

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Names of Claimants

The Estate of William Gathen, a Protected Person,
by its Conservator, Jon B. Munger, Esq. and the
Elizabeth Gathen Trust, by Stephen Albery, Trustee

and

Case Number: 03-01646
Hearing Site: Southfield, Michigan

Names of Respondents

National Financial Services LLC
Securities America, Inc., Ronald Harczak,
Jeffrey Antonette, and Karen Multhaup

NATURE OF DISPUTE

Customers v. Members and Associated Persons

REPRESENTATION OF PARTIES

The Estate of William Gathen, a Protected Person, by its Conservator, Jon B. Munger, Esq. and the Elizabeth Gathen Trust, by Stephen Albery, Trustee ("Claimants") were represented by Richard R. Mannausa, Esq., Richard R. Mannausa, PLC, Troy, Michigan.

National Financial Services LLC ("NFS") was represented by Michael G. Shannon, Esq., Brown Raysman, New York New York.

Securities America, Inc. ("SAI") and Ronald Harczak ("Harczak") were represented by Harvey Heller, Esq., and Julie Chenot Mayer, Esq., Maddin Hauser Wartell Roth & Heller, Southfield, Michigan.

Jeffrey Antonette ("Antonette") was represented by Walter L. Baumgardner, Jr., Esq., Musilli, Brennan, Letvin & Parnell, PLLC from on or about February 5, 2004, until on or about June 1, 2004. An appearance was received from Kendall L. Sailor, Esq. on or about December 31, 2003. Respondent Antonette appeared in pro per at all other times.

Karen Multhaup ("Multhaup") appeared in pro per.

CASE INFORMATION

The Statement of Claim was filed on or about January 22, 2003, by William Gathen. The Amended Statement of Claim was filed on or about March 25, 2003, by the above-captioned Claimants. The Submission Agreement of William Gathen was filed on or about April 4, 2003.

Statement of Answer and Motion for Pre-Hearing Dismissal was filed by Respondent NFS on or about July 8, 2003. The Submission Agreement of Respondent National Financial Services LLC was signed on or about May 1, 2003, by Richelle Kennedy. Claimant, William Gathen, filed a Response to NFS' Motion for Pre-Hearing Dismissal on or about August 20, 2003. Claimants filed a second Response on or about December 15, 2003. Respondent NFS filed A Reply to Claimants' Response on or about December 17, 2003.

Statement of Answer and Affirmative Defenses was filed by Respondents Securities America, Inc. and Respondent Ronald Harczak on or about July 14, 2003. The Submission Agreement of Respondent Securities America, Inc. was signed on or about June 18, 2003, by Kevin J. Miller, Asst. General Counsel.

Respondents Securities America, Inc. and Respondent Ronald Harczak filed a Motion to Dismiss on or about November 18, 2003. Claimants' filed a Response to Motion on or about December 15, 2003.

Statement of Answer was filed by Respondent Jeffrey Antonette on or about January 30, 2004. Respondent Antonette filed a Motion to Dismiss on or about March 8, 2004. Claimants filed a Response to Respondent Antonette's Motion to Dismiss on or about March 19, 2004.

Counsel for Respondent Antonette filed a Notice of Intent to Withdraw on or about May 27, 2004.

Respondent Karen Multhaup did not file a Statement of Answer or Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: malpractice, negligence, respondent's superior (sic), breach of supervisory rules, fraud, common law fraud, violation of the 1934 Securities Exchange Act Rule 10b-5, violations of state securities laws, breach of fiduciary duty, conversion, and RICO violations. The causes of action relate to Claimants' allegations that Respondent Multhaup improperly wrote checks from Claimants' accounts at SAI and converted the funds for her use, that Respondents Harczak and Antonette were aware that Claimants never had any intention of conveying any of their assets to Respondent Multhaup, and that Respondent NFS improperly honored the checks with an unauthorized payor's signature.

Unless specifically admitted in its Answer, Respondent NFS denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Claim fails to set forth a basis in recovery from NFS; Claimants' claim against NFS is barred because, as the clearing broker for SAI, NFS owed no fiduciary supervisory or other such duties to Claimant; Claimants' alleged losses arise from the allegedly wrongful and allegedly criminal activity of others as to which NFS had no involvement or responsibility; and no private right of action lies for some of the claims alleged.

