
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Giovanni Oliva
Wilma Angeleri

Case Number: 03-01519

Names of the Respondents

William O. Day, III
Jackie McDaniels
Karl W. Hamilton

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Associated Person.

REPRESENTATION OF PARTIES

For Giovanni Oliva and Wilma Angeleri, hereinafter collectively referred to as "Claimants": Frederico Pollicina, Personal Representative, St. Petersburg, Florida.

For William O. Day, III ("Day"), Jackie McDaniels ("McDaniels"), and Karl W. Hamilton ("Hamilton"), hereinafter collectively referred to as "Respondents": Richard H. Bergman, Esq., Bergman & Jacobs, P.A., Fort Lauderdale, Florida.

CASE INFORMATION

Statement of Claim filed on or about: March 3, 2003.

Claimants signed the Uniform Submission Agreements: May 13, 2003.

Statement of Answer filed by Respondents on or about: May 30, 2003.

Respondents signed the Uniform Submission Agreements: May 23, 2003.

Motion to Amend and Amended Claim filed by Claimants on or about: January 23, 2004.

Answer to Amended Claim and Motion to Strike or Dismiss filed by Respondents on or about: January 26, 2004.

Motion to Dismiss, Motion for Permission to Appear by Telephone, and Motion for Order of Appearance filed by Respondents on or about: January 28, 2004.

Response to Motion to Dismiss, Motion to Appear by Telephone, and Motion for Order of Appearance filed by Claimants on or about: January 29, 2004.

Motion to Dismiss Respondent McDaniels filed by Claimants on or about: February 5, 2004.

Response to Motion to Dismiss Respondent McDaniels filed by Respondents on or about: February 6, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: negligence; lack of supervision; and poor account management. The causes of action relate to, among other things, tax withholdings in connection with the sale from Claimants' account of the Pimco Real Return Class D mutual fund.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$16,610.00, and punitive damages in the amount of \$1,500.00.

Respondents requested that the claim be denied, and that all costs and fees incurred in the defense of the claim be assessed against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

On January 29, 2004, the undersigned arbitrator (the "Arbitrator") issued an Order which stated, among other things, that Claimants' "Amended Complaint" was accepted as filed.

Respondents filed a Motion to Strike or Dismiss which asserted that the entity responsible for withholding taxes and transmitting funds to the Internal Revenue Service (the "IRS") was unnamed party, SunTrust Securities, Inc. Respondents filed a second Motion to Dismiss which asserted, among other things, that as a matter of law, Respondents cannot be held responsible for any funds being transmitted to the IRS as payment of non-resident taxes on Claimants' transactions. Claimants filed a response which asserted, among other things, that the individuals named as Respondents in this matter were the parties responsible for Claimants' account, and that Respondents failed to provide Claimants with, or request that Claimants sign, a W-8BEN form. On or about February 5, 2004, the Arbitrator issued an Order which stated that Respondents' motions were held in abeyance pending receipt of further submissions by Respondents. Additionally, the Arbitrator's Order granted Respondents' Motion to Appear by Telephone, and *sua sponte*, to all parties if desired.

Claimant filed an unopposed motion to dismiss Respondent McDaniels, which asserted that Respondent McDaniels was only following the instructions of her superiors and should not be held responsible.

On or about February 7, 2004, the Arbitrator issued an Order which (1) dismissed with prejudice the claims against Respondent McDaniels and ordered, *sua sponte*, the expungement of this arbitration claim from Respondent McDaniels' NASD Central Registration Depository ("CRD") records; (2) denied Respondents' motions to dismiss Respondent Day and Respondent Hamilton from this arbitration; (3) stated that Claimants waived their right to change or amend the Statement of Claim to add SunTrust or any like-named entity such as the non-bank SunTrust Securities, Inc. as a Respondent in

this matter; and (4) ordered the parties to present legal or equitable authority to support any issues that arise regarding liability or damages, with the issue of liability to be presented first and damages second.

During the evidentiary hearing, Respondent Hamilton and Respondent Day moved for involuntary dismissal of the claim, which was granted by the Arbitrator.

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 Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Claimants' claims are dismissed in their entirety, with prejudice.

The Arbitrator recommends the expungement of all references to the above captioned arbitration from Respondents' registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$125.00
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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, SunTrust Securities, Inc. is a member firm.

Member fees were not assessed in this matter.

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 Arbitrator 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:

Three (3) Pre-hearing sessions @ \$450.00/session			= \$1,350.00
Pre-hearing conferences:	August 18, 2003	1 session	
	January 29, 2004	1 session	
	February 5, 2004	1 session	
One (1) Hearing session @ \$450.00/session			= \$ 450.00
Hearing Date:	February 17, 2004	1 session	
<hr/> Total Forum Fees			= \$1,800.00

The Arbitrator has assessed the total forum fees of \$1,800.00 to Claimants, 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

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 125.00
<u>Forum Fees</u>	= \$ 1,800.00
Total Fees	= \$ 1,925.00
<u>Less Payments</u>	= \$ 325.00
Balance Due NASD Dispute Resolution	= \$ 1,600.00

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

ARBITRATOR

Todd M. Saunders, Esq.

Public Arbitrator

Arbitrator's Signature



Todd M. Saunders, Esq.

Public Arbitrator



Signature Date

Date of Service (For NASD Dispute Resolution office use only)

ARBITRATOR

Todd M. Saunders, Esq.

Public Arbitrator

Arbitrator's Signature

_____/s/_____
Todd M. Saunders, Esq.
Public Arbitrator

March 1, 2004
Signature Date

March 1, 2004
Date of Service (For NASD Dispute Resolution office use only)