

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants
Charles and Ester Holupka

Case Number: 03-04296

Name of the Respondents
PNC Brokerage Corp.
Steven A. Greene

Hearing Site: Pittsburgh, PA

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

REPRESENTATION OF PARTIES

Claimants, Charles and Ester Holupka , hereinafter collectively referred to as "Claimants", were represented by Vicki Kufic Horne, Esq., Pittsburgh, Pennsylvania.

Respondents, PNC Brokerage Corp. ("PNC") and Steven A. Greene ("Greene"), hereinafter collectively referred to as "Respondents", were represented by Elizabeth A. Jerdonek, Esq., Ulmer & Berne, LLP, Cleveland, Ohio.

CASE INFORMATION

Statement of Claim filed on or about June 13, 2003.

Claimants signed the Uniform Submission Agreement on May 26, 2003.

Statement of Answer filed by Respondents on or about September 11, 2003.

A representative of Respondent PNC signed the Uniform Submission Agreement on June 23, 2003.

Respondent Greene signed the Uniform Submission Agreement on September 10, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: fraud; misrepresentation; *respondeat superior*; breach of fiduciary duty; negligence; violations of the Pennsylvania Securities Act; and, violations of the Pennsylvania Consumer Protection law. The causes of action relate to the purchase and sale of mutual funds.

Unless specifically admitted in their Answer, Respondents 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 the risk; failure to mitigate; estoppel, waiver and laches; statute of limitations; ratification; and, failure to plead fraud claims with the requisite degree of particularity.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$96,000.00, treble damages, punitive damages, interest, attorneys' fees, and costs.

Respondents requested the case be dismissed in its entirety, that judgment be rendered in their favor, and that the Panel award Respondents their costs.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing on the merits, the Arbitration Panel granted Claimants' request to amend the Statement of Claim for compensatory damages in the amount of \$40,964.70.

AWARD

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

1. Claimants' claims are denied in their entirety;
2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Greene's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Greene must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,
4. Any and all relief not specifically addressed herein, including punitive and treble damages, 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 firm that employed the associated person at the time of the events giving rise to the dispute.

Accordingly, PNC is a party.

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

Forum Fees and Assessments

The Arbitration 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 Panel @ \$ 1,125.00	= \$ 1,125.00
Pre-hearing conference(s): January 7, 2004 1 session	

Three (3) Hearing sessions @ \$ 1,125.00	= \$ 3,375.00
Hearing Dates: March 11, 2004 2 sessions	
March 12, 2004 1 session	

Total Forum Fees	= \$ 4,500.00
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1. The Arbitration Panel has assessed \$ 2,250.00 of the forum fees to Claimants, jointly and severally.
2. The Arbitration Panel has assessed \$ 2,250.00 of the forum fees to Respondents, jointly and severally.

Fee Summary

1. Claimants are jointly and severally assessed and shall pay:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 2,250.00
Total Fees	= \$ 2,550.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 1,125.00

2. Respondent PNC is assessed and shall pay:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 00.00

3. Respondents are jointly and severally assessed:

<u>Forum Fees</u>	= \$ 2,250.00
Total Fees	= \$ 2,250.00
<u>Less payments</u>	= \$.00
Balance Due NASD Dispute Resolution	= \$ 2,250.00

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

ARBITRATION PANEL

Marc A. Winters	-	Public Arbitrator, Presiding Chairperson
Dwight A. Howes, Esq.	-	Public Arbitrator, Panelist
John H. Ewing, Jr.	-	Non-Public Arbitrator, Panelist

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Concurring Arbitrators' Signatures

Marc A. Winters

Marc A. Winters
Public Arbitrator, Presiding Chairperson

April 5, 2004
Signature Date

Dwight A. Howes, Esq.
Public Arbitrator, Panelist

Signature Date

John H. Ewing, Jr.
Non-Public Arbitrator, Panelist

Signature Date

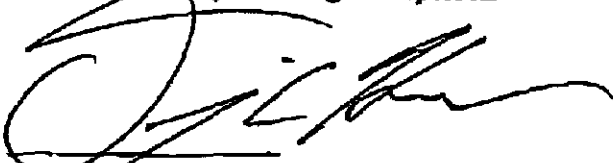
4/6/04
Date of Service (For NASD Dispute Resolution office use only)

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Signature Date



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Public Arbitrator, Panelist

4/5/04

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