
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Leander W. Hughley, Trustee of the
Johnny L. Hughley Sr. and
Leander W. Hughley Family Trust

Case Number: 03-04584

Names of the Respondents

Byron Rainer
William P. Chien
Synergy Investment Group, LLC
Penson Financial Services, Inc.
MetLife Securities, Inc.
Michael Chien
Kevin Begley

Hearing Site: Atlanta, Georgia

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

REPRESENTATION OF PARTIES

For Leander W. Hughley, Trustee of the Johnny L. Hughley Sr. and Leander W. Hughley Family Trust, hereinafter collectively referred to as "Claimant": Luis F. Biason, Esq., Luis F. Biason, P.A., North Miami Beach, Florida.

Respondent Byron Rainer ("Rainer") appeared pro se.

For Respondent Synergy Investment Group, LLC ("Synergy"): Felix J. Lopez, White & Case, Miami, Florida.

Respondent William P. Chien did not appear in this matter.

For Respondent Penson Financial Services, Inc. ("Penson"): Thomas W. Craddock, Esq., McGuire, Craddock & Strother, P.C., Dallas, Texas.

For Respondent MetLife Securities, Inc. ("MetLife"): B. John Pendleton, Jr., Esq., McCarter & English, LLP, Newark, New Jersey.

For Respondent Michael Chien: Alan Foxman, Esq., Law Office of Alan Foxman, P.A., Boca Raton, Florida.

Respondent Kevin T. Begley ("Begley") appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: September 10, 2003.
Claimant's First Amended Statement of Claim filed on or about: April 1, 2004.
Claimant signed the Uniform Submission Agreement: August 15, 2003.
Statement of Answer including Motion to Dismiss filed by Respondent Penson on or about: October 30, 2003.
Statement of Answer filed by Respondent Rainer on or about: October 31, 2003.
Statement of Answer and Affirmative Defenses filed by Respondent MetLife on or about: October 30, 2003.
Statement of Answer and Affirmative Defenses filed by Respondent Synergy on or about: October 31, 2003.
Statement of Answer filed by Respondent Michael Chien on or about: May 26, 2004.
Respondents William P. Chien and Begley did not file Statements of Answer.
Respondent Rainer signed the Uniform Submission Agreement: December 15, 2003.
Respondent Penson signed the Uniform Submission Agreement: September 23, 2003.
Respondent Synergy signed the Uniform Submission Agreement: October 28, 2003.
Respondents William P. Chien, Michael Chien, MetLife and Begley did not file with NASD Dispute Resolution executed Uniform Submission Agreements.
Claimant's Motion to Amend Statement of Claim filed on or about: January 29, 2004.
Claimant's Motion to add William P. Chien as a Named Respondent filed on or about: April 26, 2004.
Claimant's Reply to Respondent Penson's Motion to Dismiss filed on or about: May 17, 2004.
Respondent Penson's Response to Claimant's Reply to Motion to Dismiss filed on or about: June 7, 2004.
Claimant's Reply to Respondent Penson's June 7, 2004 Response and Claimant's Motion to Strike Penson's Request to Dismiss Florida Securities and Investor's Protection Act Claims filed on or about: June 10, 2004.
Claimant's Motion to Strike Respondent Penson's Motion to Dismiss filed on or about: June 16, 2004.
Claimant's Motion to Proceed against Respondent Rainer filed on or about: June 16, 2004.
Claimant's Motion to Deem Respondent William Chien Properly Served filed on or about: December 22, 2004.
Respondent Michael Chien's Motion to Dismiss Michael Chien filed on or about: December 31, 2004.
Claimant's Motion to Deny Respondent Michael Chien's Motion to Dismiss filed on or about January 7, 2005.

CASE SUMMARY

Claimant alleged the following causes of action: violations of Section 517.301, Florida Statutes, the Florida Securities and Investor Protection Act (2001) including fraudulent misrepresentations and omissions and unauthorized trading; negligence through breach of fiduciary duty; violation of NASD "Know Your Customer" and "Know Your Product" conduct rules including unsuitability; churning; and, failure to supervise, control person liability, respondeat superior, and material aiding and abetting. The causes of action relate to Claimant's investments in various unspecified mutual funds.

Unless specifically admitted in their Answers, Respondents Penson, Rainer, MetLife, Synergy and Michael Chien denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant requested an award of compensatory damages of \$685,579.97; statutory interest in an amount exceeding \$281,597.00 for the period April 2000 to the present; punitive damages in the amount of \$2,056,740.00 or triple the amount of the action for compensatory damages; reasonable attorneys' fees; and

Claimant's costs and expenses in pursuing this matter.

