

**NASD DISPUTE RESOLUTION
AWARD**

In the Matter of the Arbitration Between

Name of Claimant

Jerry I. Gilliland

and

03-05803
Dallas, Texas

Name of Respondent

Sid Lorio, Linsco Private Ledger Corp.,
Linsco Private Ledger Financial Services
a/k/a LPL Financial Services

NATURE OF THE DISPUTE

Public Customer v. Member Firm and Associated Person

PARTIES AND THEIR REPRESENTATIVES

Claimant:

Claimant, Jerry I. Gilliland ("Claimant") was represented by Brian D. Esenwein, Esq., of the firm of Cotton Schmidt, L.L.P., located in Fort Worth, Texas.

Respondents:

Respondents Sid Lorio and Linsco Private Ledger Financial Services a/k/a LPL Financial Services were represented by D. Craig Brinker, Esq. and Charles Settle, Esq., of the firm of Henslee Fowler Hepworth & Schwartz LLP, located in Dallas, Texas.

CASE INFORMATION

Claimant's Statement of Claim and Uniform Submission Agreement was filed on or about August 7, 2003.

Respondent, Linsco Private Ledger Financial Services a/k/a LPL Financial Services' Statement of Answer was filed on or about December 9, 2003; a Uniform Submission Agreement was filed on behalf of Linsco Private Ledger Corp. and Sid J. Lorio on or about January 8, 2004. Respondent Sid Lorio's Answer to the Statement of Claim was filed on April 16, 2004.

An initial Pre-Hearing Conference Scheduling Order was entered on April 14, 2004. Orders of Production to Hartford Financial Services Group, Inc. and to Kemper Investors Life Insurance Company were entered on May 6, 2004.

Claimant, Jerry I. Gilliland's, Motion To Compel the Deposition of Respondent Sid Lorio was entered on May 10, 2004.

Opposition To Motion To Compel Deposition of Respondent Sid Lorio was filed on June 1, 2004.

Claimant, Jerry I. Gilliland's, First Amended Statement of Claim was filed on June 1, 2004.

Claimant, Jerry I. Gilliland's, Reply To Respondent's Opposition To Motion To Compel Deposition of Respondent Sid Lorio was filed on June 2, 2004.

Motion To Schedule Deposition and Hearing was filed on July 15, 2004.

Claimant's Response to Respondents' Amended Answers was filed on April 25, 2005.

Amended Pre-Hearing Scheduling Order, Order Compelling Discovery was entered on April 15, 2005. Claimant Jerry I. Gilliland's Motion To Compel Production of Documents was filed on April 14, 2005.

Claimant Jerry I. Gilliland's Motion For Entry of Pre-Hearing Scheduling Order was filed on April 12, 2005.

Respondents Sid Lorio and Linsco Private Ledger Financial Services a/k/a LPL Financial Services' Answer and Response To the First Amended Statement of Claim and To The Claimant's First Supplement To First Amended Statement of Claim was filed on April 13, 2005.

Respondents Linsco Private Ledger Financial Services and Sid Lorio's Discovery Motions were filed on April 13, 2005.

Pre-Hearing Brief of Respondents Linsco Private Ledger and Sid Lorio was filed on May 4, 2005. Claimant Jerry I. Gilliland's Brief In Support of Claimant's Causes of Action was filed on May 5, 2005.

Order Compelling Discovery was entered on May 6, 2005.

SUMMARY OF CLAIMS

Claimant, Jerry I. Gilliland contended that Respondents Sid Lorio and Linsco Private Ledger Financial Services breached fiduciary duties which they owed to him in that they purchased or allowed the purchasing of unsuitable investments in his managed account, failed to supervise his managed account, and violated a duty of proper supervision, all of which resulted in the investment losses incurred by Claimant in his roll-over Individual Retirement Account.

Respondents' position in the case was that no duties owed to Claimant were violated, that the investments in Claimant's account were not unsuitable and that there was no failure to supervise and that the losses suffered by Claimant in his account occurred as a result of a broad downturn in the stock market which began in 2000 and which caused losses throughout the financial community.

RELIEF REQUESTED

Claimant, Jerry I. Gilliland, requested in his original and supplemental pleadings filed in the case, damages attributable to losses in his accounts with Respondents in the total amount of \$5,907,808.00 being composed of actual damages in the amount of \$2,804,138.00, trebling of the damages pursuant to the *Texas Deceptive Trade Practices Act* in the amount of \$2,925,202.00, and punitive damages in the amount of \$177,743.00.

