

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Wayne P. Hoffman

Case Number: 03-00823

Names of the Respondents
Washington Square Securities, Inc.
Kenneth E. Smith, III

Hearing Site: Raleigh, NC

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

REPRESENTATION OF PARTIES

Claimant, Wayne P. Hoffman, hereinafter referred to as "Claimant", was represented by Glenn A. Barfield, Esq., Barnes, Braswell & Haithcock, P.A., Goldsboro, North Carolina.

Respondents, Washington Square Securities, Inc. ("Washington Square") and Kenneth E. Smith, III ("Smith"), hereinafter collectively referred to as "Respondents", were represented by Jenna F. Butler, Esq., Ward & Smith, P.A., Wilmington, North Carolina.

CASE INFORMATION

Statement of Claim filed on February 4, 2003.

Motion to Amend Statement of Claim filed by Claimant on February 20, 2004.

Claimant signed the Uniform Submission Agreement on February 3, 2003.

Statement of Answer filed by Respondents on May 15, 2003.

Motion to Dismiss Motion to Amend Statement of Claim filed by Respondents on March 23, 2004.

A representative of Respondent Washington Square signed the Uniform Submission Agreement on May 8, 2003.

Respondent Smith signed the Uniform Submission Agreement on May 8, 2003.

CASE SUMMARY

Claimant asserted the following causes of action, among others: breach of fiduciary duty, negligence, misrepresentation, suitability, failure to supervise, and churning. The causes of action relate to the purchase and sale of Reliastar Flexdesign variable universal life insurance policy.

Unless specifically admitted in their Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimant's claims are barred by the doctrines of waiver, estoppel, and ratification; assumption of the risk; contributory negligence; failure to mitigate damages; failure to state a claim upon which relief

may be granted; and Claimant's claims are barred by the statute of limitations.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages
Punitive Damages

\$ 273,000.00
amount unspecified

Respondents requested that the Statement of Claim be dismissed in its entirety and that all costs of the arbitration be assessed to Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

On April 1, 2004, the Arbitration Panel (the "Panel") denied Claimant's Motion to Amend Statement of Claim.

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:

1. Claimant's claims against Washington Square are denied in their entirety;
2. Respondent Smith is liable to and shall pay to Claimant the sum of \$27,000.00 in compensatory damages, plus simple interest at a rate of 5% per annum accruing from February 28, 2000 until the award is paid in full;
3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,
4. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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 = \$ 300.00

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 Washington Square is a party.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

May 18-19, 2004, adjournment by Respondents	= \$ 1,125.00
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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:

One (1) Pre-hearing session with a single arbitrator @ \$ 450.00	= \$ 450.00
Pre-hearing conference: January 13, 2004 1 session	

Two (2) Pre-hearing sessions with Panel @ \$ 1,125.00	= \$ 2,250.00
Pre-hearing conferences: November 24, 2003 1 session	
June 14, 2004 1 session	

Six (6) Hearing sessions @ \$ 1,125.00	= \$ 6,750.00
Hearing Dates: June 21, 2004 2 sessions	
June 22, 2004 2 sessions	
September 13, 2004 2 sessions	

Total Forum Fees	= \$ 9,450.00
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The Panel has assessed \$ 9,450.00 of the forum fees to Respondent Smith.

Fee Summary

1. Claimant is assessed and shall pay:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 1,575.00
Refund owed Claimant	= \$ 1,275.00

2. Respondent Washington Square is assessed and shall pay:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 8,275.00

Balance	= \$ 3,075.00
<u>Less Refund to Be Returned to CRD Account</u>	= \$ 2,250.00
Refund owed Respondent Washington Square	= \$ 825.00

3. Respondent Smith is assessed and shall pay:

<u>Forum Fees</u>	= \$ 9,450.00
Total Fees	= \$ 9,450.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 9,450.00

4. Respondents are jointly and severally assessed and shall pay:

<u>Adjournment Fee</u>	= \$ 1,125.00
Total Fees	= \$ 1,125.00
<u>Less Payments</u>	= \$ 1,125.00
Balance Due NASD Dispute Resolution	= \$ 0.00


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

ARBITRATION PANEL

W. Allen Schmitt	-	Public Arbitrator, Presiding Chairperson
Harold G. Koger	-	Public Arbitrator, Panelist
Daniel W. Desmond, VP	-	Non-Public Arbitrator, Panelist

NASD Dispute Resolution
Arbitration No. 03-00823
Award Page 5

Concurring Arbitrators' Signatures


W. Allen Scmitt
Public Arbitrator, Presiding Chairperson

9/15/04
Signature Date

Harold G. Koger
Public Arbitrator, Panelist

Signature Date

Daniel W. Desmond, VP
Non-Public Arbitrator, Panelist

Signature Date

September 17, 2004
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

W. Allen Scmitt
Public Arbitrator, Presiding Chairperson

Signature Date

Harold G. Koger
Harold G. Koger
Public Arbitrator, Panelist

9-15-4
Signature Date

Daniel W. Desmond, VP
Non-Public Arbitrator, Panelist

Signature Date

September 17, 2004
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Concurring Arbitrators' Signatures

W. Allen Scmitt
Public Arbitrator, Presiding Chairperson

Signature Date

Harold G. Koger
Public Arbitrator, Panelist

Signature Date


Daniel W. Desmond, VP
Non-Public Arbitrator, Panelist

9/16/04
Signature Date

September 17, 2004
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