Unless specifically admitted in their Answer, Respondents Securities America, Inc. and Ronald Harczak denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants have failed to state a claim on which relief may be granted; Claimants' claims are barred by laches, waiver, estoppel and ratification; Respondents' obligations to the Claimants have been fully satisfied and discharged; and the alleged wrongdoing of which Claimants complain was perpetuated, if at all, by an individual or entities other than SAI or Harczak or their agents, and therefore, SAI is not liable in any respect.

Unless specifically admitted in his Answer, Respondent Antonette denied the allegations made in the Statement of Claim and asserted various defenses including the following: the claim is without merit.

RELIEF REQUESTED

Claimants requested an award in the amount of \$810,407.00 as out-of-pocket losses, plus \$1,620,814.00 in damages pursuant to MCLA 600.2912a and 18 USCA §1964, interest, costs, actual attorney fees, exemplary and punitive damages, and additional damages as allowed by the panel.

Respondent NFS requested that the claims asserted against it be dismissed or that the claims denied in their entirety and that it be awarded its costs and that forum fees be assessed against Claimants.

Respondents SAI and Harczak requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and attorneys' fees.

Respondent Antonette requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees, and enter a judgment of no cause of action.

OTHER ISSUES CONSIDERED & DECIDED

Respondents Ronald Harczak and Jeffrey Antonette, did not file with the NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to

arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, and appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

Respondent Karen Multhaup did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

Claimants, The Estate of William Gathen, a Protected Person, by its Conservator, Jon B. Munger, Esq. and the Elizabeth Gathen Trust, by Stephen Albery, Trustee, did not file with the NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having signed and filed the claim, and appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

The panel granted Claimant William Gathen's oral request to Amend the Statement of Claim to add the Conservator and Trustee, and identify National Financial Services as an "LLC".

In its Order of February 23, 2004, the Panel ruled that Counts I, IV, and X of Claimants' Amended Statement of Claim were dismissed as to all parties, that any claims against Respondent NFS were limited to account #AG1-00570, and the Motion to Dismiss as to the remaining claims was denied.

At the hearing, on June 1, 2004, the panel granted Walter Baumgardner, Esq.'s Motion to Withdraw as counsel for Respondent Jeffrey Antonette. Respondent Antonette appeared and acted in pro per for the remainder of the hearing.

At the hearing, all Respondents moved to dismiss at the close of Claimants' proofs. The panel denied each motion on the record.

Any motions not previously ruled upon are herein denied.

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.) Respondent Karen Multhaup is solely liable for and shall pay to Claimant, The Estate of William Gathen, a Protected Person, by its Conservator, Jon B. Munger, Esq., the sum of \$60,000.00 in compensatory damages;
- 2.) Respondents, Securities America, Inc., and Ronald Harczak, are jointly and severally liable for and shall pay to Claimant, The Estate of William Gathen, a Protected Person, by its Conservator, Jon B. Munger, Esq., the sum of \$40,000.00 in compensatory damages;
- 3.) The claims asserted by The Elizabeth Gathen Trust, by Stephen Albery, Trustee, each and all, are denied and dismissed with prejudice;
- 4.) Claimants' claims against Respondents National Financial Services LLC and Jeffrey Antonette, are denied and dismissed with prejudice;
- 5.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 6.) Any relief not specifically enumerated, including punitive and exemplary 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	= \$ 500.00
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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 firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firms are National Financial Services LLC and Securities America, Inc.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

Adjournment Fees

Adjournments requested during these proceedings:

April 1-2, 2004, adjournment by SAI and Harczak = \$ 1,200.00
(the panel assessed the fee ½ to Claimants, jointly and severally and ½ to SAI & Harczak, jointly and severally)

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:

Two (2) Pre-hearing sessions with a single arbitrator x \$450.00 = \$ 900.00
Pre-hearing conferences: January 29, 2004 1 session
May 17, 2004 1 session

Six (6) Pre-hearing sessions with Panel x \$1,200.00 = \$ 7,200.00
Pre-hearing conferences: October 29, 2003 1 session
December 18, 2003 1 session
February 20, 2004 1 session
February 23, 2004 1 session
February 27, 2004 1 session
March 22, 2004 1 session

Thirteen (13) Hearing sessions x \$1,200.00 = \$15,600.00
Hearing Dates: March 29, 2004 1 session
March 30, 2004 2 sessions
March 31, 2004 2 sessions
June 1, 2004 2 sessions
June 2, 2004 2 sessions
June 3, 2004 2 sessions
June 4, 2004 2 sessions

Total Forum Fees = \$23,700.00

The Arbitration Panel has assessed \$11,850.00 of the forum fees jointly and severally to The Estate of William Gathen, a Protected Person, by its Conservator, Jon B. Munger, Esq. and the Elizabeth Gathen Trust, by Stephen Albery, Trustee.

