

**AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

John Dale

and

Case Number: 03-03531  
Hearing Site: Troy, Michigan

Names of Respondents

Dominion Investor Services, Inc.  
Kathy L. Colby and Financial  
Independents, Inc.

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**NATURE OF DISPUTE**

Customer v. Member, Associated Person and Non-Member

**REPRESENTATION OF PARTIES**

John Dale ("Claimant") was represented by Anthony V. Trogan, Esq., and Lysa Postula-Stein, Esq., Anthony V. Trogan, P.L.L.C., West Bloomfield, Michigan.

Dominion Investor Services, Inc. ("Dominion") was represented by George "Rocky" Bromley, Law Offices of George "Rocky" Bromley, San Antonio, Texas.

Kathy L. Colby ("Colby") and Financial Independents, Inc. ("FI") were represented by Joseph H. Spiegel, Esq., Law Offices of Joseph H. Spiegel, P.C., Ann Arbor, Michigan.

**CASE INFORMATION**

The Statement of Claim was filed on or about May 14, 2003. The Submission Agreement of Claimant, John Dale, was signed on or about May 6, 2003.

The Statement of Answer was filed by Respondent, Dominion Investor Services, Inc., on or about July 10, 2003. The Submission Agreement of Respondent, Dominion Investor Services, Inc., was signed on or about July 9, 2003.

The Statement of Answer was filed jointly by Respondents, Kathy L. Colby and Financial Independents, Inc., on or about July 14, 2003.

### **CASE SUMMARY**

Claimant asserted the following legal theories: breach of contract, common law fraud, promissory estoppel, conspiracy, negligence, malpractice, breach of fiduciary duty, and breach of Michigan securities law. The causes of action related to the recommendation and sale of the Flexible Plan Investments Ltd., managed by the Practical Investor. Claimant asserted that Respondents dissuaded him from consideration of any other investment strategy or product and told him that diversification was not necessary.

Unless specifically admitted in its Answer, Respondent Dominion denied the allegations made in the Statement of Claim and asserted defenses including the following: all transactions were in accordance and in compliance with all statutory and industry laws, rules and regulations; Claimant could have changed his investment portfolio, but chose not to do so; and Claimant's claims are without merit.

Unless specifically admitted in their Answer, Respondents, Colby and FI, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim fails to state a claim upon which relief can be granted; the Statement of Claim lacks details necessary to any suitability or fraud claims; and the Statement of Claim is barred by the doctrines of assumption of risk, estoppel, laches, and unclean hands.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$80,183.00 in out-of-pocket losses, plus interest, costs, attorneys' fees, exemplary and punitive damages, and rescission.

Respondent Dominion requested that the claims asserted against it be dismissed in their entirety, that it be awarded its costs and attorneys' fees, and that the panel grant such other and further relief, at law and equity, to which Respondent may be entitled.

Respondents, Colby and FI, requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs, attorneys' fees, and such other and further relief as the panel deems equitable and just. At hearing, Respondent Colby requested that all references to this matter be expunged from her CRD record.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent, Kathy L. Colby, did not file with 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 answered the claim, and appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

Respondent, Financial Independents, Inc., did not file with NASD Dispute Resolution a properly executed submission to arbitration, but having answered the claim, is bound by the determination of the arbitration panel on all issues submitted.

The parties submitted post-hearing submissions on or about July 29, 2004.

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

- 1.) Claimant's claims, each and all, are denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Kathy L. Colby's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Kolby must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
- 4.) Any relief not specifically enumerated, including exemplary and punitive 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 = \$ 225.00

### **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. In this matter, the member firm is Dominion Investor Services, Inc.

Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,700.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

July 20, 2004, adjournment requested by Colby and FI	= \$ 750.00
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### **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:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: July 1, 2004 1 session	

One (1) Pre-hearing session with Panel x \$750.00	= \$ 750.00
Pre-hearing conference: November 6, 2003 1 session	

Four (4) Hearing sessions x \$750.00	= \$ 3,000.00
Hearing Dates: July 21, 2004 2 sessions	
July 22, 2004 2 sessions	

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Total Forum Fees	= \$ 4,200.00
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The Arbitration Panel has assessed \$2,100.00 of the forum fees to John Dale.

