
Corrected Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Dr. Joseph Taubman

Case Number: 03-04901

Names of the Respondents

APB Financial Group a/k/a Abernathy
Technology Research Institute
Steven Abernathy

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Dr. Joseph Taubman, hereinafter referred to as "Claimant": Justin Kam, Esq., Feingold & Kam, LLC, Palm Beach Gardens, Florida.

For APB Financial Group a/k/a Abernathy Technology Research Institute ("APB Financial") and Steven Abernathy ("Abernathy"), hereinafter collectively referred to as "Respondents": Andrew Sidman, Esq., Butler, Fitzgerald & Potter, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: June 18, 2004.

Claimant signed the Uniform Submission Agreement: June 23, 2004.

Respondent APB Financial signed the Uniform Submission Agreement: June 22, 2004.

Respondent Abernathy signed the Uniform Submission Agreement: June 22, 2004.

Respondents' Motion to Dismiss the Statement of Claim Prior to a Hearing and Statement of Answer filed on or about: September 19, 2003.

Claimant's Response to Respondents' Motion to Dismiss filed on or about: October 10, 2003.

Respondents' Motion to Dismiss and/or for Sanctions and to Preclude filed on or about: June 4, 2004.

Claimant's Motion to Strike/Bar filed on or about: June 18, 2004.

Respondents' Response in Opposition to Claimant's Motion to Strike/Bar filed on or about: June 21, 2004.

CASE SUMMARY

Claimant alleged the following causes of action: 1) breach of fiduciary duty; 2) negligence; and 3) unsuitability. The causes of action relate to the purchase and sale of shares of Cisco and other unspecified securities in Claimant's account.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim, asserted various affirmative defenses, and asserted Motions to Dismiss the Statement of Claim on the following bases: there was a net profit in Claimant's account, the stocks in Claimant's IRA were consistent with Claimant's stated investment objectives, and Respondents Abernathy and APB Financial acted professionally, considerately, and fulfilled all duties owed to Claimant.

RELIEF REQUESTED

Claimant requested: 1) compensatory damages in an amount between \$1,000,000 and \$3,000,000.00; 2) punitive damages; 3) well managed account theory damages; and 4) any other relief the Panel deemed just and proper.

Respondents requested 1) dismissal, with prejudice, of all claims filed by Claimant; 2) an award of costs including reasonable attorney's fees incurred in defending this proceeding; and 3) expungement of all references to this proceeding from Respondent Abernathy's NASD Central Registration Depository ("CRD") records.

OTHER ISSUES CONSIDERED AND DECIDED

On or about December 19, 2003, the Panel issued an order that denied Respondents' Motion to Dismiss the Statement of Claim Prior to a Hearing.

Claimant's Motion to Strike/Bar was resolved at the evidentiary hearing, and deemed as moot.

Respondent's Motion to Dismiss and/or for Sanctions and to Preclude was resolved at the evidentiary hearing, and deemed as moot.

The parties agreed that the Award in this matter may be executed in counterpart copies.

AWARD

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

1. All claims against Respondents are dismissed.

2. The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Abernathy's registration records maintained by the NASD CRD, based on the defamatory nature of the information contained therein, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Abernathy must obtain confirmation from a court of competent jurisdiction before the NASD CRD will execute the expungement directive.
3. Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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

Adjournment Fees

Adjournment granted during these proceedings for which fees were assessed:

June 23 - 25, 2004, adjournment requested by Claimant = \$ 1,200.00 (waived by panel)

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 APB Financial Group, Inc. is a party.

Pre-hearing Process Fee: = \$ 750.00

Hearing Process Fee: = \$ 5,000.00

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:

No three-day cancellation fees were incurred 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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 per session = \$ 450.00

Pre-hearing conference: June 4, 2004 1 session

One (1) Pre-hearing session with Panel @ \$ 1,200.00 per session = \$ 1,200.00

Pre-hearing conference: December 8, 2003 1 session

Eight (8) Hearing sessions @ \$1,200.00 per session = \$ 9,600.00

Hearing Dates: June 22, 2004 3 sessions

June 23, 2004 1 session

October 12, 2004 2 sessions

October 13, 2004 2 sessions

Total Forum Fees = \$11,250.00

The Panel has assessed the total forum fees of \$11,250.00 to Claimant.

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.

No administrative costs were incurred in this matter.

Fee Summary

Claimant is liable for:

Initial Filing Fee = \$ 500.00

Forum Fees = \$ 11,250.00

Total Fees = \$ 11,750.00

Less payments = \$ 1,700.00

Balance Due NASD Dispute Resolution = \$ 10,050.00

Respondent, APB Financial, is solely liable for:

Pre-hearing Process Fee: = \$ 750.00

Hearing Process Fee: = \$ 5,000.00

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Total Fees	=	\$ 5,750.00
<u>Less payments</u>	=	<u>\$ 5,750.00</u>
Balance Due NASD Dispute Resolution	=	\$ 0.00

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

ARBITRATION PANEL

Joel F. Martineau	-	Public Arbitrator, Presiding Chairperson
Mark C. Perry, Esq.	-	Public Arbitrator
Jerry A. Desiderio	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/	11/8/04
_____ Joel F. Martineau Public Arbitrator, Presiding Chairperson	_____ Signature Date
/s/	11/8/04
_____ Mark C. Perry, Esquire Public Arbitrator	_____ Signature Date
/s/	11/8/04
_____ Jerry A. Desiderio Non-Public Arbitrator	_____ Signature Date

11/11/04

Date of Service (For NASD Dispute Resolution office use only)

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11/1/04

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Public Arbitrator, Presiding Chairperson

Signature Date

/s/

10/28/04

Mark C. Perry, Esquire
Public Arbitrator

Signature Date

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