

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Rodger Bender as Personal Representative of the Estate of Harry E. Bender and on behalf of Dorris Bender, Claimant v. Sigma Financial Corporation and Michael J. Penn, Respondents

Case Number: 03-00465

Hearing Site: Seattle, Washington

Nature of the Dispute: Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimant:

Shannon L. McDougald, Esq.
Perkins Coie LLP
Seattle, Washington

For Respondent:

Thomas H. Knudsen, Esq.
Sedgwick, Detert, Moran &
Arnold LLP
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: January 21, 2003

Claimant's Uniform Submission Agreement signed: December 13, 2002

Joint Statement of Answer filed by Respondents Sigma Financial Corporation and Michael J. Penn: May 12, 2003

Respondent Michael J. Penn's Uniform Submission Agreement signed: May 9, 2003

Respondent Sigma Financial Corporation's Uniform Submission Agreement signed but not dated

CASE SUMMARY

Claimant alleged violation of the Idaho Securities Act, violation of federal securities laws, breach of fiduciary duty, failure to supervise, common law fraud, breach of contract, and negligence (unsuitability). Claimant's allegations involved technology stocks and options trading.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested rescission of all transactions and return of capital, interest, attorney's fees, and punitive damages.

Respondents requested dismissal of Claimant's Statement of Claim in its entirety, costs, and attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

At the initial pre-hearing conference, Claimant moved the Panel to have this matter heard in Seattle by a panel of arbitrators that would be chosen from the Seattle arbitrator pool. As Respondents did not object to this motion, the Panel granted Claimant's motion on October 20, 2003 and directed that the matter be heard in Seattle by an arbitration panel composed of arbitrators from the Seattle arbitration pool.

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

- 1) Claimants' claims against Respondents that were brought under the Idaho and the federal securities acts as well as Claimants' claims for common law fraud are denied. They are hereby dismissed with prejudice.
- 2) Respondent Michael J. Penn is liable to and shall pay Claimant Rodger Bender as Personal Representative of the Estate of Harry E. Bender and on behalf of Dorris Bender the sum of \$69,000.00 in compensatory damages for his unsuitability and breach of fiduciary duty claims. Respondents are jointly and severally liable for satisfaction of this Award.
- 3) Respondent Sigma Financial Corporation is liable to and shall pay Claimant Rodger Bender as Personal Representative of the Estate of Harry E. Bender and on behalf of Dorris Bender the sum of \$69,000.00 in compensatory damages as a result of Sigma Financial Corporation's negligent failure to supervise Michael J. Penn. Respondents are jointly and severally liable for satisfaction of this Award.
- 4) Pursuant to NASD Code of Arbitration Procedure Section 10215 and Idaho Code Section 12-120(3), Claimant is awarded his reasonable attorney's fees incurred herein in the amount of \$30,000.00 and also his reasonable litigation costs incurred herein in the amount of

\$19,111.00 (exclusive of NASD fees, as awarded below). This award of attorney's fees and costs is joint and several against Sigma Financial Corporation and Michael J. Penn. The Panel exercised its discretion in determining the amount of a reasonable fee award by considering the factors enumerated in Rule 1.5 of the Washington Rules of Professional Conduct as useful persuasive authority, including that provision's reference to the "results obtained." The Panel also took into consideration the amounts of time devoted to matters and claims other than the claims on which Claimant prevailed.

5) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 250.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Sigma Financial Corporation is a party, and the following fees are assessed:

Member Surcharge	= \$1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,200.00</u>
Total Member Fees	= \$4,450.00

Adjournment Fees

The following adjournment fees are assessed:

June 28 – July 2, 2004, adjournment requested by the Parties	= \$ waived
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Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) pre-hearing conference session with a single arbitrator @ \$ 450.00/session	= \$ 450.00
Pre-hearing conference: May 19, 2004 1 session	

Two (2) pre-hearing conference sessions with the Panel @ \$1,000.00/session	= \$2,000.00
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Pre-hearing conferences:	October 1, 2003	1 session	
	March 1, 2004	1 session	
Seven (7) hearing sessions @ \$1,000.00/session			= \$7,000.00
Hearings:	August 31, 2004	2 sessions	
	September 1, 2004	2 sessions	
	September 2, 2004	2 sessions	
	September 3, 2004	1 session	
Total Forum Fees			= \$9,450.00

The Panel assessed \$9,450.00 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimant Rodger Bender is charged with the following fees and costs:

Initial Filing Fee	= \$ 250.00
<u>Less payments</u>	<u>= \$(1,425.00)</u>
Refund Due Claimant	= \$(1,175.00)
2. Respondents Sigma Financial Corporation is charged with the following fees and costs:

Member Fees	= \$ 4,450.00
<u>Less payments</u>	<u>= \$(4,450.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00
3. Respondents Sigma Financial Corporation and Michael J. Penn are charged jointly and severally with the following fees and costs:

<u>Forum Fees</u>	<u>= \$ 9,450.00</u>
Balance Due NASD Dispute Resolution	= \$ 9,450.00

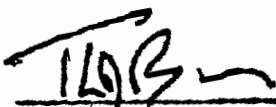
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Thomas J. Brewer
Richard D. Brady, Esq.
William B. Donley

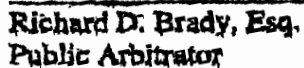
Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

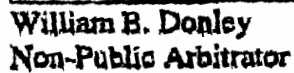


Thomas J. Brewer
Chair, Public Arbitrator

September 26, 2004
Signature Date


Richard D. Brady, Esq.
Public Arbitrator

Signature Date


William B. Donley
Non-Public Arbitrator

Signature Date

9/29/04
Date of Service

ARBITRATION PANEL

Thomas J. Brewer

Richard D. Brady, Esq.

William B. Donley

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Public Arbitrator, Presiding Chair

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Thomas J. Brewer
Chair, Public Arbitrator



Richard D. Brady, Esq.
Public Arbitrator

William B. Donley
Non-Public Arbitrator

Signature Date

September 27, 2004

Signature Date

Signature Date

9/29/04

Date of Service

ARBITRATION PANEL

Thomas J. Brewer
Richard D. Brady, Esq.
William B. Donley

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Thomas J. Brewer
Chair, Public Arbitrator

Signature Date

Richard D. Brady, Esq.
Public Arbitrator

Signature Date

William B. Donley
William B. Donley
Non-Public Arbitrator

26 SEP 2004
Signature Date

Date of Service