

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

The Estate of J. Edward Allen, Sally Jo Wiley, and Max Allen (Claimants) v. J.J.B. Hilliard, W.L. Lyons, Inc., Keith F. Knight, and Sara B. McVey (Respondents)

Case Number: 03-04079

Hearing Site: Columbus, Ohio

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

**REPRESENTATION OF PARTIES**

Claimants The Estate of J. Edward Allen ("The Estate of J. Edward Allen"), Sally Jo Wiley ("Wiley"), and Max Allen ("Allen") hereinafter collectively referred to as "Claimants": Roger W. Van Deusen, Van Deusen & Wagner, LLC, Cleveland, OH. The Estate of J. Edward Allen was previously represented by: Michael B. Gardner, Esq., Cleveland, OH.

Respondents J.J.B. Hilliard, W.L. Lyons, Inc. ("J.J.B. Hilliard") and Sara B. McVey ("McVey"): Joseph S. Simms, Esq., Ulmer & Berne, LLP, Cleveland, OH. McVey was previously represented by: Kevin R. McDermott, Esq., and Kevin Murch, Esq., Schottenstein, Zox & Dunn Co., LPA, Columbus, OH.

Respondent Keith F. Knight ("Knight"): Stephen E. Chappellear, Esq., Hahn Loeser & Parks, LLP, Columbus, OH.

J.J.B. Hilliard, McVey, and Knight are hereinafter collectively referred to as "Respondents".

**CASE INFORMATION**

Statement of Claim filed on or about: June 3, 2003.

Amended Statement of Claim filed on or about: June 23, 2004.

The Estate of J. Edward Allen signed the Uniform Submission Agreement: May 19, 2003.

Wiley signed the Uniform Submission Agreement: August 2, 2004.

Allen signed the Uniform Submission Agreement: August 3, 2004.

Statement of Answer to Statement of Claim and Cross-Claims of Knight filed by Respondent J.J.B. Hilliard on or about: September 11, 2003.

Respondent J.J.B. Hilliard signed the Uniform Submission Agreement: July 3, 2003.

Statement of Answer filed by Respondent McVey on or about: August 11, 2003.  
Answer to Cross-Claims of Knight filed by Respondent McVey on or about: September 18, 2003.  
Respondent McVey signed the Uniform Submission Agreement: August 11, 2003.

Statement of Answer and Cross-Claims filed by Respondent Knight on or about: August 11, 2003.  
Respondent Knight signed the Uniform Submission Agreement: August 7, 2003.

### **CASE SUMMARY**

In the Amended Statement of Claim, Claimants asserted the following causes of action: fraudulent, intentional, knowing, or reckless misrepresentation; negligent misrepresentation; negligent account management; unsuitable trading; breach of fiduciary duty; breach of contract; and failure to supervise or negligent supervision of a broker's activities (respondeat superior). Claimants' claim involved Polaroid Corporation corporate bonds.

Unless specifically admitted in its Answer, Respondent J.J.B. Hilliard denied the allegations made in the Statement of Claim and Cross-Claims and asserted various affirmative defenses.

Unless specifically admitted in her Answer and her Answer to the Cross-Claim, Respondent McVey denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer to the Statement of Claim, Respondent Knight denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In his Cross-Claim, Respondent Knight asserted the following cause of action: indemnification/contribution.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$96,500.00; punitive damages in the amount of \$193,000.00; interest; costs; attorneys' fees; and additional legal and equitable relief as the Arbitrators may award.

Respondent J.J.B. Hilliard requested that it be dismissed from this matter and that judgment be rendered in its favor and against Claimant, with all costs, including reasonable attorneys' fees and forum fees, to be assessed against Claimants.

Respondent McVey requested that she be dismissed from these proceedings and that she recover her costs and attorneys' fees.

Respondent Knight requested that the Statement of Claim be dismissed, that judgment be

entered against Claimant and in favor of Respondent Knight, that Respondent Knight have judgment over against Respondents McVey and J.J.B. Hilliard on his Cross-Claim, costs, expenses, and attorneys' fees, and such other and further relief as may be proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On or about April 12, 2004, Claimant filed a Stipulation of Dismissal with Prejudice of Respondent Keith Knight; therefore, all claims against Respondent Knight were dismissed with prejudice, and all Cross-Claims filed by Respondent Knight were dismissed with prejudice.

On or about June 25, 2004, Claimant made a motion to amend the Statement of Claim. After reviewing all of the pleadings and hearing oral argument on the motion, the Panel determined to grant the motion. Therefore, Sally Jo Wiley, individually, and Max Allen were added as Claimants to this matter.

After the close of Claimants' case, Respondents moved that the claims of Claimants Wiley and Allen be dismissed. The Panel deferred ruling on the motion and ordered that the hearing proceed with Respondents' case and closing arguments.