The Arbitration Panel has assessed \$2,100.00 of the forum fees jointly and severally to Dominion Investor Services, Inc., Kathy L. Colby, and Financial Independents, Inc.

### **FEE SUMMARY**

Claimant, John Dale, is liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 2,100.00
Total Fees	= \$ 2,325.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 1,350.00

Respondent, Dominion Investor Services, Inc., is liable for:

Member Fees	= \$ 3,550.00
Total Fees	= \$ 3,550.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Dominion Investor Services, Inc., and Kathy L. Colby, are jointly and severally liable for:

Forum Fees	= \$ 2,100.00
Total Fees	= \$ 2,100.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,100.00

Respondents, Kathy L. Colby and Financial Independents, Inc., are jointly and severally liable for:

Adjournment Fee	= \$ 750.00
Total Fees	= \$ 750.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 750.00

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

**ARBITRATION PANEL**

Sandra J. Budnick, Esq. - Public Arbitrator, Presiding Chair  
Patrick R. Sughrue, Esq. - Public Arbitrator  
Douglas H. McDonald - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Sandra J. Budnick, Esq.  
Sandra J. Budnick, Esq.  
Public Arbitrator, Presiding Chair

08/05/04  
Signature Date

/s/ Patrick R. Sughrue, Esq.  
Patrick R. Sughrue, Esq.  
Public Arbitrator

08/05/04  
Signature Date

/s/ Douglas H. McDonald  
Douglas H. McDonald  
Non-Public Arbitrator

08/05/04  
Signature Date

08/05/04  
Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 03-03531  
Award Page 5 of 5

Respondent, Dominion Investor Services, Inc., is liable for:

Member Fees	= \$ 3,550.00
Total Fees	= \$ 3,550.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Dominion Investor Services, Inc., and Kathy L. Colby, are jointly and severally liable for:

Forum Fees	= \$ 2,100.00
Total Fees	= \$ 2,100.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,100.00

Respondents, Kathy L. Colby and Financial Independents, Inc., are jointly and severally liable for:

Adjournment Fee	= \$ 750.00
Total Fees	= \$ 750.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 750.00

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Patrick R. Sughrue, Esq. - Public Arbitrator  
Douglas H. McDonald - Non-Public Arbitrator

Concurring Arbitrators:

Sandra J. Budnick, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

*Patrick R. Sughrue*

Patrick R. Sughrue, Esq.  
Public Arbitrator

*8-5-04*  
Signature Date

Douglas H. McDonald  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 03-03891  
Award Page 5 of 5

Respondent, Dominion Investor Services, Inc., is liable for:

Member Fees	= \$ 3,550.00
Total Fees	= \$ 3,550.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Dominion Investor Services, Inc., and Kathy L. Colby, are jointly and severally liable for:

Forum Fees	= \$ 2,100.00
Total Fees	= \$ 2,100.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,100.00

Respondents, Kathy L. Colby and Financial Independents, Inc., are jointly and severally liable for:

Adjournment Fee	= \$ 750.00
Total Fees	= \$ 750.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 750.00

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Patrick R. Sughrue, Esq. - Public Arbitrator  
Douglas H. McDonald - Non-Public Arbitrator

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Public Arbitrator, Presiding Chair

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Signature Date

\_\_\_\_\_  
Patrick R. Sughrue, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

  
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Douglas H. McDonald  
Non-Public Arbitrator

8-5-04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
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NASD Dispute Resolution  
Arbitration No. 03-03831  
Award Page 5 of 5

Respondent, Dominion Investor Services, Inc., is liable for:

<u>Member Fees</u>	= \$ 3,550.00
<u>Total Fees</u>	= \$ 3,550.00
<u>Less payments</u>	= \$ 3,550.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondents, Dominion Investor Services, Inc., and Kathy L. Colby, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 2,100.00
<u>Total Fees</u>	= \$ 2,100.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 2,100.00

Respondents, Kathy L. Colby and Financial Independents, Inc., are jointly and severally liable for:

<u>Adjournment Fee</u>	= \$ 750.00
<u>Total Fees</u>	= \$ 750.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 750.00

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8-5-04  
Signature Date

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Public Arbitrator

Signature Date

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