

Award
NASD Dispute Resolution

COPY

In the Matter of the Arbitration Between:

Moosa M. Lunat, Claimant v. Clover J. Hill, Weatherly Securities Corporation, Weatherly International, PLC and Ehrenkrantz King Nussbaum, Inc., Respondents

Case Number: 03-03933

Hearing Site: San Francisco, California

Nature of the Dispute: Customer vs. Members, Non-Member and Associated Person

REPRESENTATION OF PARTIES

For Claimant:

Jeff Dennis Ferentz, Esq.
Greenbaum & Ferentz LLP
Newport Beach, California

For Respondent Clover J. Hill:

Clover J. Hill
Edgewater, New Jersey

For Respondent Ehrenkrantz King Nussbaum, Inc.:

Robert M. Bursky, Esq.
Garden City, New York

CASE INFORMATION

Statement of Claim filed: May 28, 2003

First Amended Statement of Claim filed: October 5, 2004

Claimant's Response to Respondent Ehrenkrantz King Nussbaum, Inc.'s Motion to Dismiss dated July 7, 2005 filed: July 28, 2005

Claimant's Uniform Submission Agreement signed: May 1, 2003

Statement of Answer filed by Respondent Clover J. Hill: December 8, 2003

Statement of Answer and Motion by Respondent Ehrenkrantz King Nussbaum, Inc. ("EKN") To Dismiss, or Bifurcate, Stay and/or Change Venue filed: November 24, 2004

Motion to Dismiss or, in the alternative, Motion to Bifurcate filed by Respondent EKN: July 7, 2005

Respondent EKN's Uniform Submission Agreement signed: November 24, 2004

CASE SUMMARY

Claimant alleged the following claims with respect to investments in various securities, including but not limited to, Advanced Power Technologies, Allegiance Telecom, Ampex Corporation, Atmel Corporation, Cell Genesys Inc., Conductus Inc., Cytogen Corporation and Illinois Superconductor: 1) Churning; 2) Unsuitability; 3) Fraud, Deceit and Omission of Material Fact; 4) Breach of Fiduciary Duty; 5) Failure to Supervise; and 6) Negligence.

In separately filed Statements of Answer, Respondents Clover J. Hill and EKN denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents Clover J. Hill and EKN also asserted various defenses.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages of approximately \$1,621,241.06;
2. Disgorging Respondents' commissions, margin interest and any other compensation;
3. Punitive damages;
4. Interest;
5. Costs including attorneys and consulting fees; and
6. Such other and further relief as the Panel deems just and proper.

Respondent Clover J. Hill requested:

1. Dismissal of Claimant's claims; and
2. Such other and further relief as the Panel deems just and proper.

Respondent EKN requested:

1. That the Amended Claim as against EKN be dismissed;
2. Costs and expenses of this arbitration, including but not limited to forum fees, arbitrator fees and member surcharge fees;
3. Attorney's fees; and
4. All other relief as the Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Clover J. Hill did not file with NASD Dispute Resolution ("NASD-DR") a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered Claimant's Claim is bound by the determination of the Panel on all issues submitted.

Weatherly International, PLC was invited to voluntarily submit to arbitration since it had not signed an agreement to arbitrate. On or about November 10, 2003, Weatherly International, PLC was removed as a party as it did not voluntarily submit to NASD jurisdiction in this matter.

On or about June 18, 2003, NASD-DR received a copy of the Notice of Securities Investor Protection Corporation with respect to Weatherly Securities Corporation. Accordingly, all matters concerning Weatherly Securities Corporation are indefinitely stayed.

On December 31, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100 the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On or about August 18, 2004, the Panel reviewed and considered the positions of the parties relative to Claimant's request to postpone the August 23-26, 2004, hearing dates and granted the request. The Panel also reviewed and considered the positions of the parties relative to Claimant's request to amend Statement of Claim to name EKN as an additional Respondent in this matter. The Panel granted Claimant's request to amend the Statement of Claim.

