

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Names of Claimants

Joel R. and Paula Brown

v.

Case Number: 03-01611
Hearing Site: Houston, Texas

Names of Respondents

IMS Securities, Inc. and
Stephen L. Friedman

and

Names of Third Party Claimants

IMS Securities, Inc. and
Stephen L. Friedman

v.

Name of Third Party Respondent

Lester Dearl Butler, Jr.

NATURE OF DISPUTE

Customers v. Member Firm and Associated Person;
Member Firm and Associated v. Associated Person

REPRESENTATION OF PARTIES

Joel R. and Paula Brown ("**Claimants**") were represented by A.G. Crouch, Esq., Crouch Law Office, Alvin, Texas.

IMS Securities, Inc. ("**IMS**") and Stephen L. Friedman ("**Friedman**") were represented by Timothy J. Casper, Esq., Handlin & Associates, Houston, Texas.

Lester Dearl Butler, Jr. ("**Butler**") was represented by Charles W. Settle, Jr., Esq., Henslee, Fowler, Hepworth & Schwartz, LLP, Fort Worth, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about March 6, 2003. The Submission Agreement of Claimants, Joel R. and Paula Brown, was signed on or about February 26, 2003.

A Statement of Answer was filed jointly by Respondents, IMS Securities, Inc. and Stephen L. Friedman, on or about May 7, 2003. The Submission Agreement of Respondent, IMS Securities, Inc., was signed on or about May 1, 2003. Submission Agreement of Respondent, Stephen L. Friedman, was signed on or about April 30, 2005. A Third Party Claim was filed by IMS and Friedman on or about July 14, 2004.

A Statement of Answer was filed by Third Party Respondent, Lester Dearl Butler, Jr., on or about September 21, 2004. The Submission Agreement of Third Party Respondent, Lester Dearl Butler, Jr., was signed on or about March 9, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty, omission of facts and misrepresentations. The causes of action related to the recommendation and purchase of a life insurance policy. Claimants alleged that Friedman recommended that by changing their existing life insurance policies to new ones, provided by Friedman, they would have better coverage at no existing cost. Claimants alleged that they relied on Friedman's recommendation and canceled their old life insurance policies, which were provided through a separate agent, Lester Brown. Finally, Claimants alleged that as a direct result of Friedman's recommendations, Claimants were forced to pay income tax penalties of \$39,236.00 for 1999.

Unless specifically admitted in their Answer, Respondent, IMS and Friedman, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: IMS made no representations regarding the matters in the Statement of Claims and therefore is not a proper party to this proceeding; Claimants' claims cannot be properly pursued without the addition of a necessary third party; alleged misrepresentations, if any, were made by a third party over whom IMS and Friedman had no control; Claimants failed to mitigate their damages; and Claimants failed to act with ordinary prudence in engaging in these transactions.

Third Party Claimants, IMS and Friedman, asserted the following cause of action: misrepresentation. Third Party Claimants alleged that Butler participated in the review, analysis, exchange and sale of the insurance policies at issue in this matter to the same extent, or a greater extent, than Friedman. Third party Claimants alleged that two policies were ultimately sold to Claimants: one (1) by Butler and one (1) by Friedman. Third Party Claimants further alleged that Butler is a necessary party to this matter with respect to liability, if any, to Claimants for the transactions at issue.

Unless specifically admitted in his Answer, Third Party Respondent Butler denied the allegations made in the Third Party Statement of Claim and asserted affirmative defenses including the following: Third Party Claimants' Statement of Claim should be dismissed pursuant to *inter alia*, Section 16 and 26(a) of the NASD Code; Friedman's claims failed to properly state a claim for relief and are other deficient and should be dismissed with prejudice; and Claimants cannot recover from Friedman or Butler under the Texas Deceptive Trade Practices Act ("DTPA") because the professional services provided were exempt from the DTPA.

RELIEF REQUESTED

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$39,236.00
Punitive/Exemplary Damages	\$20,000.00
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents, IMS and Friedman, requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, these Third Party Claimants requested an award in the amount of unspecified damages.

Third Party Respondent Butler requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

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 hereby denied and dismissed with

prejudice;

- 2.) The Third Party Claim of IMS and Friedman is hereby denied and dismissed with prejudice;
- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorneys' 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	= \$ 225.00
Third Party Claim filing fee	= \$ 500.00

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is IMS Securities, Inc.

Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,700.00

Adjournment Fees

Adjournments granted during these proceedings:

July 26-27, 2004, adjournment requested by IMS	= \$ 1,000.00
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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 session with a single arbitrator x \$450.00	= \$ 450.00
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Pre-hearing conference: April 22, 2005 1 session

Three (3) Pre-hearing sessions with Panel x \$1,000.00 = \$ 3,000.00

Pre-hearing conferences: April 1, 2004 1 session
July 23, 2004 1 session
March 22, 2005 1 session

Four (4) Hearing sessions x \$1,000.00 = \$ 4,000.00

Hearing Dates: August 31, 2005 2 sessions
September 1, 2005 2 sessions

Total Forum Fees = \$ 7,450.00

The Arbitration Panel has assessed \$3,725.00 of the forum fees jointly and severally to IMS Securities, Inc. and Stephen L. Friedman.

The Arbitration Panel has assessed \$3,725.00 of the forum fees to Lester Dearl Butler, Jr.

Fee Summary

Claimants, Joel R. and Paula Brown, are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 225.00
<u>Total Fees</u>	= \$ 225.00
<u>Less payments</u>	= \$ 1,375.00
<u>Refund Due to Claimants</u>	= \$ 1,150.00

Respondent, IMS Securities, Inc., is liable for:

<u>Member Fees</u>	= \$ 3,550.00
<u>Adjournment Fee</u>	= \$ 1,000.00
<u>Total Fees</u>	= \$ 4,550.00
<u>Less payments</u>	= \$ 3,550.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 1,000.00

Respondents/Third Party Claimants, IMS Securities, Inc. and Stephen L. Friedman, are jointly and severally liable for:

<u>Third Party Claim Filing Fee</u>	= \$ 500.00
<u>Forum Fees</u>	= \$ 3,725.00
<u>Total Fees</u>	= \$ 4,225.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 4,225.00

Third Party Respondent, Lester Dearl Butler, Jr., is liable for:

<u>Forum Fees</u>	= \$ 3,725.00
<u>Total Fees</u>	= \$ 3,725.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 3,725.00

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

ARBITRATION PANEL

James Mervin Benson, Jr., Esq. - Public Arbitrator, Presiding Chair
Mark C. Watler, J.D. - Public Arbitrator
James E. Lane - Non-Public Arbitrator

Concurring Arbitrators:

/s/ James Mervin Benson, Jr., Esq.
James Mervin Benson, Jr., Esq.
Public Arbitrator, Presiding Chair

September 2, 2005
Signature Date

/s/ Mark C. Watler, J.D.
Mark C. Watler, J.D.
Public Arbitrator

September 2, 2005
Signature Date

/s/ James E. Lane
James E. Lane
Non-Public Arbitrator

September 5, 2005
Signature Date

September 6, 2005
Date of Service (For NASD office use only)

Third Party Respondent, Lester Dearl Butler, Jr., is liable for:

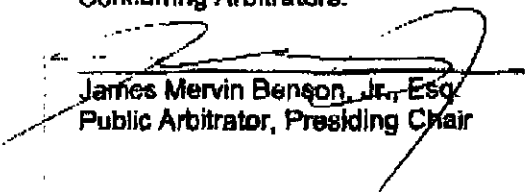
Forum Fees	= \$ 3,725.00
Total Fees	= \$ 3,725.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,725.00

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Mark C. Watler, J.D. - Public Arbitrator
James E. Lane - Non-Public Arbitrator

Concurring Arbitrators:


James Mervin Benson, Jr., Esq.
Public Arbitrator, Presiding Chair

9-2-05
Signature Date

Mark C. Watler, J.D.
Public Arbitrator

Signature Date

James E. Lane
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

Third Party Respondent, Lester Dearl Butler, Jr., is liable for:

<u>Forum Fees</u>	= \$ 3,725.00
<u>Total Fees</u>	= \$ 3,725.00
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Concurring Arbitrators:

James Mervin Benson, Jr., Esq.
Public Arbitrator, Presiding Chair

Mark C. Watler

Mark C. Watler, J.D.
Public Arbitrator

Signature Date

Sept. 2, 2005

Signature Date

James E. Lane
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

Third Party Respondent, Lester Dearl Butler, Jr., is liable for:

Forum Fees	= \$ 3,725.00
Total Fees	= \$ 3,725.00
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Mark C. Watler, J.D. - Public Arbitrator
James E. Lane - Non-Public Arbitrator

Concurring Arbitrators:

James Mervin Benson, Jr., Esq.
Public Arbitrator, Presiding Chair

Signature Date

Mark C. Watler, J.D.
Public Arbitrator

Signature Date

James E. Lane
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)