The Arbitration Panel has assessed \$11,850.00 of the forum fees jointly and severally to National Financial Services LLC, Securities America, Inc. Ronald Harczak Jeffrey Antonette and Karen Multhaup.

Fee Summary

Claimants, The Estate of William Gathen, a Protected Person, by its Conservator, Jon B. Munger, Esq. and the Elizabeth Gathen Trust, by Stephen Alberty, Trustee, are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Adjournment Fee	= \$ 600.00
Forum Fees	= \$ 11,850.00
Total Fees	= \$ 12,950.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 11,250.00

Respondent, National Financial Services LLC, is liable for:

Member Fees	= \$ 8,550.00
Total Fees	= \$ 8,550.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, National Financial Services LLC and Ronald Harczak, are jointly and severally liable for:

Adjournment Fee	= \$ 600.00
Total Fees	= \$ 600.00
Less payments	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

Member Fees	= \$ 8,550.00
Total Fees	= \$ 8,550.00
Less payments	= \$ 7,550.00
Balance Due NASD Dispute Resolution	= \$ 1,000.00

Respondents, National Financial Services LLC, Securities America, Inc., Ronald Harczak, Jeffrey Antonette, and Karen Multhaup are jointly and severally liable for:

Forum Fees	= \$ 11,850.00
Total Fees	= \$ 11,850.00
Less payments	= \$ 3,000.00
Balance Due NASD Dispute Resolution	= \$ 8,850.00

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

ARBITRATION PANEL

Kenneth J. Safran, Esq. - Public Arbitrator, Presiding Chair
Robert J. Scafuri, Esq. - Public Arbitrator
Mark A. Cleland - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Kenneth J. Safran, Esq.
Kenneth J. Safran, Esq.
Public Arbitrator, Presiding Chair

06/15/04
Signature Date

/s/ Robert J. Scafuri, Esq.
Robert J. Scafuri, Esq.
Public Arbitrator

06/15/04
Signature Date

Mark A. Cleland
Mark A. Cleland
Non-Public Arbitrator

06/15/04
Signature Date

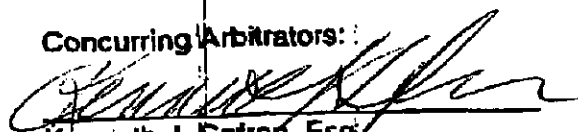
06/15/04
Date of Service (For NASD office use only)

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ARBITRATION PANEL

Kenneth J. Safran, Esq. - Public Arbitrator, Presiding Chair
Robert J. Scafuri, Esq. - Public Arbitrator
Mark A. Cleland - Non-Public Arbitrator

Concurring Arbitrators:


Kenneth J. Safran, Esq.
Public Arbitrator, Presiding Chair


Signature Date

Robert J. Scafuri, Esq.
Public Arbitrator

Signature Date

Mark A. Cleland
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)


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ARBITRATION PANEL

Kenneth J. Safran, Esq. - Public Arbitrator, Presiding Chair
Robert J. Scafuri, Esq. - Public Arbitrator
Mark A. Cleland - Non-Public Arbitrator

Concurring Arbitrators:

Kenneth J. Safran, Esq.
Public Arbitrator, Presiding Chair


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Public Arbitrator

Mark A. Cleland
Non-Public Arbitrator

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6/15/04
Signature Date

Signature Date

NASD Dispute Resolution
Arbitration No. 03-01848
Award Page 8 of 8

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Mark A. Cleland - Non-Public Arbitrator

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Public Arbitrator, Presiding Chair

Signature Date

Robert J. Scafuri, Esq.
Public Arbitrator

Signature Date


Mark A. Cleland
Non-Public Arbitrator

6-15-04
Signature Date

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