

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants
Newton and Eleanor Deibert

Case Number: 03-01757

Name of the Respondents
J.J.B. Hilliard, W.L. Lyons, Inc.
(f/k/a PNC Brokerage Corp.)
Gregory Trimbur

Hearing Site: Philadelphia, PA

Nature of the Dispute: Customers vs. Member and Associated Person.

REPRESENTATION OF PARTIES

Claimants, Newton and Eleanor Deibert, hereinafter collectively referred to as "Claimants", were represented by Albert N. Peterlin, Esq., Gates, Halbruner & Hatch, P.C., Lemoyne, Pennsylvania.

Respondent, J.J.B. Hilliard, W.L. Lyons, Inc., f/k/a PNC Brokerage Corp., ("Hilliard Lyons"), hereinafter referred to as "Respondent Hilliard Lyons", was represented by Kenneth A. Bravo, Esq., Ulmer & Berne, LLP, Cleveland, Ohio.

Respondent, Gregory Trimbur ("Trimbur"), hereinafter referred to as "Respondent Trimbur", was represented by Samuel L. Andes, Esq., Samuel L. Andes, Attorney at Law, Lemoyne, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on: February 6, 2003.

Amended Statement of Claim filed on: May 12, 2003.

Claimants signed the Uniform Submission Agreement on: May 12, 2003.

Statement of Answer filed by Respondent Hilliard Lyons on: August 15, 2003.

A representative of Respondent Hilliard Lyons signed the Uniform Submission Agreement on: May 27, 2003.

Answer to the Amended Statement of Claim filed by Respondent Trimbur on: July 3, 2003.

CASE SUMMARY

Claimants asserted the following causes of action in their Amended Statement of Claim, among others: breach of contract, unjust enrichment, quantum meruit, common law fraud, unsuitability, state securities fraud, negligence, breach of fiduciary duty, and unfair trade practice. The causes of action relate to the purchase of various mutual funds in their Capital Directions Growth

account and their Capital Directions Balance account, including but not limited to: BlackRock G SciTech IvB, BlackRock Intl Equity Svc., BlackRock Lg Cap Gr Iv8, BlackRock Lg Cap Gr Svc, BlackRock Lg Cap Val Svc, BlackRock Managed Inc Sv, BlackRock Mid Cap Gr IvB, BlackRock Mid Cap Gr Svc, BlackRock Mid Cap Val Sv, BlackRock Select Eq Svc, BlackRock Sm Cap Grth Sv, BlackRock Sm Cap Val Svc, Federated Cap Apprec B, Federated Large Cap Gw A, and Putnam Voyager B.

Unless specifically admitted in its Answer, Respondent Hilliard Lyons denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; Respondent Hilliard Lyons acted reasonably; proper supervision; Respondent Hilliard Lyons acted in good faith; assumption of risk; failure to mitigate damages; Claimants' claims are barred by the doctrines of estoppel, waiver, laches and applicable statutes of limitations; and ratification.

Unless specifically admitted in his Answer, Respondent Trimbur denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

Claimants in their Statement of Claim requested compensatory damages in the amount of two hundred sixty thousand seven hundred five dollars and seventy-seven cents (\$260,705.77), punitive damages in the amount of one million dollars (\$1,000,000.00), treble damages, attorneys' fees, costs, interest, and such further relief as the Arbitrators deem just and proper.

Respondent Hilliard Lyons in its Statement of Answer requested that this case be dismissed in its entirety, that judgment be rendered in its favor, and that the Arbitration Panel (the "Panel") award Respondent its costs in defending this action.

Respondent Trimbur in his Answer to the Amended Statement of Claim requested that this case be dismissed in its entirety.

OTHER ISSUES CONSIDERED AND 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.

AWARD

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

1. Claimants' claims for compensatory damages are denied in their entirety;
2. Claimants' claims for punitive damages are denied in their entirety;

3. Claimants' claims for treble damages are denied in their entirety;
4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Trimbur's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Trimbur must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
5. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,
6. Any and all relief not specifically addressed herein is denied in its entirety.

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 person at the time of the events giving rise to the dispute. Accordingly, Respondent Hilliard Lyons is a party.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 5,000.00</u>
Total Member Fees	= \$ 8,550.00

Forum Fees and Assessments

The Panel 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:

One (1) Pre-hearing session with a single arbitrator @ \$ 450	= \$ 450.00
Pre-hearing conference: March 8, 2004 1 session	

One (1) Pre-hearing session with Panel @ \$ 1,200	= \$ 1,200.00
Pre-hearing conference: December 4, 2003 1 session	

Five (5) Hearing sessions @ \$ 1,200	= \$ 6,000.00
Hearing Dates: April 27, 2004 2 sessions	
April 28, 2004 2 sessions	

April 29, 2004 1 session

Total Forum Fees = \$ 7,650.00

1. The Panel has assessed \$ 3,825.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$ 3,825.00 of the forum fees jointly and severally to Respondents.

FEE SUMMARY

1. Claimants are jointly and severally assessed and shall pay the following fees:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 3,825.00
Total Fees	= \$ 4,325.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 2,625.00

2. Respondent, Hilliard Lyons, is assessed and shall pay the following fees:

Member Fees	= \$ 8,550.00
Total Fees	= \$ 8,550.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 00.00

3. Respondents, Hilliard Lyons and Trimbur, are jointly and severally assessed and shall pay the following fees:

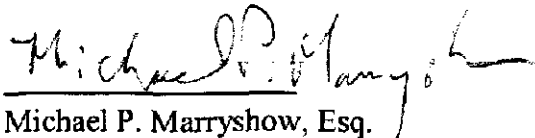
Forum Fees	= \$ 3,825.00
Total Fees	= \$ 3,825.00
Less payments	= \$ 00.00
Balance Due NASD Dispute Resolution	= \$ 3,825.00

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

ARBITRATION PANEL

Michael P. Marryshow, Esq.	-	Public Arbitrator, Presiding Chairperson
Anita Vestal	-	Public Arbitrator, Panelist
Jeffrey Steinberg	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Michael P. Marryshow, Esq.
Public Arbitrator, Presiding Chairperson

5/5/04
Signature Date

Anita Vestal
Public Arbitrator, Panelist

Signature Date

Jeffrey Steinberg
Non-Public Arbitrator, Panelist

Signature Date

May 12, 2004
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

Arbitration No. 03-01757

Award Page 5

Concurring Arbitrators' Signatures

Michael P. Marryshow, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Anita Vestal
Anita Vestal
Public Arbitrator, Panelist

May 6, 2004
Signature Date

Jeffrey Steinberg
Non-Public Arbitrator, Panelist

Signature Date

May 12, 2004
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Michael P. Marryshow, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Anita Vestal
Public Arbitrator, Panelist

Signature Date


Jeffrey Steinberg
Non-Public Arbitrator, Panelist

05/03/2004
Signature Date

May 12, 2004
Date of Service (For NASD Dispute Resolution office use only)