

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Margaret A. Meyer

vs

03-04493  
Chicago, Illinois

Name of Respondents

Linsco Private Ledger Corp.,  
and Terry L. Gourley

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

**REPRESENTATION OF PARTIES**

Margaret A. Meyer, ("**Claimant**"), was represented by Andrew J. Stoltmann, Esq., Maddox Hargett & Caruso, P.C. Chicago, Illinois.

Respondent Linsco Private Ledger, Corp., ("**LPL**"), was represented by John S. Monical, Esq., Lawrence Kamin Saunders & Uhlenhop, located in Chicago, Illinois.

Respondent Terry Gourley was pro se and did not appear at the hearing.

**CASE INFORMATION**

The Statement of Claim was filed on or about July 20, 2003. Submission Agreement of Claimant was signed on May 23, 2003.

Statement of Answer was filed by Respondent LPL on July 16, 2003. Submission Agreement of Respondent was signed on June 14, 2003.

Respondent LPL filed a Motion to Dismiss on Statute of Limitations Grounds on May 18, 2004.

Respondent LPL filed a Motion to Dismiss for Lack of Causation on August 19, 2004.

Respondent LPL filed a Motion for Adverse Inference on August 23, 2004.

Claimant filed a Response to the Motion to Dismiss on Statute of Limitation Grounds on June 18, 2003.

Claimant filed a Response to the Motion to Dismiss for Lack of Causation on August 26, 2004.

Claimant filed a Response to the Respondent's Motion for Adverse Inferences at the time of the hearing on the merits.

### **CASE SUMMARY**

Claimant alleged the following causes of action: misrepresentation and omissions; front running; unsuitable investment recommendations; state securities law violations; violations of the Illinois Consumer Fraud and Deceptive Trade Practices Act; violations of Section 2310 Conduct Rules of the NASD; violations of Section 2110 Conduct Rules of the NASD; violations of Section 2120 Conduct Rules of the NASD; violations of Section 3010 Conduct Rules of the NASD; breach of contract; common law fraud and misrepresentation; breach of fiduciary duty and constructive fraud; respondent superior; fraud; negligence; unsuitable investment recommendations; and failure to supervise.

Claimant's causes of action are in relation to purchases of Liberte Capital Viaticals and 3dshopping.com. f/k/a "PI Graphix fund."

Respondent denied the allegations set forth in the Statement of Claim and asserted the following affirmative defenses: Claimant fails to State a claim upon which relief can be granted; Claimant's claim is barred by equity and the doctrines of waiver, estoppel, and ratifications; Claimant assumed the risks of her investments; respondent LPL acted in good faith; Claimant had full knowledge of all material facts; any loss that was incurred by Claimant was caused by her own negligence or the negligence of third parties; Claimant failed to mitigate her alleged damages; Claimant's losses, if any, were caused by economic forces beyond the control of Respondent; and, as a matter of law, Claimant is barred from recovery under the Illinois Securities Act.

### **RELIEF REQUESTED**

Claimant requested an award of actual damages in the excess of \$199,999.00 including pre and post judgment interest and attorneys' fees and costs.

Respondent LPL requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

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

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 remain on file with the NASD Dispute Resolution (the "NASD").

Respondent LPL's motions were heard at the time of the hearing on the merits. The Arbitrators denied all motions. Claimant's cause of action regarding 3dshopping.com was resolved prior to the hearing.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Terry L. Gourley has been properly served with the Statement of Claim pursuant to Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Terry L. Gourely, has received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondent Terry L. Gourley, Esq., did not file with the 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").

### **AWARD**

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

1. Respondent Terry Gourley shall pay to Claimant the sum of \$100,000.00 in compensatory damages;
2. Respondent Terry Gourley shall pay to Claimant the sum of \$33,333.00 in attorneys' fees. The authority for the attorneys fees is the Illinois Consumer Fraud Act;
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice; and,
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

### **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 event -giving rise to the dispute. In this matter, the member firm is LPL.

