

**AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Names of Claimants

Frank J. Elie, Nina Elie, and
the Elie Living Trust u/a/d 2/18/93

and

Case Number: 03-00915
Hearing Site: Southfield, Michigan

Name of Respondent

David F. Lau

NATURE OF DISPUTE

Customers v. Associated Person

REPRESENTATION OF PARTIES

Frank J. Elie, Nina Elie, and the Elie Living Trust u/a/d 2/18/93 ("Claimants") were represented by Thomas J. Delpup, Esq., Rochester, Michigan.

David F. Lau ("Respondent") or ("Lau") was represented by Richard A. Kudla, Esq., Richard A. Kudla & Associates, Southfield, Michigan.

CASE INFORMATION

The Statement of Claim was filed on or about February 7, 2003. The First Amended Statement of Claim was filed on or about March 31, 2003. The Submission Agreement of Claimants Frank J. Elie and Nina Elie was signed on or about January 28, 2003. The Submission Agreement of the Elie Living Trust, u/a/d 2/18/93 was signed by Frank J. Elie and Nina Elie, Trustees, on or about January 28, 2003.

The Statement of Answer was filed by Respondent Lau on or about May 5, 2003. The Submission Agreement of Respondent Lau was signed on or about April 29, 2003.

CASE SUMMARY

Claimants asserted causes of action including the following: unsuitability and breach of fiduciary duty. The causes of action related to Claimants' allegations that Respondent did not monitor or manage Claimants' portfolio in a way that would have permitted them to reach their goal of retirement in two years. Claimants asserted that Respondent selected

"high risk growth-style investments," including Putnam International New Opportunities, Putnam International Growth and Putnam Voyager funds, when Claimants should have been invested conservatively with attention to wealth preservation.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants ratified the investments in that they failed to object or complain in a timely manner; Claimants' losses, if any, were market losses that were not caused by Respondent; Claimants' claims are barred by the defenses of laches and estoppel, and Claimants' claims are barred in whole or in part, by the doctrine of comparative negligence.

RELIEF REQUESTED

In their Amended Statement of Claim, Claimants requested an award in the amount of \$244,000.00, plus punitive damages of \$183,000.00, in addition to costs, attorney fees, and such other amounts the panel deemed just and appropriate.

Respondent requested that the claims asserted against him be dismissed in their entirety and that he be awarded his costs and attorneys' fees. At hearing, Respondent requested that all references to this matter be expunged from his CRD record.

OTHER ISSUES CONSIDERED & DECIDED

Claimant, the Elie Living Trust, u/a/d 2/18/93, was succeeded by the Frank J. Elie Family Trust u/a/d 12/1/99, and the Nina Elie Family Trust, u/a/d 12/1/99, Frank J. Elie and Nina Elie, Trustees.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimants' claims, each and all, are denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;

- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent David F. Lau's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent David F. Lau must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

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 that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is MML Investors Services, Inc.

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

Adjournment Fees

Adjournments requested during these proceedings:

April 27-29, 2004, adjournment requested by David F. Lau = \$ 1,125.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 Panel x \$1,125.00		= \$1,125.00
Pre-hearing conference: September 22, 2003	1 session	
Four (4) Hearing sessions x \$1,125.00		= \$4,500.00
Hearing Dates: August 3, 2004	2 sessions	
August 4, 2004	2 sessions	
Total Forum Fees		= \$5,625.00

The Arbitration Panel has assessed \$1,406.25 of the forum fees to Frank J. Elie and Nina Elie, jointly and severally.

The Arbitration Panel has assessed \$4,218.75 of the forum fees to David F. Lau.

Fee Summary

Claimants, Frank J. Elie and Nina Elie, are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,406.25
Total Fees	= \$ 1,706.25
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 281.25

Respondent, David F. Lau, is liable for:

Adjournment Fee	= \$ 1,125.00
Forum Fees	= \$ 4,218.75
Total Fees	= \$ 5,343.75
Less payments	= \$ 1,125.00
Balance Due NASD Dispute Resolution	= \$ 4,218.75

MML Investors Services, Inc. is liable for:

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

George H. Zinn, Jr., Esq. - Public Arbitrator, Presiding Chair
Patrick R. Sughrue, Esq. - Public Arbitrator
Garrick A. Rollert, J.D. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Gerbe H. Zinn, Jr., Esq.

George H. Zinn, Jr., Esq.
Public Arbitrator, Presiding Chair

08/04/04

Signature Date

/s/ Patrick R. Sughrue, Esq.

Patrick R. Sughrue, Esq.
Public Arbitrator

08/04/04

Signature Date

/s/ Garrick A. Rollert, J.D.

Garrick A. Rollert, J.D.
Non-Public Arbitrator

08/04/04

Signature Date

08/04/04


Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 03-00815
Award Page 5 of 8

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George H. Zinn, Jr., Esq. - Public Arbitrator, Presiding Chair
Patrick R. Sughrue, Esq. - Public Arbitrator
Garrick A. Rollert, J.D. - Non-Public Arbitrator

Concurring Arbitrators:


George H. Zinn, Jr., Esq.
Public Arbitrator, Presiding Chair


Patrick R. Sughrue, Esq.
Public Arbitrator


Garrick A. Rollert, J.D.
Non-Public Arbitrator

4 Aug 04
Signature Date

8-4-04
Signature Date

8/4/04
Signature Date

Date of Service (For NASD office use only)