

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimants

Tammy Stringfellow, Robert Hager, Pierre Petrau,
Arnold Morris, Carol Morris, Danny Morris,
James Madden, Barbara Madden, Charles West,
Rose Beranek, and Walter Hager

v.

03-01236
Denver, Colorado

Respondents

Locust Street Securities, Inc., Michael Loween,
Kathy Loween and Loween & Associates
a/k/a Michael A. Loween & Associates

Cross-Claimant

Locust Street Securities, Inc.

v.

Cross-Respondents

Michael Loween, Kathy Loween,
and Loween & Associates
a/k/a Michael A. Loween & Associates

Nature of Dispute: Customers v. Member, Associated Person and Non-Members and Member v. Associated Person and Non-Members.

REPRESENTATION OF PARTIES

Tammy Stringfellow, Robert Hager, Pierre Petrau, Arnold Morris, Carol Morris, Danny Morris, James Madden, Barbara Madden, Charles West, Rose Beranek, and Walter Hager, hereinafter referred to as ("**Claimants**") were represented by Linda M. Deola, Esq., of Reynolds, Motl and Sherwood, PLLP, Helena, Montana.

Locust Street Securities, Inc. ("**Locust Street**") was represented by Cleo A. Rauchway Jones, Esq., of Robergerber Johnson & Lyons, LLP, Denver, Colorado.

Michael Loween ("**Michael Loween**"), Kathy Loween ("**Kathy Loween**") Loween & Associates a/k/a Michael A. Loween & Associates ("**Loween & Associates**") did not appear.

CASE INFORMATION

The Statement of Claim was filed on or about February 20, 2003. The Submission Agreement of Claimant, Tammy Stringfellow, was signed on or about January 29, 2003. The Submission Agreement of Claimant, Robert Hager, was signed on or about January 11, 2003. The Submission Agreement of Claimant, Pierre Petrau, was signed on or about January 11, 2003. The Submission Agreement of Claimant, Arnold Morris, was signed on or about January 21, 2003. The Submission Agreement of Claimant, Carol Morris, was signed on or about January 21, 2003. The Submission Agreement of Claimant, Danny Morris, was signed on or about January 14, 2003. The Submission Agreement of Claimant, James Madden, was signed on or about January 24, 2003. The Submission Agreement of Claimant, Barbara Madden, was signed on or about January 24, 2003. The Submission Agreement of Claimant, Charles West, was signed on or about February 10, 2003. The Submission Agreement of Claimant, Rose Beranek, was signed on or about January 13, 2003. The Submission Agreement of Claimant, Walter Hager, was signed on or about January 14, 2003.

A Statement of Answer and Cross-Claim was filed by Respondent, Locust Street Securities, Inc., on or about May 14, 2003.

No Statements of Answer or Submission Agreements were filed on behalf of Respondents Michael Loween, Kathy Loween, and Loween & Associates a/k/a Michael A. Loween & Associates.

Respondent, Locust Street Securities Inc., submitted a Partial Motion to Dismiss on or about October 30, 2003.

Claimants filed a Response to Respondent Locust Street Securities Inc.'s Partial Motion to Dismiss on or about November 6, 2003.

CASE SUMMARY

Claimants asserted causes of action including the following: respondeat superior, negligence, violation of the Montana Securities Act, breach of fiduciary duty, misrepresentations, and fraudulent concealment. The causes of action related to Claimants' allegation that Respondents sold them unregistered securities, including ETS Payphones, FON Digital Network, Inc., MP3 Entertainment.com, PhyMed and Century III. Claimants alleged that Respondents never disclosed that the investments at issue were unregistered securities and that Respondents did not have the authority to sell these investments to Claimants. Claimants also alleged that the securities sold were not registered with the State of Montana nor did any of the issuers file for an exemption under the Montana Securities Act. Claimants further alleged that the sale of the securities at issue was done during the time that Michael Loween was an associated person with Locust Street and Locust Street had supervisory responsibility over Loween.

