

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Marie T. Osborne on behalf of the Marie T Osborne Family Limited Partnership and the Marie T Osborne Qualified Personal Residence Trust, Claimant v. August DiVito and Mutual Service Corporation, Respondents

Case Number: 03-00661

Hearing Site: Las Vegas, Nevada

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

REPRESENTATION OF PARTIES

For Claimant:

David Liebrader, Esq.
The Law Offices of David Liebrader, APC
Las Vegas, Nevada

For Respondents:

Joseph S. Simms, Esq.
Ulmer & Berne LLP
Cleveland, Ohio

CASE INFORMATION

Statement of Claim filed: March 20, 2003

Claimant's Uniform Submission Agreement signed but not dated

Joint Statement of Answer filed by Respondents: June 11, 2003

Respondent August DiVito's Uniform Submission Agreement signed: April 17, 2003

Respondent Mutual Service Corporation's Uniform Submission Agreement signed: March 31, 2003

CASE SUMMARY

Claimant alleged breach of fiduciary duty, misrepresentations and omissions, negligence, violations of Nevada Revised Statutes Sections 90.570 and 90.660, and control person liability. Claimant's allegations concerned the purchase of B Share equity mutual funds.

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

RELIEF REQUESTED

Claimant requested \$270,000.00 in compensatory damages, punitive and exemplary damages, pre- and post judgment interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, expungement of all reference to the Claim from August DiVito's Central Registration Depository (CRD) records, and costs, including attorney's fees and forum fees.

OTHER ISSUES CONSIDERED AND DECIDED

The parties agreed that a Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

AWARD

After considering the pleadings and the Parties' request for this Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants and Respondents have entered into a confidential settlement agreement.
2. Claimant's claims against August DiVito are dismissed with prejudice.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent August DiVito's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent August DeVito must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. Claimant and her counsel shall cooperate with any and all efforts by Respondents to obtain an Order from a court of competent jurisdiction directing the expungement of all reference to the Claim from Mr. DiVito's CRD records.
5. The parties shall bear their respective costs.
6. 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	= \$ 300.00
--------------------------	-----------------

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 Mutual Service Corporation is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,750.00
Total Member Fees	= \$ 5,200.00

Adjournment Fees

Claimant and Respondents mediated through NASD Dispute Resolution's mediation program. Accordingly, a postponement fee in the amount of \$1,200.00 for postponement of hearing dates that were scheduled for June 22-23, 2004 was waived.

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 the Panel @ \$ 1,125.00/session	= \$ 1,125.00
Pre-hearing conference: September 26, 2003 1 session	
Total Forum Fees	= \$ 1,125.00

1. The Panel assessed \$ 562.50 of the forum fees to Claimant.
2. The Panel assessed \$ 562.50 of the forum fees jointly and severally to Respondents.

Fee Summary

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

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 862.50
<u>Less payments</u>	= \$ (862.50)
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent Mutual Service Corporation is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Less payments</u>	= \$ (5,200.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Mutual Service Corporation and August DiVito are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 562.50
<u>Less unused Mediation Deposit by Mutual Service Corp.</u>	= \$ (168.75)
Balance Due NASD Dispute Resolution	= \$ 393.75

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.

NASD Dispute Resolution

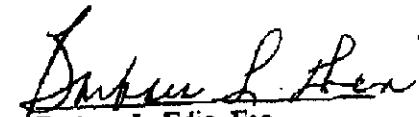
Arbitration No. 03-00661

Stipulated Award Page 5 of 5

ARBITRATION PANEL

Barbara L. Edin, Esq.
Jordan H. Bodenstein, Esq.
Gary Lee Abraham

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator


Barbara L. Edin, Esq.
Chair, Public Arbitrator

9/8/04
Signature Date

Jordan H. Bodenstein, Esq.
Public Arbitrator

Signature Date

Gary Lee Abraham
Non-Public Arbitrator

Signature Date

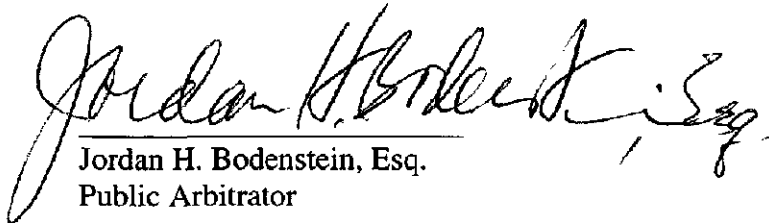
9/15/04
Date of Service

ARBITRATION PANEL


<i>Barbara L. Edin, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Jordan H. Bodenstein, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Gary Lee Abraham</i>	-	<i>Non-Public Arbitrator</i>

Barbara L. Edin, Esq.
Chair, Public Arbitrator

Signature Date



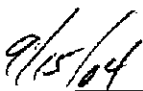
Jordan H. Bodenstein, Esq.
Public Arbitrator



Signature Date

Gary Lee Abraham
Non-Public Arbitrator

Signature Date



Date of Service

NASD Dispute Resolution
Arbitration No. 03-00661
Stipulated Award Page 5 of 5

ARBITRATION PANEL

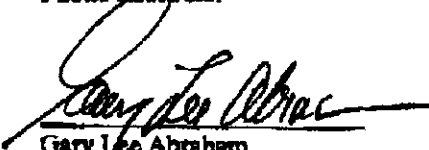
<i>Barbara L. Edin, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Jordan H. Bodenstein, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Gary Lee Abraham</i>	-	<i>Non-Public Arbitrator</i>

Barbara L. Edin, Esq.
Chair, Public Arbitrator

Signature Date

Jordan H. Bodenstein, Esq.
Public Arbitrator

Signature Date


Gary Lee Abraham
Non-Public Arbitrator

9/7/2004
Signature Date

9/15/04
Date of Service