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	2,750.00
Total Member Fees	\$	<u>5,200.00</u>

**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, including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

2	Pre-hearing sessions with the Panel	x	\$1,125.00	\$	2,250.00
	March 29, 2004	1	session		
	July 29, 2004	1	session		
7	Hearing sessions	x	1,125.00	\$	7,875.00
	August 18, 2004	2	sessions		
	August 19, 2004	2	sessions		
	August 20, 2004	2	sessions		
	September 14, 2004	1	session		
	Total Forum Fees			\$	<u>1,125.00</u>

The Arbitration Panel has assessed \$5,062.50 to Claimant Margaret Meyer.

The Arbitration Panel has assessed \$5,062.50 of the forum fees to Respondent LPL.

**Fee Summary**

Claimant, Margaret Meyer, shall be and hereby is liable for:

Initial Filing Fee	= \$	300.00
Forum Fees	= \$	5,062.50

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<u>Total Fees</u>		= \$	5,362.50
<u>Less payments</u>		= \$	-1,425.00
Balance Due to NASD Dispute Resolution		= \$	3,937.50

Respondent, LPL, shall be and hereby is liable for:

Member Fees		= \$	5,200.00
Forum Fees		= \$	5,062.50
<u>Total Fees</u>		= \$	10,262.50
<u>Less payments</u>		= \$	-5,200.00
Balance Due NASD Dispute Resolution		= \$	5,062.50

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

Champ W. Davis, Jr., Esq. - Public Arbitrator, Presiding Chair  
Howard S. Suskin, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Champ W. Davis, Jr.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Howard S. Suskin, Esq.

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

Dissenting Arbitrator  
Public Arbitrator

\_\_\_\_\_  
Robert J. Downing, Esq. - Public Arbitrator

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

Date of Service by NASD \_\_\_\_\_

**NASD Dispute Resolution**  
**Arbitration No. 03-4493**  
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<u>Total Fees</u>		= \$	<u>5,362.50</u>
<u>Less payments</u>		= \$	<u>-1,425.00</u>
<b>Balance Due to NASD Dispute Resolution</b>		= \$	<b>3,937.50</b>

Respondent, LPL, shall be and hereby is liable for:

<b>Member Fees</b>		= \$	<b>5,200.00</b>
<b>Forum Fees</b>		= \$	<b>5,062.50</b>
<b>Total Fees</b>		= \$	<b>10,262.50</b>
<b>Less payments</b>		= \$	<b>-5,200.00</b>
<b>Balance Due NASD Dispute Resolution</b>		= \$	<b>5,062.50</b>

All balances are due to NASD Dispute Resolution

**ARBITRATION PANEL**

Champ W. Davis, Jr., Esq. - Public Arbitrator, Presiding Chair  
Howard S. Suskin, Esq. - Non-Public Arbitrator

**Concurring Arbitrators:**

\_\_\_\_\_  
Champ W. Davis, Jr.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Howard S. Suskin, Esq.

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

~~Disputing Arbitrator~~  
Public Arbitrator

  
Robert J. Downing, Esq. - Public Arbitrator

10/26/04  
Signature Date

Date of Service by NASD 10/26/04

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Balance Due to NASD Dispute Resolution = \$ 3,937.50

Respondent, LPL, shall be and hereby is liable for:

Member Fees	= \$	5,200.00
Forum Fees	= \$	5,062.50
Total Fees	= \$	10,262.50
Less payments	= \$	<del>5,200.00</del>
Balance Due NASD Dispute Resolution	= \$	5,062.50

All balances are due to NASD Dispute Resolution

### ARBITRATION PANEL

Champ W. Davis, Jr., Esq. - Public Arbitrator, Presiding Chair  
 Howard S. Suskin, Esq. - Non-Public Arbitrator

Consenting Arbitrators:

Champ W. Davis, Jr.  
 Champ W. Davis, Jr.  
 Public Arbitrator, Presiding Chair

10/25/04  
 Signature Date

Howard S. Suskin, Esq.  
 Howard S. Suskin, Esq.

10/26/04  
 Signature Date

Disconsenting Arbitrator  
 Public Arbitrator

Robert J. Downing, Esq. - Public Arbitrator

Signature Date

Date of Service by NASD