On or about March 22, 2005, the Panel reviewed and considered the positions of the parties relative to Respondent EKN's Motion to Dismiss, or Bifurcate, Stay and/or Change Venue and denied Respondent EKN's Motion without prejudice to renew said Motion on or before the date set for hearing of non-discovery motions.

On or about September 9, 2005, Claimant advised that he had withdrawn his claims against Respondent Clover J. Hill.

The Panel 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 positions of the parties presented during the phone conference held September 6, 2005, and Respondent EKN's requests of September 19 and September 21, 2005, for an Award dismissing the above-referenced arbitration against it, and for waiver of all charges/fees (including any forum fees, arbitrator fees and member fees) against EKN or, alternatively, that Claimant be required to reimburse EKN for all such charges/fees, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent EKN's Motion to Dismiss of July 7, 2005, is granted. Accordingly, all claims by Claimant, including the claim for punitive damages, against EKN are dismissed.
- 2) Respondent EKN's requests for waiver of all charges/fees (including any forum fees, arbitrator fees and member fees) against EKN or, alternatively, that Claimant be required to reimburse EKN for all such charges/fees are denied.
- 3) Each party shall bear its own costs, including attorney's fees.
- 4) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$500.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, EKN is a party and the following fees are assessed:

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

Adjournment Fees

The following adjournment fees are assessed:

The Panel waived the \$1,200.00 postponement fee in connection with Claimant's request to postpone the hearing dates of August 23-26, 2004.

3-Day Cancellation Fee

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session. The Panel waived the 3-day cancellation fee in the amount of \$300.00 in connection with the cancelled hearing sessions scheduled on September 12-16, 2005.

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

(1) Pre-hearing conference with a single arbitrator @ \$450.00/session = \$450.00
Pre-hearing conference: July 27, 2004 1 session

(3) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$3,600.00
Pre-hearing conferences: April 6, 2004 1 session
March 22, 2005 1 session
September 6, 2005 1 session

Total Forum Fees = \$4,050.00

Referencing the phone conference held April 6, 2004, the Panel determined that Claimant shall be assessed \$600.00; and that Respondent Hill shall be assessed \$600.00.

Referencing the phone conference held March 22, 2005, the Panel determined that Claimant shall be assessed \$400.00; Respondent Hill shall be assessed \$400.00; and Respondent EKN shall be assessed \$400.00.

Referencing the phone conference held September 6, 2005, the Panel determined that Respondent EKN shall be assessed \$1,200.00.

The Panel waived the \$450.00 in forum fees in connection with the phone conference held July 27, 2004.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= \$ 1,000.00
Total Fees	= \$ 1,500.00
Retained deposit in accordance with Rule 10332(f) of the Code	= \$ 200.00
<u>Less payments</u>	= \$(1,700.00)
Balance Due NASD-DR	= \$ 0.00

2. Respondent Clover J. Hill is charged with the following fees and costs:

Forum Fees	= \$ 1,000.00
<u>Less Payments</u>	= \$(0.00)
Balance Due NASD-DR	= \$ 1,000.00

3. Respondent EKN is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 1,600.00
Total Fees	= \$ 10,150.00
Less Payments	= \$(0.00)
Balance Due NASD-DR	= \$ 10,150.00

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

ARBITRATION PANEL

Helen B. Culiner, Esq.	-	Public Arbitrator, Presiding Chair
Ralph A. Cotton, CPA	-	Public Arbitrator
Jerold R. Babin	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Helen B. Culiner
Helen B. Culiner, Esq.
Chair, Public Arbitrator

10/20/2005
Signature Date

Ralph A. Cotton, CPA
Ralph A. Cotton, CPA
Public Arbitrator

Signature Date

Jerold R. Babin
Jerold R. Babin
Non-Public Arbitrator

Signature Date

10/21/05
Date of Service

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Jerold R. Babin	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Helen B. Culiner, Esq.
Chair, Public Arbitrator

Signature Date


Ralph A. Cotton, CPA
Public Arbitrator

Oct 20, 2005
Signature Date

Jerold R. Babin
Non-Public Arbitrator

Signature Date

10/21/05
Date of Service

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