

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Janice K. Hawks

v.

03-05376
Denver, Colorado

Respondent

Mountain States Investments

Nature of Dispute: Customer v. Member Firm

REPRESENTATION OF PARTIES

Janice K. Hawks ("Claimant") was represented by John F. Head, Esq., of Head & Associates, P.C., Denver, Colorado.

Mountain States Investments ("Respondent") was represented by William D. Nelson, Esq., of Rothgerber Johnson & Lyons, LLP, Denver, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about July 22, 2003. The Submission Agreement of Claimant was signed on or about July 15, 2003.

The Statement of Answer was filed by Respondent, Mountain States Investments, on or about September 11, 2003. The Submission Agreement of Respondent, Mountain States Investments, was signed on or about September 15, 2003.

CASE SUMMARY

Claimant asserted causes of action including the following: fraud, negligence, negligent misrepresentation, breach of contract, violation of the Colorado Consumer Protection Act, breach of covenant of good faith and fair dealing, and securities fraud under C.R.S. § 11-51-125(2) and § 11-51-125(3). The causes of action related to Claimant's allegations that Respondent misrepresented her income, investment objectives and investment experience on her account forms. Claimant stated that because of these misrepresentations, Respondent kept her in mutual funds (Aim Weingarten Fund Oppenheimer Capital Appreciation, Oppenheimer Mid Cap, Putnam Voyager and Putnam Vista), which, according to Claimant, were overly concentrated in the volatile technology sector and unsuitable given her primary investment objectives of income and preservation of capital.

Respondent denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted; Claimant's damages, if any, were caused by acts, events, circumstances or persons over which Respondent had neither authority nor control; Claimant's claims are barred by the doctrines of waiver, estoppel, ratification and unclean hands; Claimant authorized and/or directed all transactions at issue and assumed the risks associated with such transactions; and Claimant's losses, if any, were proximately caused by Claimant's own decisions, conduct, actions and/or negligence and not by any action or inaction of Respondent.

RELIEF REQUESTED

Claimant requested an award in the amount of \$300,000 in compensatory damages, plus interest, attorney's fees, costs and any other relief that the panel deemed just and equitable.

Respondent 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 originals remain on file with NASD Dispute Resolution ("NASD").

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, Mountain States Investments, is liable for and shall pay to Claimant, Janice K. Hawks, the sum of Sixty Five Thousand Nine Hundred Sixty One Dollars and No Cents (\$65,961.00) as compensatory damages;
2. Respondent, Mountain States Investments, is liable for and shall pay to Claimant, Janice K. Hawks, interest on above-stated sum at the rate of 8% per annum from and including May 30, 2002, through and including the date this Award is paid in full;
3. Respondent, Mountain States Investments, is liable for and shall pay to Claimant, Janice K. Hawks, the sum of Twenty One Thousand Seven Hundred Twenty Dollars and No Cents (\$21,720.00) in attorney's fees pursuant to C.R.S. § 13-22-221;

4. Respondent, Mountain States Investments, is liable for and shall pay to Claimant, Janice K. Hawks, the sum of Eight Thousand Four Hundred Eighty Three Dollars and No Cents (\$8,483.00) in arbitration costs pursuant to C.R.S. § 13-22-221; and
5. 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.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 300

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Mountain States Investments.

Member surcharge	= \$ 1,700
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 2,750

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(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 x \$ 1,125 = \$ 1,125

Pre-hearing conference: 03/15/2004 1 session

Three (3) Hearing sessions with Panel x \$ 1,125 = \$ 3,375

Hearing Dates:	07/28/2004	2 sessions
	07/29/2004	1 session

Total Forum Fees = \$ 4,500

The Arbitration Panel has assessed \$ 2,250 of the forum fees to Janice K. Hawks.

The Arbitration Panel has assessed \$ 2,250 of the forum fees to Mountain States Investments.

Fee Summary

Claimant, Janice K. Hawks, is liable for:

Initial Filing Fee	= \$ 300
<u>Forum Fees</u>	<u>= \$ 2,250</u>
Total Fees	= \$ 2,550
<u>Less payments</u>	<u>= \$ 1,425</u>
Balance Due NASD Dispute Resolution	= \$ 1,125

Respondent, Mountain States Investments, is liable for:

Member Fees	= \$ 5,200
<u>Forum Fees</u>	<u>= \$ 2,250</u>
Total Fees	= \$ 7,450
<u>Less payments</u>	<u>= \$ 5,200</u>
Balance Due NASD Dispute Resolution	= \$ 2,250

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

ARBITRATION PANEL

David Butler, Esq. - Public Arbitrator, Presiding Chair
Robert C. Roth, Jr., Esq. - Public Arbitrator
Charlyce A. Friday- Non-Public Arbitrator

Concurring Arbitrators:

David Butler, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Robert C. Roth, Jr., Esq.
Public Arbitrator

Signature Date

Charlyce A. Friday
Non-Public Arbitrator

Signature Date

2/25/04
Date of Service (NASD use only)

ARBITRATION PANEL

David Butler, Esq. - Public Arbitrator, Presiding Chair
Robert C. Roth, Jr., Esq. - Public Arbitrator
Charlyce A. Friday- Non-Public Arbitrator

Concurring Arbitrators:

David Butler
David Butler, Esq.
Public Arbitrator, Presiding Chair

August 24, 2004
Signature Date

Robert C. Roth, Jr., Esq.
Robert C. Roth, Jr., Esq.
Public Arbitrator

Signature Date

Charlyce A. Friday
Charlyce A. Friday
Non-Public Arbitrator

Signature Date

2/25/04
Date of Service (NASD use only)

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Robert C. Roth, Jr., Esq. - Public Arbitrator
Charlyce A. Friday- Non-Public Arbitrator

Concurring Arbitrators:

David Butler, Esq.
Public Arbitrator, Presiding Chair

Robert C. Roth, Jr., Esq.
Public Arbitrator

Charlyce A. Friday
Non-Public Arbitrator

Signature Date

Signature Date

Signature Date

8/25/04
Date of Service (NASD use only)

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Charlyce A. Friday - Non-Public Arbitrator

Concurring Arbitrators:

David Butler, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Robert C. Roth, Jr., Esq.
Public Arbitrator

Signature Date


Charlyce A. Friday
Non-Public Arbitrator

8-24-04
Signature Date

8/25/04
Date of Service (NASD use only)