

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Garland F. Gonseth and Bernard F. Larkin (Claimants) v. McDonald Investments, Inc.
and David E. Soderquist (Respondents)

Case Number: 03-05133

Hearing Site: Albany, New York

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

REPRESENTATION OF PARTIES

Claimants Garland F. Gonseth ("Gonseth") and Bernard F. Larkin ("Larkin") hereinafter collectively referred to as "Claimants": Kimberly M. Zimmer, Esq., Green & Seifter, Attorneys, PLLC, Syracuse, NY.

Respondents McDonald Investments, Inc. ("McDonald") and David E. Soderquist ("Soderquist") hereinafter collectively referred to as "Respondents": Richard A. McGuirk, Esq., Nixon Peabody, LLP, Rochester, NY.

CASE INFORMATION

Statement of Claim filed on or about: July 11, 2003.

Response to Respondents' Motion for a More Definite Statement filed on or about: October 3, 2003.

Claimant Gonseth signed the Uniform Submission Agreement: June 10, 2003.

Claimant Larkin signed the Uniform Submission Agreement: June 10, 2003.

Joint Statement of Answer and Motion for a More Definite Statement filed by Respondents on or about: September 11, 2003.

Respondent McDonald signed the Uniform Submission Agreement: September 11, 2003.

Respondent Soderquist signed the Uniform Submission Agreement: September 11, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitability; misrepresentation and overstatement of the returns on the investment; failure to disclose investment risk; failure to supervise; breach of fiduciary duty; and violation of industry rules and securities rules. Claimants' claim involved investments in Hartford Life Insurance's Director Variable Annuity and in the Advisers HLS Fund, Inc.

Unless specifically admitted in their Answer and Motion for a More Definite Statement, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In their Statement of Claim, Claimants each requested an award of approximately \$225,000.00, plus prejudgment interest; restitution of surrender charges and a waiver of any future surrender charges; disgorgement of commissions; punitive damages; reasonable attorneys' fees; costs and disbursements; and such other and further relief as the arbitrators deem just and proper. In their Response to Respondents' Motion for a More Definite Statement, Claimants requested that the Motion be denied.

Respondents requested that the claims against them be denied in their entirety; that all forum fees be awarded against Claimants; that Respondents be awarded costs and attorneys' fees; that Claimants' complaint be expunged from Respondents' records; that Claimants be required to submit a more definite statement articulating a cognizable theory of damages and how those damages are calculated; and that the Panel grants such other and further relief as it deems just and proper under the circumstances.

OTHER ISSUES CONSIDERED AND DECIDED

After the pre-hearing conference held on January 20, 2004, the Panel denied Respondents' Motion for a More Definite Statement.

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. Claimants' claims are dismissed in their entirety.
2. 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

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, McDonald Investments, Inc. 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 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 6, 2004	1 session
	January 20, 2004	1 session
	June 21, 2004	1 session
	July 22, 2004	1 session

Twelve (12) Hearing sessions @ \$1,125.00 = \$13,500.00

Hearing Dates:	June 7, 2004	2 sessions
	June 8, 2004	2 sessions
	June 16, 2004	2 sessions
	June 17, 2004	2 sessions
	October 4, 2004	2 sessions
	October 6, 2004	2 sessions

Total Forum Fees = \$18,000.00

1. The Panel has assessed \$18,000.00 of the forum fees jointly and severally against the Respondents.

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.

1. Claimants requested phone service during the hearing = \$ 175.00

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Administrative Fees</u>	= \$ 175.00
Total Fees	= \$ 475.00
<u>Less payments</u>	= \$ 1,425.00
Refund Due Claimants	= \$ 950.00

2. Respondent McDonald is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
Total Fees	= \$ 5,200.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$18,000.00
Total Fees	= \$18,000.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$18,000.00

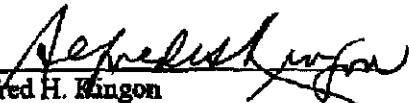
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Alfred H. Kingon	-	Public Arbitrator, Presiding Chairperson
Lewis S. Kurlantzick	-	Public Arbitrator
Catherine Ladnier	-	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 which is my award.