In closing argument, counsel for Claimant, Jerry I. Gilliland, requested actual damages in the amount of \$1,234,434.00, prejudgment interest in the amount of \$109,177.00, and attorneys' fees and expenses of \$166,983.00.

Respondents, Sid Lorio and Linsco Private Ledger Corp. denied any liability to Claimant and requested dismissal of Claimant's claims and requested their attorneys' fees in defending against Claimant's claims.

ISSUES CONSIDERED AND DECIDED

A hearing was held in Dallas, Texas beginning at 9:00 A.M. (CST) on May 9, 2005 and continuing on May 10, 11, and 12, 2005. Present at the hearing were the following persons:

Arbitration Panel:

G. Maynard Green, Public Arbitrator/Chairperson
James M. Tipton, Public Arbitrator
Peter J. Conlon, Jr., Industry Arbitrator

Claimant:

Jerry I. Gilliland, Claimant
Patricia Gilliland, Spouse of Claimant
Brian D. Esenwein, Attorney for Claimant
Jeannetta Castle, Legal Assistant to Esenwein

Respondent:

Sid Lorio, Respondent
David J. Freniere, Attorney for Respondent, Linsco Private Ledger Corp.
Senior Vice-President-Assistant General Counsel of Linsco Private Ledger Corp.
D. Craig Brinker, Attorney for Respondent
Charles Settles, Attorney for Respondent

The Panel specifically finds as follows:

The Panel faced an unusual situation in this case. Because both Claimant's and Respondents' expert witnesses prepared no damage calculations prior to the hearing, the Panel was left with at least five damage models contained in the pleadings and

which emerged during testimony given at the hearing.

One model, developed by the Panel from Gillilands' testimony, assumes that a life insurance motive during the accumulating or "illiquid" phase of the variable annuity was important in the decision process. This assumption comes directly from the testimony of Patricia Gilliland. The bequest motive also stands as a binding factor in the Gillilands' decision process. The Gillilands' desire to meet their "needs" to help, and/or give, to family, friends, and church, both now and later, was asserted by testimony of several other witnesses. A "special needs" concern for self, i.e., concern for uninsured medical expenses, inflation shock, etc., was not a factor in the Gillilands' decision as indicated by their testimony. Normally, a variable annuity inside an Individual Retirement Account is a questionable activity based on wrapped fee structures. However, due to the testimony in this case, and the future commutability feature of the Kemper variable annuity and the actual amount of the fees, the extra feature may reduce to a worthless second tax feature. The investment objective was to have a stated income level to grow at the level of inflation, and included the GRIB (which acts as a "protective put option" on the Kemper/Scudder Destination Annuity). The testimony concerning the above listed "motives" was important in the evaluation of the investment plan by the Panel. When the motives expressed by the Gillilands are considered, a limited annuity purchase becomes plausible as optimal. Consideration was given to this model.

A second damage model was developed by Mason A. Dinehart, III, Claimant's witness. This model is most troubling to the Panel. Mr. Dinehart argued, after hearing testimony of the Gillilands, the motives had no value, there was no value to the GRIB, future worth did not need to be discounted to present, he confused value statements, and briefly ignored all contractual liquidity in the annuity. His argument against the design of the overall plan was essentially an argument of execution of the plan. Because he wanted all the motives dropped, he essentially was arguing for a "full" annuity in the investment plan. He argued "dynamic hedging" essentially incorrectly. Likewise, he stated his approach would give a 45% bond, 55% stock portfolio asset allocation. Assuming the Panel disregards all his assumptions, and starts from his recommended plan conclusion, his solution of 45% bonds, 55% stock allocation is synthetically equivalent to the 45% Kemper/Scudder Destination Annuity, 55% SAM. Mr. Dinehart's damage model was disregarded.

The third damage model was created by the Respondents' expert witness, N. Glenn Whittington. The assumptions of his model were consistent with including the motives and actions the Panel views as material. The conclusions were consistent with the assumptions, but the loss amounts were questionable. The amounts were not adjusted for the time value of money, nor was there any risk-adjustment attempted in the performance evaluation. Consideration was given to this model.

A fourth damage model was presented by counsel for Claimant, in Claimant's First Amended Statement of Claim, pages 49-51. The treble damage claim was inconsistent with the Client's testified wishes, and data appeared to be overreaching

in value; however some consideration was given to it on arriving at an award.

