
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Clifton W. Shepherd, Individually,
and as Owner of the Clifton W.
Shepherd IRA Plan

Case Number: 03-00762

Names of the Respondents

Hancock Investment Services, Inc.
Randall Bluth

Hearing Site: New Orleans, Louisiana

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

REPRESENTATION OF PARTIES

For Clifton W. Shepherd, Individually, and as Owner of the Clifton W. Shepherd IRA Plan, hereinafter referred to as "Claimant": James R. Swanson, Esq. and Joseph C. Peiffer, Esq., Corroero, Fishman, Haygood, Phelps, Walmsley & Casteix, L.L.P., New Orleans, Louisiana.

For Hancock Investment Services, Inc. ("HIS") and Randall Bluth ("Bluth"), hereinafter collectively referred to as "Respondents": John C. Anjier, Esq. and George Denegre, Jr., Esq., Liskow & Lewis, New Orleans, Louisiana.

CASE INFORMATION

Statement of Claim filed on or about: January 31, 2003.

Claimant signed the Uniform Submission Agreement: January 29, 2003.

Statement of Answer filed by Respondents on or about: May 5, 2003.

Respondents did not submit executed Uniform Submission Agreements.

Supplemental Motion to Compel Production of Documents, Motion to Strike Claimant's Exhibits and Motion to Strike Two of Claimant's Witnesses filed by Respondents on or about: May 5, 2004.

Memorandum in Opposition to Respondents' Motion to Compel Production of Documents, Motion to Strike Claimant's Exhibits and Motion to Strike Two of Claimant's Witnesses filed by Claimant on or about: May 12, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: excessive trading; breach of fiduciary duty; violation of Louisiana Blue Sky laws; unauthorized trading; breach of contract; breach of duty; and unjust enrichment. The causes of action relate to the purchase in Claimant's accounts of stocks and mutual funds including, but not limited to, the following: Applied Materials, Inc.; Applied Micro Circuits Corp.; Amgen, Inc.; BEA Systems, Inc.; BMC Software, Inc.; Brocade Communications Systems, Inc.; Broadcom Corp.; Broadvision, Inc.; Check

Point Software Tech, Ltd.; Cisco Systems, Inc.; EMC Corp.; Emulex Corp.; Corning, Inc.; JDS Uniphase Corp.; Juniper Networks, Inc.; KLA-Tencor Corp.; Nokia Corp.; PeopleSoft, Inc.; Siebel Systems, Inc.; Washington Mutual, Inc.; Munder Net; and Navellier Millennium All Cap Growth.

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

RELIEF REQUESTED

Claimant requested the following:

- (1) losses suffered in Claimant's individual account of approximately \$2,172,604.57 and in Claimants' IRA account of approximately \$347,894.82, together with the amount that the accounts would have been worth if they were prudently managed;
- (2) interest paid to Respondents as a result of the improper margin strategy utilized;
- (3) money paid to Respondents for the management of the accounts and/or as a result of trades placed in the accounts;
- (4) attorneys' fees, costs and other expenses;
- (5) pre- and post-judgment interest; and
- (6) all other sums Claimant is entitled to at law or equity.

Respondents requested that the Statement of Claim be dismissed in its entirety, and that judgment be entered awarding Respondents their costs in defending this action.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant asserted claims against two non-members of NASD whose submissions to the jurisdiction of NASD Dispute Resolution were voluntary. The non-members declined to voluntarily submit to the jurisdiction of NASD Dispute Resolution.

Respondents did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code"), and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

Respondents filed a Motion to Strike Claimant's Exhibits which asserted that Claimant violated the spirit of Rule 10321 of the Code, as well as the Chairperson's verbal orders regarding exhibit presentation, causing Respondents' trial preparation to be severely prejudiced. In his response, Claimant asserted that, in accordance with Rule 10321 of the Code, Claimant identified or exchanged all exhibits Claimant intended to use at the hearing.

Respondents filed a Motion to Strike Two of Claimant's Witnesses which asserted that Claimant's failure to disclose the identity of the witnesses during discovery was a violation of Claimant's discovery obligations under the Code. In his response, Claimant asserted that he complied with Rule 10321(c) of the Code, which provides that witness lists be exchanged 20 days prior to the arbitration, not during discovery.

On or about May 13, 2004, the Panel issued an Order which denied Respondents' Motion to Strike Claimant's Exhibits and denied Respondents' Motion to Strike Two of Claimant's Witnesses.

At the close of Claimant's case-in-chief, Respondents moved for a directed verdict. Claimant and Respondents presented oral argument on the motion. After deliberating in executive session, the Panel denied Respondents' motion.

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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondents are jointly and severally liable and shall pay compensatory damages to Claimant in the amount of \$501,949.25, plus interest at the rate of 5.75% per annum from March 1, 2002 until payment of the Award.

Respondents are jointly and severally liable and shall reimburse Claimant the sum of \$500.00, representing the non-refundable filing fee paid by Claimant to NASD Dispute Resolution.

Any and all claims for relief not specifically addressed herein are 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	= \$ 500.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly,

Respondent HIS is a member firm and a party.

Member Surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00
Total Member Fees	= \$8,550.00

Adjournment Fees

No adjournments were requested 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.

Injunctive relief fees were not assessed 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with the Panel @ \$1,200.00/session	= \$2,400.00
Pre-hearing conferences:	
September 26, 2003	1 session
May 13, 2004	1 session
Three (3) Pre-hearing sessions with a single arbitrator @ \$450.00/session	= \$1,350.00
Pre-hearing conferences:	
April 15, 2004	1 session
April 22, 2004	1 session
May 19, 2004	1 session
Eleven (11) Hearing sessions @ \$1,200.00/session	= \$13,200.00
Hearing Dates:	
May 24, 2004	2 sessions
May 25, 2004	2 sessions
May 26, 2004	2 sessions
May 27, 2004	2 sessions
May 28, 2004	3 sessions
Total Forum Fees	= \$16,950.00

The Panel has assessed the total forum fees of \$16,950.00 to Respondents, jointly and severally.

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.

There were no administrative costs incurred in this matter.

Fee Summary

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 500.00
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Total Fees	= \$ 500.00
Less Payments	= \$ 500.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent HIS is solely liable for:

<u>Member Fees</u>	= \$ 8,550.00
Total Fees	= \$ 8,550.00
Less Payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$16,950.00
Total Fees	= \$16,950.00
Less Payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$16,950.00

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

ARBITRATION PANEL

Clinton W. Shinn, Esq.	-	Public Arbitrator, Presiding Chairperson
Larry M. Roedel, Esq.	-	Public Arbitrator
Charles E. Melancon, Jr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

_____/s/_____
Clinton W. Shinn, Esq.
Public Arbitrator, Presiding Chairperson

6/8/04
Signature Date

_____/s/_____
Larry M. Roedel, Esq.
Public Arbitrator

6/8/04
Signature Date

_____/s/_____
Charles E. Melancon, Jr.
Non-Public Arbitrator

6/8/04
Signature Date

6/9/04
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
 Arbitration No. 03-00762
Award Page 5

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 Public Arbitrator, Presiding Chairperson

June 8, 2004
 Signature Date

Larry M. Roedel, Esq.
 Public Arbitrator

Signature Date

Charles E. Melancon, Jr.
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 Charles E. Melancon, Jr.
 Non-Public Arbitrator


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 Signature Date

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