

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Ellen J. Woliner-Rhoda and Todd Rhoda JT TEN; Ellen Woliner, Inc., Profit Sharing Plan DTD 8/4/89; Ellen Woliner, Inc., Money Purchase Pension Plan; Ellen Woliner-Rhoda IRA; Ellen Woliner-Rhoda c/f Quinn B. Rhoda; and Ellen Woliner-Rhoda c/f Emily Hope Rhoda (Claimants) v. Clearing Services of America, Inc. and Todd Eberhard (Respondents)

Case Number: 03-02566

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimants Ellen J. Woliner-Rhoda ("E. Woliner-Rhoda") and Todd Rhoda ("T. Rhoda") JT TEN; Ellen Woliner, Inc., Profit Sharing Plan DTD 8/4/89 ("E. Woliner PSP"); Ellen Woliner, Inc., Money Purchase Pension Plan ("E. Woliner MPPP"); Ellen Woliner-Rhoda IRA ("E. Woliner IRA"); Ellen Woliner-Rhoda c/f Quinn B. Rhoda ("E. Woliner c/f Q. Rhoda"); and Ellen Woliner-Rhoda c/f Emily Hope Rhoda ("E. Woliner c/f E. Rhoda") hereinafter collectively referred to as "Claimants": David McCarty, Esq. and Andrew W. Sidman, Esq., Butler, Fitzgerald & Potter, P.C., New York, NY.

Respondent Clearing Services of America, Inc. ("CSA"): Donald J. Mehan, Jr., Esq., Moline, Shostak & Mehan, LLC, St. Louis, MO.

Respondent Todd Eberhard ("Eberhard") – *pro se*.

CSA and Eberhard are hereinafter referred to as "Respondents".

CASE INFORMATION

Statement of Claim filed on or about: April 4, 2003.

E. Woliner-Rhoda and T. Rhoda JT TEN signed the Uniform Submission Agreement: April 4, 2003.

E. Woliner MPPP signed the Uniform Submission Agreement: June 26, 2003.

E. Woliner PSP signed the Uniform Submission Agreement: June 26, 2003.

E. Woliner IRA signed the Uniform Submission Agreement: June 26, 2003.

E. Woliner c/f Q. Rhoda signed the Uniform Submission Agreement: June 26, 2003.

E. Woliner c/f E. Rhoda signed the Uniform Submission Agreement: June 26, 2003.

Statement of Answer and Cross-Claim filed by Respondent CSA on or about: June 26, 2003.

CSA signed the Uniform Submission Agreement: June 26, 2003.

Statement of Answer filed by Respondent Eberhard on or about: July 13, 2003.
Eberhard did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: misrepresentation; failure to disclose material facts; unsuitability; fraudulent and deceptive practices; excessive trading; violation of federal securities laws; common law fraud; breach of fiduciary duty; negligence; breach of contract; and breach of implied covenant of good faith and fair dealing; Claimants' claims involved bond funds, mutual funds, and common stock.

Unless specifically admitted in its Answer, Respondent CSA denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In its Cross-Claim against Eberhard, CSA asserted: indemnification and/or contribution under Section 6 of Independent Contractor Agreement.

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

RELIEF REQUESTED

Claimants requested the following relief:

- (a) \$175,000.00 for the joint account;
- (b) \$450,000.00 for the E. Woliner PSP and the E. Woliner MPPP accounts;
- (c) \$75,000.00 for the E. Woliner IRA account;
- (d) \$35,000.00 for the E. Woliner c/f Q. Rhoda;
- (e) \$40,000.00 for the E. Woliner c/f E. Rhoda.

Claimants, together, additionally requested lost profits, interest, punitive damages, and their costs, including reasonable attorneys' fees.

Respondent CSA requested that the Arbitration Panel dismiss with prejudice Claimants' Statement of Claim against CSA and award CSA its costs, disbursements, attorneys' fees, and enter judgment on its behalf, accordingly. In addition, CSA requested that the Arbitration Panel award CSA fully contribution and/or indemnification against and from Respondent Eberhard for any award entered against CSA and any losses, cost, disbursements, and attorneys' fees incurred by CSA in this matter.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Respondent Todd Eberhard has been properly served with the Statement of Claim and received due notice of the hearing and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

On or about September 8, 2003, NASD Dispute Resolution received notification from Respondent CSA that all claims against it are stayed pursuant to an Order Commencing SIPC Liquidation Proceeding filed in the United States District Court for the Eastern District of Missouri.

Respondent Eberhard did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

Claimants made a motion for default judgment due to the non-appearance of Respondent Eberhard. After due consideration, the Panel denied said motion.

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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Eberhard is liable and shall pay to Claimants jointly, compensatory damages in the amount of \$365,739.00.
2. Respondent Eberhard is liable and shall pay to Claimants jointly, punitive damages in the amount of \$127,904.00 pursuant to Porush v. Lemire, 6F. Supp. 2d 178, 186 (E.D.N.Y. 1998) and Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 59-64 (1995).
3. Respondent Eberhard is liable and shall pay to Claimants jointly, attorneys' fees in the amount of \$20,000.00 pursuant to Porush v. Lemire, 6F. Supp. 2d 178, 186, and PaineWebber, Inc. v. Bybyk, 81F. 3d 1193.

4. CSA's Cross-claim against Eberhard is dismissed without prejudice.
5. Any and all relief not specifically addressed herein is denied.

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	= \$ 375.00
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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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Clearing Services of America, Inc., is a party.

Member surcharge	= \$2,250.00
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Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 Panel @ \$1,200.00	= \$1,200.00
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Pre-hearing conference:	November 10, 2003	1 session
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Three (3) Hearing sessions @ \$1,200.00	= \$3,600.00
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Hearing Dates:	March 30, 2004	2 sessions
	March 31, 2004	1 session

Total Forum Fees	= \$4,800.00
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1. The Panel has assessed the total forum fees of \$4,800.00 against Eberhard.

Fee Summary

1. Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 375.00
<u>Total Fees</u>	= \$ 375.00
<u>Less payments</u>	= \$1,575.00
<u>Refund Due to Claimants</u>	= \$1,200.00

2. Respondent Eberhard is solely liable for:

<u>Forum Fees</u>	= \$4,800.00
<u>Total Fees</u>	= \$4,800.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$4,800.00

3. Respondent CSA solely liable for:

<u>Member Fees</u>	= \$2,250.00
<u>Total Fees</u>	= \$2,250.00
<u>Less payments</u>	= \$2,250.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

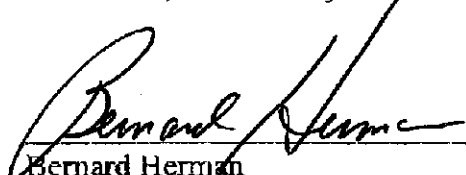
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Bernard Herman	-	Public Arbitrator, Presiding Chair
Carole L. Green, Esq.	-	Public Arbitrator
Edith M. Gunn	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.



Bernard Herman
Public Arbitrator, Presiding Chairperson

27 April 2004
Signature Date

Carole L. Green, Esq.
Public Arbitrator

Signature Date

Edith M. Gunn
Non-Public Arbitrator

Signature Date

May 3, 2004

Date of Service (For NASD Dispute Resolution use only)

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Signature Date

Carole L. Green
Carole L. Green, Esq.
Public Arbitrator

4/29/04
Signature Date

Edith M. Gunn
Non-Public Arbitrator

Signature Date

May 3, 2004

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Public Arbitrator

Signature Date

Edith M. Gunn
Edith M. Gunn
Non-Public Arbitrator

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Signature Date

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