Locust Street denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimants failed to state a claim upon which relief can be granted; Claimants' damages, if any, were caused by circumstances or persons over which Locust Street had no control; the non-customer claimants were not customers of Locust Street; Respondent Michael Loween lacked actual or apparent authority to act for Locust Street in the subject transactions; and Claimants' claims against Locust Street are barred by the applicable statute of limitations.

Locust Street asserted a crossclaim for indemnification. Locust Street asserted that to the extent that Claimants prevail on their claims against it, Claimants' damages, if any, were caused by the representations, acts, or omissions of Michael Loween, Kathy Loween, and Loween & Associates a/k/a Michael A. Loween & Associates, and as such Locust Street is entitled to indemnification from them for any amounts paid to Claimants in this case.

RELIEF REQUESTED

Claimants requested an award in the amount of \$750,000 in compensatory damages, plus, lost opportunity damages, punitive damages, interest, attorneys' fees, costs, and any other relief that the panel deemed just and equitable.

Respondent Locust Street requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees. Locust Street requested an award of indemnification from Michael Loween, Kathy Loween, and Loween & Associates a/k/a Michael A. Loween & Associates in its counterclaim.

OTHER ISSUES CONSIDERED & DECIDED

Respondent, Michael Loween, did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to NASD Code of Arbitration Procedures ("the Code") and is bound by the determination of the Panel on all issues submitted.

The Arbitration Panel issued an Order on or about January 12, 2004, denying Respondent Locust Street Securities, Inc.'s Partial Motion to Dismiss.

Claimants settled all claims against Respondent Locust Street Securities, Inc. on or about April 14, 2004.

Claimants submitted a Motion for Entry of Award and Proposed Award on or about April 26, 2004.

By letter dated, May 3, 2004, Claimants opted to proceed against Respondents, Michael Loween, Kathy Loween, and Loween & Associates a/k/a Michael A. Loween & Associates, pursuant to Rule 10314(e) of the Code.

By letter dated, May 5, 2004, Cross-Claimants opted to proceed against Respondents, Michael Loween, Kathy Loween, and Loween & Associates a/k/a Michael A. Loween & Associates, pursuant to Rule 10314(e) of the Code.

Respondent Locust Street Securities withdrew its claims against Respondents Kathy Loween and Loween & Associates a/k/a Michael A. Loween & Associates without prejudice on or about May 5, 2004.

Claimants withdrew their claims against Respondents Kathy Loween and Loween & Associates a/k/a Michael A. Loween & Associates without prejudice on or about May 5, 2004.

Claimants filed a Supplement to the Motion for Default on or about August 16, 2004.

The arbitrator requested on pre-hearing to address the Motion for Default on or about September 8, 2004.

On or about September 21, 2004, Respondent, Locust Street Securities, Inc., withdrew its cross-claim against Respondent, Michael Loween.

The arbitrator determined that Respondent Michael Loween was properly served notice of the Statement of Claim and notification of the Motions for Default by certified mail and/or overnight mail, and that Respondent, Michael Loween, is required to submit to arbitration pursuant to the Code and is bound by the determination of the arbitrator on all issues submitted.

The Claimants 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 Claimants have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony at the pre-hearing conferences, and the Motion for Default Award presented to the arbitrator, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Michael Loween, is liable for and shall pay to Claimants, Tammy Stringfellow, Robert Hager, Pierre Petrau, Arnold Morris, Carol Morris, Danny Morris, James Madden, Barbara Madden, Charles West, Rose Beranek, and Walter Hager, the sum of Seven Hundred Forty Eight Thousand Six Hundred Eighty Dollars and No Cents (\$748,680.00) in compensatory damages;