Respondent Rainer requested that the arbitration be dismissed and that the forum fees be assessed against the Claimant.

Respondent Penson requested that this matter be dismissed in its entirety and that Claimant recover nothing from Penson, and that Respondent Penson have and recover all its fees, costs, and expenses incurred herein.

Respondent Synergy requested that the Claimant take nothing against Respondent Synergy by way of this action; the Statement of Claim and all allegations therein be dismissed with prejudice; Respondent Synergy be awarded arbitration fees, expenses, and reasonable attorneys' fees incurred in defending this arbitration; and any other relief the Panel deemed just and proper.

Respondent MetLife requested that the Panel enter an Award dismissing the Statement of Claim with prejudice; assessing Respondent MetLife its costs and attorneys' fees against Claimant; and granting such other and further relief as this Panel deemed just and proper.

Respondent Michael Chien requested an award dismissing all claims and providing for such other and further relief as the panel may seem just and proper, including an order directing expungement of any reference to the dispute underlying this case from the records of the Central Registration Depository and the costs and disbursements of this proceeding, including attorneys' fees, as permitted by the rules of Arbitration Procedure and applicable law.

OTHER ISSUES CONSIDERED AND DECIDED

On or about January 28, 2004, Respondent Prudential Insurance Company of America, who is not a member firm of NASD, informed NASD Dispute Resolution that it declined to participate in this matter.

On or about March 22, 2004, NASD Dispute Resolution was informed that Respondent Rainer had filed for protection pursuant to Chapter 13 of the U.S. Bankruptcy Code. As such, all matters with respect to Respondent Rainer were stayed.

On or about January 10, 2005, Claimant filed with NASD Dispute Resolution a Stipulation of Dismissal With Prejudice with respect to Respondent Kevin T. Begley.

On or about February 9, 2004, the Panel issued an order which granted Claimant's Motion to Amend Statement of Claim and requested that Claimant provide Respondents and NASD Dispute Resolution with its amendment in writing.

On or about April 1, 2004, Claimant filed the First Amended Statement of Claim wherein Claimant dismissed Prudential Insurance Company of America.

On or about April 26, 2004, Claimant filed with NASD Dispute Resolution Claimant's Dismissal With Prejudice of Respondent Synergy.

On or about June 3, 2004, Claimant informed NASD Dispute Resolution that Respondent Rainer's bankruptcy petition had been dismissed by the U.S. Bankruptcy Court on April 28, 2004.

On or around July 2, 2004, the Panel issued an order which granted Claimant's Motion to Join Respondent Michael Chien and Respondent Begley, and granted Claimant's Motion to add Respondent William Chien, and dismissed Respondent Metlife and denied Respondent Penson's Motion to Dismiss.

On or about July 22, 2004, the Panel issued an order which granted Claimant's Motion to Proceed against Respondent Rainer.

On or about October 28, 2004, Claimant and Respondent Penson filed a Stipulation of Dismissal with Prejudice.

On or about January 19, 2005, Claimant filed with NASD Dispute Resolution a Notice of Dismissal With Prejudice of Respondent Michael Chien. This agreement had been reached in principal on January 12, 2005, prior to the evidentiary hearing.

Respondents William P. Chien, Begley, MetLife and Michael Chien did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and are bound by the determination of the Panel on all issues submitted.

The parties present at the hearing agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

Respondents Rainer and William Chien did not attend the evidentiary hearing in this matter. Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Respondents Rainer and William Chien have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the Code.

One member of the arbitration panel passed away immediately prior to the evidentiary hearing scheduled for January 13, 2005. The party present at the hearing agreed to proceed with the remaining two arbitrators.

The Panel determined that as there was no account owned by Leander W. Hughley, individually, the only Claimant in this matter is Leander Hughley as Trustee of the Johnny L. Hughley Sr. and Leander W. Hughley Family Trust.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Panel finds in favor of Claimant on the following causes of action: violations of Section 517.301, Florida Statutes, the Florida Securities and Investor Protection Act (2001) including fraudulent misrepresentations and omissions and unauthorized trading; negligence through breach of fiduciary duty; violation of NASD "Know Your

Customer" and "Know Your Product" conduct rules including unsuitability and churning.

Respondents William Chien and Byron Rainer are liable, jointly and severally, and shall pay to Claimant Leander W. Hughley, Trustee of the Johnny Hughley Sr. and Leander Hughley Family Trust the following:

Compensatory damages in the amount of \$405,759.03;

Punitive or RICO damages in the amount of \$811,518.06

Authority for Punitive or RICO damages: *Mastrobuono v. Shearson Lehman Hutton, Inc.* 115 S.Ct. 1212, 1218 (1995) and *Davis v. Prudential Securities, Inc.*, 59 F.3d 1186 (11th Cir. 1995), NASD Rule 10214.