Alfred H. Kingon
Public Arbitrator, Presiding Chairperson

10/11/04

Signature Date

Catherine Ladnier
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

Lewis S. Kurlantzick
Public Arbitrator

Signature Date

October 15, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Alfred H. Kingon
Lewis S. Kurlantzick
Catherine Ladnier

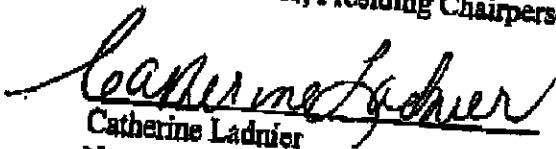
Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

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Alfred H. Kingon
Public Arbitrator, Presiding Chairperson

Signature Date


Catherine Ladnier
Non-Public Arbitrator

Oct. 9, 2004
Signature Date

Dissenting Arbitrator's Signature

Lewis S. Kurlantzick
Public Arbitrator

Signature Date

October 15, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Alfred H. Kingon	-	Public Arbitrator, Presiding Chairperson
Lewis S. Kurlantzick	-	Public Arbitrator
Catherine Ladnier	-	Non-Public Arbitrator

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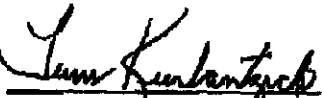
Alfred H. Kingon
Public Arbitrator, Presiding Chairperson

Signature Date

Catherine Ladnier
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature



Lewis S. Kurlantzick
Public Arbitrator

10/9/04

Signature Date

October 15, 2004
Date of Service (For NASD Dispute Resolution use only)

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 03-05136

Prime Charter Ltd., Claimant v. Wayne S. Hemans, Respondent.

ATTORNEYS:

Claimant, Prime Charter Ltd., ("Claimant"), appeared through their in-house counsel, Evelyn Bukchin, Esq., New York, NY.

Respondent, Wayne S. Hemans, ("Respondent"), did not respond to the Statement of Claim.

NATURE OF DISPUTE: Member v. Associated Person

DATE FILED: July 14, 2003

CASE SUMMARY: Claimant alleged that Respondent failed to repay monies owed pursuant to the terms of a promissory note. Claimant maintained that due to Respondent's action, the corporation suffered financial losses.

Claim Data

Claim: \$15,000.00

Interest: Unspecified

Attorney Fees: \$3,000.00

Filing Fees: \$1,475.00

Other: Unspecified

Award Data

Award: \$15,000

Interest: At the rate of 9% per annum
from 3/24/03 to 11/24/03

Attorney Fees: \$2,250.00

Filing Fees: \$1,050.00

Other: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondent is liable and shall pay to the Claimant \$15,000.00. 2) Respondent is liable and shall pay to the Claimant interest at the rate of 9% per annum from March 24, 2003 to November 24, 2003. 3) Respondent is liable and shall pay to the Claimant \$2,250.00 attorney fees according to Claimant's request. 4) All other relief requests are denied. 5) NASD Dispute Resolution shall retain the \$1,050.00 filing fee that the Claimant deposited previously. 6) Respondent is liable for and shall pay to the Claimant \$1,050.00 as reimbursement of the filing fee.

OTHER FEES: Pursuant to Rule 10333 of the Code, Claimant, Prime Charter Ltd. has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

OTHER ISSUES: Pursuant to the By-Laws of NASD Dispute Resolution, the arbitrator determined that Respondent Wayne S. Hemans was served notice of the Statement of Claim and Notification of Arbitrator by regular mail, and Overdue Notice by certified mail as evidenced by the signed signature card on file, and is therefore bound by the Arbitrator's ruling and determination.

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Melanie S. Cherdack, Esq.

Sole Non-Public Arbitrator

AFFIRMATION

I, Melanie S. Cherdack, Esq., do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.

Melanie S. Cherdack
Melanie S. Cherdack, Esq.

12-29-03
Signature Date

January 9, 2004
Date of Service (For NASD-DR office use only)