2. Respondent, Michael Loween, is liable for and shall pay to Claimants, Tammy Stringfellow, Robert Hager, Pierre Petrau, Arnold Morris, Carol Morris, Danny Morris, James Madden, Barbara Madden, Charles West, Rose Beranek, and Walter Hager, pre-award interest of Three Hundred Sixty Eight Thousand Sixty Two Dollars and No Cents (\$368,062.00) pursuant to the Montana Securities Act Sec. 30-10-307;
3. Respondent, Michael Loween, is liable for and shall pay to Claimants, Tammy Stringfellow, Robert Hager, Pierre Petrau, Arnold Morris, Carol Morris, Danny Morris, James Madden, Barbara Madden, Charles West, Rose Beranek, and Walter Hager, post-award interest on the above-stated sum at the rate of 10% per annum from and including September 23, 2004, through and including the date this award is paid in full pursuant to the Montana Securities Act Sec. 30-10-307;
4. Respondent, Michael Loween, is liable for and shall pay to Claimants, Tammy Stringfellow, Robert Hager, Pierre Petrau, Arnold Morris, Carol Morris, Danny Morris, James Madden, Barbara Madden, Charles West, Rose Beranek, and Walter Hager Dale E. Frey, Two Hundred Forty Six Thousand Six Hundred Ninety Six Dollars and No Cents (\$246,696.00) in attorneys' fees pursuant to Montana Securities Act Sec. 30-10-307;
5. Respondent, Michael Loween, is liable for and shall pay to Claimants, Tammy Stringfellow, Robert Hager, Pierre Petrau, Arnold Morris, Carol Morris, Danny Morris, James Madden, Barbara Madden, Charles West, Rose Beranek, and Walter Hager Dale E. Frey, Seventeen Thousand One Hundred and One Dollars and No Cents (\$17,101.00) in arbitration costs pursuant to Montana Securities Act Sec. 30-10-307; and
6. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages, are denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 375
Cross-Claim filing fee	= \$ 1,250

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 Locust Street Securities, Inc.

Member surcharge	= \$ 2,250
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 4,000

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing sessions with Chairperson x \$ 450	= \$ 450
Pre-hearing conference: 09/23/2004 1 session	
One (1) Pre-hearing sessions with Panel x \$ 1,200	= \$ 1,200
Pre-hearing conference: 08/19/2003 1 session	
Total Forum Fees	= \$ 1,650

The arbitrator has assessed \$ 1,650 of the forum fees solely to Michael Loween.

Fee Summary

Claimants, Tammy Stringfellow, Robert Hager, Pierre Petrau, Arnold Morris, Carol Morris, Danny Morris, James Madden, Barbara Madden, Charles West, Rose Beranek and Walter Hager, are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 375
Total Fees	= \$ 375
<u>Less payments</u>	= \$ 1,700
Balance Refunded By NASD Dispute Resolution	= \$ 1,325

Respondent, Locust Street Securities, Inc., is liable for:

Cross-Claim Filing Fee	= \$ 1,250
<u>Member Fees</u>	<u>= \$ 7,000</u>
Total Fees	= \$ 8,250
<u>Less payments</u>	<u>= \$ 8,500</u>
Balance Refunded By NASD Dispute Resolution	= \$ 250

Respondent, Michael Loween, is liable for:

<u>Forum Fees</u>	<u>= \$ 1,650</u>
Total Fees	= \$ 1,650
<u>Less payments</u>	<u>= \$ 0</u>
Balance Due NASD Dispute Resolution	= \$ 1,650

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

ARBITRATOR

Steven Meyrich, Esq. - Public Arbitrator, Presiding Chair

Arbitrator's Signature:

Steven Meyrich, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Date of Service (NASD use only)

Respondent, Locust Street Securities, Inc., is liable for:

Cross-Claim Filing Fee	= \$ 1,250
Member Fees	= \$ 7,000
Total Fees	= \$ 8,250
Less payments	= \$ 8,500
Balance Refunded By NASD Dispute Resolution	= \$ 250

Respondent, Michael Loween, is liable for:


Forum Fees	= \$ 1,650
Total Fees	= \$ 1,650
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 1,650

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

ARBITRATOR

Steven Meyrich, Esq. - Public Arbitrator, Presiding Chair

Arbitrator's Signature:



Steven Meyrich, Esq.
Public Arbitrator, Presiding Chair

10/8/04
Signature Date

10/8/04
Date of Service (NASD use only)