The Panel has reviewed the evidence and the proofs provided at the hearing on January 13, 2005 and find the following conduct gave rise to the award of punitive damages under Florida Statute 768.72:

1. Respondent Rainer deceived Claimant through fraudulent misrepresentations that Claimant's investment assets would be deposited with Prudential but instead delivered the Claimant's funds elsewhere. The fraud was further perpetuated by Respondent Rainer through additional misrepresentations that the investment assets were safe in an account and that any discrepancies were insignificant and would be corrected.
2. Fraud also occurred when Respondent Chien engaged in unauthorized trading and short-term margin trading that was not authorized by Claimant. The funds were placed into an account that was subject to excessive churning and excessive account risk. The fraud was further perpetuated when in response to Claimant inquiries, written misrepresentations about account discrepancies and errors were made by Respondent Chien.
3. The Claimant was an unsophisticated investor and the actions of the Respondents in these facts were sufficient to shock the conscience and to support an award of punitive damages to deter and punish the conduct of Respondents Rainer and William Chien.

Accordingly, the panel awards the sum of \$811,518.06 as punitive damages to Claimant, or two (2) times the amount of compensatory damages awarded by the panel;

Interest in the amount of \$275,205.00, calculated from April 24, 2000 until January 13, 2005.

Post judgment statutory interest at the rate of 7% per annum shall continue to accrue from January 14, 2005 until payment is rendered;

Attorneys' Fees in the amount of \$364,607.20.

Authority for Attorneys' Fees: Florida Securities and Investor Protection Act F.S. Section 517.301 and Section 517.311, *Moser v. Barron Chase Securities*, 783 So.2d 231 (Fla. 2001);

Costs in the amount of \$6,524.97; and,

Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$500.00

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, Pruco Securities Corporation, Synergy, Penson, Metropolitan and MetLife are assessed the following member fees.

Pruco's fees:

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

Synergy's fees:

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

Penson's fees:

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

Metropolitan's fees:

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

MetLife's fees:

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

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

Three-day cancellation fees were not assessed in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

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 the Panel @ \$1,200.00 per session	= \$4,800.00
Pre-hearing conference: April 5, 2004 1 session	
June 16, 2004 1 session	
June 21, 2004 1 session	
October 8, 2004 1 session	
One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conferences: January 7, 2005 1 session	
Two (2) Hearing sessions @ \$1,200.00 per session	= \$2,400.00
Hearing Dates: January 13, 2005 2 sessions	
Total Forum Fees	= \$7,650.00

The Panel has assessed the total forum fees of \$7,650.00 to Respondents William Chien and Rainer, jointly and severally.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 500.00
Total Fees	= \$ 500.00
<u>Less payments</u>	= \$ 500.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Willaim Chien and Rainner are jointly and severally liable for:

<u>Forum Fees</u>	= \$7,650.00
Total Fees	= \$7,650.00
<u>Less payments</u>	= \$.00
Balance Due NASD Dispute Resolution	= \$7,650.00

Pruco is solely liable for:

<u>Member Fees</u>	= \$8,550.00
Total Fees	= \$8,550.00
<u>Less payments</u>	= \$8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Synergy is solely liable for:

<u>Member Fees</u>	= \$8,550.00
Total Fees	= \$8,550.00
<u>Less payments</u>	= \$8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Penson is solely liable for:

<u>Member Fees</u>	= \$8,550.00
Total Fees	= \$8,550.00
<u>Less payments</u>	= \$8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Metropolitan is solely liable for:

<u>Member Fees</u>	= \$8,550.00
Total Fees	= \$8,550.00
<u>Less payments</u>	= \$8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Metlife is solely liable for:

<u>Member Fees</u>	= \$8,550.00
Total Fees	= \$8,550.00
<u>Less payments</u>	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$5,000.00

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

ARBITRATION PANEL

John F. Allgood, Esq.
Kendall P. Hill

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Public Arbitrator, Presiding Chairperson
Public Arbitrator

Concurring Arbitrators' Signatures

_____/s/_____
John F. Allgood, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

_____/s/_____
Kendall P. Hill
Public Arbitrator

Signature Date

1-26-05
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
Arbitration No. 03-04584
Award Page 9

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Kendall P. Hill

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NASD Dispute Resolution
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Award Page 9

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