

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 03-03284

Thomas J. and Bonnie Bates

Names of the Respondents

Hearing Site: Richmond, Virginia

New England Securities Corp.
George Edward Payne
Donald Wayne Anderson
Richard Harold Rubenoff

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

REPRESENTATION OF PARTIES

Claimants Thomas J. and Bonnie Bates, hereinafter collectively referred to as "Claimants", were represented by Charles W. Austin, Jr., Esq., C.W. Austin, P.C., Richmond, Virginia.

Respondent New England Securities Corp. ("New England") was represented by John Pendleton, Jr., Esq., McCarter & English, L.L.P., Newark, New Jersey.

Respondent George Edward Payne ("Payne") was initially represented by Anne B. McCray, Esq., McGuire Woods, L.L.P., Richmond, Virginia, but appeared pro se at the hearing.

Respondent Donald Wayne Anderson ("Anderson") was represented by Michael P. Falzone, Esq., Hirschler Fleischer, P.C., Richmond, Virginia.

Respondent Richard Harold Rubenoff ("Rubenoff") was represented by Anne B. McCray, Esq., McGuire Woods, L.L.P., Richmond, Virginia.

CASE INFORMATION

Statement of Claim filed on May 2, 2003.

Claimants filed a signed undated Uniform Submission Agreement.

Statement of Answer filed by Respondent New England on July 14, 2004.

A representative of Respondent New England executed the Uniform Submission Agreement on May 20, 2003.

Statement of Answer filed by Respondent Anderson on July 14, 2004.

Respondent Anderson signed the Uniform Submission Agreement on June 24, 2003.

Statement of Answer filed by Respondents Payne and Rebenoff on July 14, 2004.

Respondent Payne signed the Uniform Submission Agreement on June 26, 2003.
Respondent Rubenoff signed the Uniform Submission Agreement on June 26, 2003.

CASE SUMMARY

Claimants asserted the following causes of action, among others: actual and constructive fraud, negligence, breach of fiduciary duty, *respondeat superior*, and unsuitability. The causes of action relate to the purchase and sale of Respondent New England's variable annuity.

Unless specifically admitted in its Answer, Respondent New England 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, assumption of risk, contributory negligence, Respondents did not act with scienter, failure to mitigate, statute of limitations, estoppel, waiver, ratification, and laches.

Unless specifically admitted in his Answer, Respondent Anderson 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, assumption of risk, ratification, contributory negligence, failure to mitigate, statute of limitations, estoppel, waiver, ratification, and Respondents did not act with intent to defraud.

Unless specifically admitted in their Answer, Respondents Payne and Rubenoff 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, assumption of risk, contributory negligence, failure to mitigate, statute of limitations, estoppel, waiver, ratification, unclean hands, violation of NASD or NYSE rules does not give rise to a private cause of action, and Respondents did not act with intent to defraud.

RELIEF REQUESTED

Claimants in their Statement of Claim requested:

Compensatory Damages	\$440,000.00
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondent Anderson in his Statement of Answer requested that the Statement of Claim be dismissed, he be awarded his costs and expenses, and such other relief as is just and proper.

Respondents Payne and Rubenoff in their Statement of Answer requested that the Statement of Claim be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, the parties fully and finally settled all claims by and between them. The parties submitted a Stipulated Award containing an order of expungement for the individual Respondents.

The Panel declined to sign the proposed Stipulated Award, because it felt that it lacked sufficient information upon which to recommend or oppose expungement. The individual Respondents requested a telephonic hearing, which took place on January 28, 2005. Neither Claimants, Respondent New England nor their counsel participated in the hearing. The individual Respondents requested and were given the opportunity to provide post-hearing submissions.

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. It is the Panel's opinion that it has insufficient information upon which to recommend or oppose the request for a recommendation of expungement. Therefore, the request for expungement is denied;
2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
3. 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 = \$ 300.00

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. Accordingly, Respondent New England is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00
Total Member Fees	= \$5,200.00

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 @ \$450.00	= \$ 450.00
Pre-hearing conference: May 13, 2004 1 session	
One (1) Pre-hearing session with Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: December 16, 2003 1 session	
One (1) Hearing session @ \$1,125.00	= \$1,125.00
Hearing Date: January 28, 2005 1 session	
Total Forum Fees	= \$2,700.00

1. The Panel has assessed \$787.50 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$787.50 of the forum fees jointly and severally to Respondents New England, Anderson, Payne, and Rubenoff.
3. The Panel has assessed \$1,125.00 of the forum fees jointly and severally to Respondents Anderson, Payne, and Rubenoff.

EEE SUMMARY

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

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 787.50
Retained Hearing Session Deposit	= \$ 337.50
Total Fees	= \$1,425.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent New England is assessed and shall pay the following fees:

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

3. Respondents New England, Anderson, Payne, and Rubenoff are jointly and severally assessed and shall pay the following fees:

<u>Forum Fees</u>	= \$ 787.50
<u>Total Fees</u>	= \$ 787.50
<u>Less payments</u>	= \$ 787.50
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

4. Respondents Anderson, Payne, and Rubenoff are jointly and severally assessed and shall pay the following fees:

<u>Forum Fees</u>	= \$1,125.00
<u>Total Fees</u>	= \$1,125.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$1,125.00

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

ARBITRATION PANEL

Stuart H. Dunn, Esq.	-	Public Arbitrator, Presiding Chairperson
Charles A. Zuckerman	-	Public Arbitrator, Panelist
John "Jack" W. Rader, Sr.	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Stuart H. Dunn

Stuart H. Dunn, Esq.
Public Arbitrator, Presiding Chairperson

3/1/05

Signature Date

Charles A. Zuckerman
Public Arbitrator, Panelist

Signature Date

John "Jack" W. Rader, Sr.
Non-Public Arbitrator, Panelist

Signature Date

March 2, 2005

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

Concurring Arbitrators' Signatures

Stuart H. Dunn, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Charles A. Zuckerman
Charles A. Zuckerman
Public Arbitrator, Panelist

2/24/05
Signature Date

John "Jack" W. Rader, Sr.
Non-Public Arbitrator, Panelist

Signature Date

March 2, 2005
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Stuart H. Dunn, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Charles A. Zuckerman
Public Arbitrator, Panelist

Signature Date

John "Jack" W. Rader, Sr.
Non-Public Arbitrator, Panelist

John W. Rader, Sr.
Signature Date

March 2, 2005
Date of Service (For NASD Dispute Resolution office use only)