

Claimant signed the Uniform Submission Agreement: December 11, 2002.

Joint Statement of Answer and Motion to Dismiss filed by Respondents on or about: February 28, 2003.

Reply in Support of Motion to Dismiss filed by Respondents on or about: April 25, 2003.

Brockman signed the Uniform Submission Agreement: February 25, 2003.

Bagby signed the Uniform Submission Agreement: February 25, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: unauthorized trading; mismanagement of account; misrepresentation; breach of fiduciary duty; suitability; churning; and omission of facts. Claimant's claim involved shares of AOL, Intel, C-Cube Microsystems, and other unspecified common stock and options.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$8,000,000.00 and punitive damages in the amount of \$2,000,000.00.

Respondents requested immediate dismissal of this arbitration, an award of the costs and attorneys' fees incurred in presenting their defense, and expungement of any mention of Claimant's claims from the Form U-4 and related documentation maintained on behalf of Lawrence Brockman.

OTHER ISSUES CONSIDERED AND DECIDED

On February 28, 2003 Respondents made a motion to dismiss for failing to submit a timely claim in accordance with Rule 10304 of the NASD Code of Arbitration Procedure. After due deliberation, the Panel granted Respondents' motion to dismiss based upon the statute of limitations. Therefore, Claimant's claims are dismissed in their entirety.

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 Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are hereby dismissed in their entirety.
2. The Panel denied Respondents' request for expungement.
3. 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	= \$600.00
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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 persons at the time of the events giving

rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is the Respondents' firm.

Member surcharge	= \$3,350.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,500.00

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 session with Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference: July 7, 2003 1 session	
Total Forum Fees	= \$1,200.00

1. The Panel has assessed \$600.00 of the forum fees against Claimant.
2. The Panel has assessed \$600.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 600.00
Total Fees	= \$1,200.00
Less payments	= \$1,800.00
Refund Due	= \$ 600.00
2. Respondents are jointly and severally liable for:

Forum Fees	= \$ 600.00
Total Fees	= \$ 600.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 600.00
3. Merrill Lynch, Pierce, Fenner & Smith, Inc. is solely liable for:

Member Fees	= \$9,600.00
Total Fees	= \$9,600.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$9,600.00

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

ARBITRATION PANEL

Joanne C. Brant	-	Public Arbitrator, Presiding Chair
Dwayne E. Clark, Sr.	-	Public Arbitrator
Robert G. Conway	-	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, which is my award.

Joanne C. Brant
Public Arbitrator, Presiding Chairperson

Signature Date

Dwayne E. Clark, Sr.
Public Arbitrator

Signature Date

Robert G. Conway
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution use only)

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Joanne C. Brant
Public Arbitrator, Presiding Chairperson

1/29/04
Signature Date

Dwayne E. Clark, Sr.
Public Arbitrator

Signature Date

Robert G. Conway
Non-Public Arbitrator

Signature Date

January 30, 2004
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

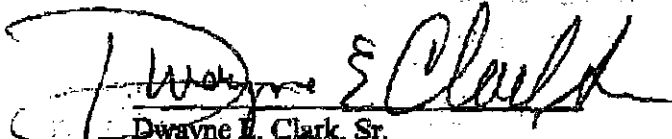
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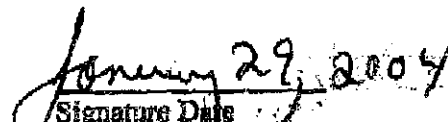
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Public Arbitrator, Presiding Chairperson

Signature Date


Dwayne E. Clark, Sr.
Public Arbitrator


January 29, 2004
Signature Date

Robert G. Conway
Non-Public Arbitrator

Signature Date

January 30, 2004
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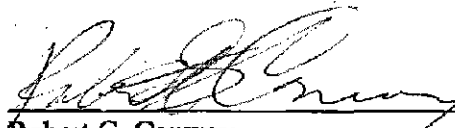
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Signature Date



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