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, and the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents J.J.B. Hilliard and McVey are jointly and severally liable for and shall pay to Claimants compensatory damages in the amount of \$75,000.00.
2. Respondents J.J.B. Hilliard and McVey are jointly and severally liable for and shall pay to Claimants the sum of \$300.00, to reimburse Claimants for the filing fee previously paid to NASD Dispute Resolution.
3. Any and all relief not specifically addressed herein, including punitive damages, 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	= \$300.00
Cross-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 firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, J.J.B. Hilliard, W.L. Lyons, Inc. is 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:

July 7-9, 2004, adjournment by Respondents	= Waived
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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:

Four (4) Pre-hearing sessions with Panel @ \$1,125.00	= \$ 4,500.00
Pre-hearing conferences:	
January 29, 2004	1 session
July 2, 2004	1 session
August 6, 2004	1 session
August 17, 2004	1 session
Five (5) Hearing sessions @ \$1,125.00	= \$ 5,625.00
Hearing Dates:	
August 10, 2004	2 sessions
August 11, 2004	3 sessions
Total Forum Fees	= \$10,125.00

The Panel has assessed has assessed forum fees as follows:

1. Claimants are liable for 25% of the forum fees for the pre-hearing conference of January 29, 2004 (\$281.25) and 50% of the forum fees for the pre-hearing conference of July 2, 2004 (\$562.50) for a total amount of forum fees of \$843.75.
2. Respondent McVey is liable for 25% of the forum fees for the pre-hearing conference of January 29, 2004 for a total amount of forum fees of \$281.25.

3. Respondent J.J.B. Hilliard is liable for 25% of the forum fees for the pre-hearing conference of January 29, 2004 for a total amount of forum fees of \$281.25.
4. Respondent Knight is liable for 25% of the forum fees for the pre-hearing conference of January 29, 2004 for a total amount of forum fees of \$281.25.
5. Respondents J.J.B. Hilliard and McVey are jointly and severally liable for 100% of the forum fees for the pre-hearing conference held on August 6, 2004 (\$1,125.00), 100% of the forum fees for the hearing sessions held on August 10-11, 2004 (\$5,625.00), 100% of the forum fees for the pre-hearing conference held on August 17, 2004 (\$1,125.00), and 50% of the forum fees for the pre-hearing conference held on July 2, 2004 (\$562.50) for a total amount of forum fees of \$8,437.50.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 843.75
Total Fees	= \$1,143.75
Less payments	= \$1,425.00
Refund Due Claimants	= \$ 281.25

*As stated in the "Award" section above, Respondents J.J.B. Hilliard and McVey are jointly and severally liable for and shall reimburse Claimant for the \$300.00 filing fee.*

2. Respondent McVey is solely liable for:

Forum Fees	= \$ 281.25
Total Fees	= \$ 281.25
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 281.25

3. Respondent J.J.B. Hilliard is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$ 281.25
Total Fees	= \$5,481.25
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 281.25

4. Respondent Knight is solely liable for:

Cross-Claim Filing Fee	= \$ 300.00
Forum Fees	= \$ 281.25
Total Fees	= \$ 581.25
Less payments	= \$1,475.00
Refund Due Knight	= \$ 893.75

5. Respondents J.J.B. Hilliard and McVey are jointly and severally liable for:

Forum Fees	= \$8,437.50
Total Fees	= \$8,437.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$8,437.50

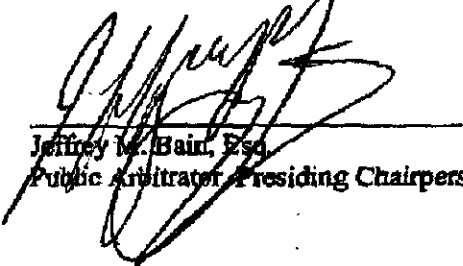
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Jeffrey M. Bain, Esq.	-	Public Arbitrator, Presiding Chairperson
Jerome B. Haddox, Esq.	-	Public Arbitrator
Mary Ten Eyck Taylor, J.D.	-	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 in which is my award.



Jeffrey M. Bain, Esq.  
Public Arbitrator, Presiding Chairperson

August 26, 2004  
Signature Date

Jerome B. Haddox, Esq.  
Public Arbitrator

Signature Date

Mary Ten Eyck Taylor, J.D.  
Non-Public Arbitrator

Signature Date

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

**ARBITRATION PANEL**

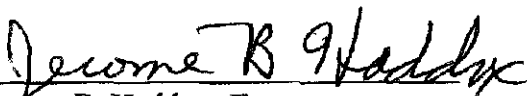
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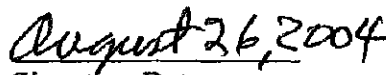
**Concurring Arbitrators' Signatures**

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 in which is my award.

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Jeffrey M. Bain, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
Jerome B. Haddox, Esq.  
Public Arbitrator

  
Signature Date

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Mary Ten Eyck Taylor, J.D.  
Non-Public Arbitrator

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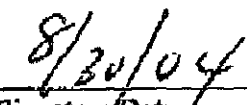
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