
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 03-02961

Theodore Bauer
Theodore Bauer IRA Rollover
Theodore R. Bauer Trust dtd 12/09/99
Eileen Bauer
Eileen Bauer IRA Rollover
Eileen Bauer Trust dtd 12/09/99

Names of the Respondents

Hearing Site: Orlando, Florida

Morgan Stanley DW, Inc.
William Smathers
Gary Bray

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

REPRESENTATION OF PARTIES

For Theodore Bauer, Theodore Bauer IRA Rollover, Theodore R. Bauer Trust dtd 12/09/99, Eileen Bauer, Eileen Bauer IRA Rollover, and Eileen Bauer Trust dtd 12/09/99, hereinafter collectively referred to as "Claimants": Robert Dyer, Esq., Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A., Orlando, Florida.

For Morgan Stanley DW, Inc. ("MSDW"), William Smathers ("Smathers") and Gary Bray ("Bray"), hereinafter collectively referred to as "Respondents": Frederick S. Schriels, Esq., Gray Robinson, P.A., Tampa, Florida.

CASE INFORMATION

Statement of Claim filed on or about: April 22, 2003.

Claimants signed the Uniform Submission Agreement on: April 7, 2003.

Statement of Answer and Affirmative Defenses filed by Respondents on or about: June 27, 2003.

Respondent MSDW did not file an executed Uniform Submission Agreement.

Respondent Smathers signed the Uniform Submission Agreement on: June 2, 2003.

Respondent Bray did not file an executed Uniform Submission Agreement.

CASE SUMMARY

Claimants alleged the following causes of action: 1) violation of Section 517.301, Florida Statutes; and 2) negligence. The causes of action relate to investments in various securities.

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

RELIEF REQUESTED

Claimants requested: 1) compensatory damages in the amount of at least \$215,000.00; 2) interest; 3) punitive damages; and 4) costs.

Respondents requested: 1) dismissal of the Statement of Claim in its entirety; and 2) costs.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents MSDW and Bray did not file with NASD Dispute Resolution properly executed submission agreements but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing, are bound by the determination of the undersigned arbitrators (the "Panel") on all issues submitted.

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

1. Respondent MSDW is liable and shall pay jointly and severally to Claimants Theodore Bauer and Eileen Bauer compensatory damages in the amount of \$25,000.00, pre-judgment interest denied. The Panel finds Respondent MSDW liable on the claim of negligence. The Panel finds no liability on the statutory claim under Chapter 517, Florida Statutes.
2. Respondent Smathers is liable and shall pay jointly and severally to Claimants Theodore Bauer and Eileen Bauer compensatory damages in the amount of \$10,000.00, pre-judgment interest denied. The Panel finds Respondent Smathers liable on the claim of negligence. The Panel finds no liability on the statutory claim under Chapter 517, Florida Statutes.
3. Respondent Bray is liable and shall pay jointly and severally to Claimants Theodore Bauer and Eileen Bauer compensatory damages in the amount of \$15,000.00, pre-judgment interest denied. The Panel finds Respondent Bray liable on the claim of negligence. The Panel finds no liability on the statutory claim under Chapter 517, Florida Statutes.

4. Claimants' request for punitive damages is denied.
5. Any and all claims or relief not specifically addressed herein are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300.00
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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, Respondent MSDW is a member firm and a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

On or about July 30, 2004, Respondents filed their Motion for Postponement of Final Arbitration Hearing. Claimants did not oppose the motion. On or about August 6, 2004, the Panel granted the motion, adjourned the evidentiary hearing scheduled for September 7 – 10, 2004 and assessed the adjournment fee in the amount of \$1,125.00 jointly and severally to Respondents.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings.

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.

There were no injunctive relief fees assessed during these proceedings.

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:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00 per session	= \$ 2,250.00
Pre-hearing conferences: December 1, 2003 1 session	
August 6, 2004 1 session	

Eight (8) Hearing sessions @ \$1,125.00 per session	= \$ 9,000.00
Hearing Dates: October 13, 2004 2 sessions	
October 14, 2004 2 sessions	
October 15, 2004 2 sessions	
October 16, 2004 2 sessions	

Total Forum Fees	= \$11,250.00
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The Panel has assessed forum fees in the amount of \$5,625.00 jointly and severally to Claimants.

The Panel has assessed forum fees in the amount of \$5,625.00 jointly and severally to Respondents.

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 during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$5,625.00</u>
Total Fees	= \$5,925.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$4,500.00

Respondent MSDW is solely liable for:

<u>Member Fees</u>	<u>= \$5,200.00</u>
Total Fees	= \$5,200.00
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Adjournment Fee	= \$1,125.00
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Forum Fees	= \$5,625.00
Total Fees	= \$6,750.00
Less payments	= \$1,125.00
Balance Due NASD Dispute Resolution	= \$5,625.00

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

ARBITRATION PANEL

<i>Maurice M. Feller, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Donald R. Ormrod, Sr.</i>	-	<i>Public Arbitrator</i>
<i>Samuel P. Peluso</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

 /s/
Maurice M. Feller, Esq.
Public Arbitrator, Presiding Chairperson

October 27, 2004
Signature Date

 /s/
Donald R. Ormrod, Sr.
Public Arbitrator

October 25, 2004
Signature Date

 /s/
Samuel P. Peluso
Non-Public Arbitrator

October 29, 2004
Signature Date

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

NASD Dispute Resolution
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Forum Fees	= \$5,625.00
Total Fees	= \$6,750.00
Less payments	= \$1,125.00
Balance Due NASD Dispute Resolution	= \$5,625.00

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Donald R. Ormrod, Sr.	-	Public Arbitrator
Samuel P. Peluso	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Maurice M. Feller, Esq.
Public Arbitrator, Presiding Chairperson

10/27/04
Signature Date

Donald R. Ormrod, Sr.
Public Arbitrator

Signature Date

Samuel P. Peluso
Non-Public Arbitrator

Signature Date

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

Oct. 21, 2004 10:38AM NASD

No. 7844 P. 6/6

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Forum Fees	= \$5,625.00
Total Fees	= \$6,750.00
Less payments	= \$1,125.00
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ARBITRATION PANEL

Maurice M. Feller, Esq.	-	Public Arbitrator, Presiding Chairperson
Donald R. Ormrod, Sr.	-	Public Arbitrator
Samuel P. Peluso	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Maurice M. Feller, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Donald R. Ormrod Sr.
Donald R. Ormrod, Sr.
Public Arbitrator

Oct. 25th 04
Signature Date

Samuel P. Peluso
Non-Public Arbitrator

Signature Date

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

Oct.29. 2004 3:32PM NASD

No.8316 P. 2

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Forum Fees	= \$5,625.00
Total Fees	= \$6,750.00
Less payments	= \$1,125.00
Balance Due NASD Dispute Resolution	= \$5,625.00

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ARBITRATION PANEL*Maurice M. Feller, Esq.**Donald R. Ormrod, Sr.**Samuel P. Peluso**Public Arbitrator, Presiding Chairperson**Public Arbitrator**Non-Public Arbitrator*Concurring Arbitrators' SignaturesMaurice M. Feller, Esq.

Public Arbitrator, Presiding Chairperson

Signature DateDonald R. Ormrod, Sr.

Public Arbitrator

Signature Date

Samuel P. Peluso

Non-Public Arbitrator

10/29/04
Signature DateDate of Service (For NASD Dispute Resolution office use only)