
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Evelyn Timko, individually, and as Personal
Representative of the Estate of John J. Timko

Case Number: 03-00196

Name of the Respondent

Barnett Investments, Inc. n/k/a
Bank of America Investment Services, Inc.

Hearing Site: Tampa, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Evelyn Timko, individually, and as Personal Representative of the Estate of John J. Timko, hereinafter referred to as "Claimant": Robert Persante, Esq., Persante & McCormack, P. A., Clearwater, Florida.

For Barnett Investments, Inc. n/k/a Bank of America Investment Services, Inc., hereinafter referred to as "Respondent": William C. Guerrant, Esq., Hill, Ward, & Henderson, P. A., Tampa, Florida.

CASE INFORMATION

Statement of Claim filed on or about: January 10, 2003.

Claimant signed the Uniform Submission Agreement: January 3, 2003.

Statement of Answer filed by Respondent on or about: March 24, 2003.

Respondent signed the Uniform Submission Agreement: March 24, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: tortious behavior; fraudulent misrepresentation; breach of fiduciary duty and unsuitability. The causes of action relate to the purchase of unspecified annuities in Claimant's accounts.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses

RELIEF REQUESTED

Claimant requested compensatory damages of \$90,000.00; treble damages of \$270,000.00; attorneys' fees; costs; and such further relief as the Panel deemed just and proper.

Respondent requested the Panel determine that Respondent is the prevailing party to enable Respondent to seek an award of their attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent is liable and shall pay to Claimant total damages of \$266,383.00 consisting of the following: the sum of \$36,732.00, plus pre-judgment interest of \$22,222.00 totaling \$58,954.00; treble damages of \$117,908.00 (\$58,954.00 x 2) for Respondent's violation of Florida Statute 772.11; and, additional compensatory damages of \$54,806.00, plus pre-judgment interest of \$34,715.00 totaling \$89,521.00. Post judgment interest shall accrue at the Florida statutory rate from the date of the Award until the date of payment of the Award on the above referenced sums.

Claimant's request for attorneys' fees is granted. Respondent is liable and shall pay to Claimant attorneys' fees in an amount to be determined by a court of competent jurisdiction pursuant to Florida Statutes.

Respondent shall pay to Claimant the sum of \$300.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Any and all claims for relief not specifically addressed herein, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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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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 persons at the time of the events giving rise to the dispute. Accordingly, Respondent is a member firm and a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

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.

No injunctive relief fees were incurred in this matter.

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 the Panel @ \$1,125.00 = \$ 1,125.00

Pre-hearing conference: June 30, 2003 1 session

Four (4) Hearing sessions @ \$1,125.00 = \$ 4,500.00

Hearing Dates: December 9, 2003 2 sessions

December 10, 2003 2 sessions

Total Forum Fees = \$ 5,625.00

The Panel assessed the total forum fees of \$5,625.00 to Respondent.

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.

No administrative costs were incurred in this matter.

Fee Summary

Claimants is solely liable for:

Initial Filing Fee = \$ 300.00

Total Fees = \$ 300.00

Less payments = \$ 300.00

Balance Due NASD Dispute Resolution = \$ 0.00

Respondent is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 5,625.00
Total Fees	= \$10,825.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 5,625.00

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

ARBITRATION PANEL

<i>David S. Bland, CPA</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>George Felos, Esq.</i>	-	<i>Public Arbitrator</i>
<i>John W. Platt</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
David S. Bland, CPA
Public Arbitrator, Presiding Chairperson

01/07/04
Signature Date

/s/
George Felos, Esq.
Public Arbitrator

01/06/04
Signature Date

/s/
John W. Platt
Non-Public Arbitrator

01/07/04
Signature Date

01/08/04
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
Arbitration No. 03-00196
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<u>Total Fees</u>	<u>= \$10,825.00</u>
<u>Less payments</u>	<u>= \$ 5,200.00</u>
<u>Balance Due NASD Dispute Resolution</u>	<u>= \$ 5,625.00</u>

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George Felos, Esq.
John W. Platt

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures



David S. Bland, CPA
Public Arbitrator, Presiding Chairperson

1/7/04

Signature Date

George Felos, Esq.
Public Arbitrator

Signature Date

John W. Platt
Non-Public Arbitrator

Signature Date

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Signature Date


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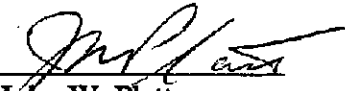
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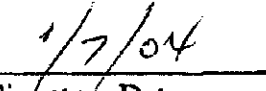
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George Felos, Esq.
Public Arbitrator

Signature Date



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Non-Public Arbitrator



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