A fifth damage model was presented by Claimant's counsel in his closing argument. Some consideration was given to the fifth damage model.

After considering the five (5) models, the Panel determined that the Respondents used improper portfolio techniques in hedging to another risky asset position instead of the money market account (the "risk free" asset) when trying to reduce the overall total portfolio risk; created excessive risk in the security selection process in the execution of the plan with too many growth, technology, and specialty funds at the speculative level; failed to actively monitor and actively correct the risk of the portfolio once knowledgeable of the problem; however Claimant failed to meet the investor's responsibility: specifically, failure to take actions to mitigate when knowledgeable that a problem is present.

AWARD

After considering the pleadings, 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. Respondents Sid Lorio and Linsco Private Ledger Financial Services a/k/a LPL Financial Services are jointly and severally liable for and shall pay to the Claimant, Jerry I. Gilliland, the sum of \$289,636.00 in compensatory damages;
2. Other than the Forum fees noted below, each party shall each bear all costs and expenses incurred by them in connection with this proceeding, including, but not limited to, attorneys fees; and,
3. Any and all relief not specifically addressed herein, including punitive and/or treble damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	\$ 600.00
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Member Fees

Member fees are asserted 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 this dispute. In this matter, the member firm is Linsco Private Ledger Financial Services.

Member surcharge	\$ 3,350.00
Pre-hearing process fee	\$ 750.00
Hearing process fee	\$ 5,500.00

NASD Dispute Resolution Award Arbitration No. 03-05803

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

August 24-27, 2004 adjournment by Respondents \$ 1,200.00

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

One (1) Pre-hearing session with the Panel x \$1,200.00	\$ 1,200.00
Pre-hearing conference: April 14, 2004 1 session	
Three (3) Pre-hearing sessions with a single arbitrator x \$450.00	\$ 1,350.00
Pre-hearing conference: June 8, 2004 1 session	
April 14, 2005 1 session	
May 6, 2005 1 session	
Eight (8) Hearing sessions x \$1,200.00	\$ 9,600.00
Hearing Dates: May 9, 2005 2 sessions	
May 10, 2005 2 sessions	
May 11, 2005 2 sessions	
May 12, 2005 2 sessions	

Total Forum Fees	\$ 12,150.00
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The Arbitration Panel has assessed all of the forum fees one-half (½) to Claimant, Jerry I. Gilliland (\$6,075.00), and one-half (½), jointly and severally, to Respondents, Sid Lorio and Linsco Private Ledger Corp. (\$6,075.00).

FEE SUMMARY

Claimant Jerry I. Gilliland is solely liable for:

Initial Filing Fee	\$ 600.00
<u>Forum Fees</u>	<u>\$ 6,075.00</u>
Total Fees	\$ 6,675.00
<u>Less Payments</u>	<u>\$ 1,250.00</u>
BALANCE DUE NASD DISPUTE RESOLUTION	\$ 5,425.00

Respondent Linsco Private Ledger Financial Services a/k/a LPL Financial Services is solely liable for:

Member Fees	\$ 9,600.00
<u>Less Payments</u>	<u>\$ 4,450.00</u>
BALANCE DUE NASD DISPUTE RESOLUTION	\$ 5,150.00

Respondents, Sid Lorio and Linsco Private Ledger Financial Services a/k/a LPL Financial Services are jointly and severally liable for:


Forum Fees	\$ 6,075.00
Adjournment Fee	\$ 1,200.00
Total Fees	\$ 7,275.00
Less Payments	\$ 0.00
BALANCE DUE NASD DISPUTE RESOLUTION	\$ 7,275.00

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

ARBITRATION PANEL

G. Maynard Green, Public Arbitrator, Presiding Chair
James M. Tipton, Public Arbitrator
Peter J. Conlon, Jr., Industry Arbitrator

CONCURRING ARBITRATORS:


G. Maynard Green
Public Arbitrator, Presiding Chair

May 26, 2005
Signature Date

James M. Tipton
Public Arbitrator

Signature Date

Peter J. Conlon, Jr.
Industry Arbitrator

Signature Date

5/26/05 
Date of Service (For NASD Dispute Resolution office use only)

Respondents, Sid Lorio and Linsco Private Ledger Financial Services a/k/a LPL Financial Service are jointly and severally liable for:

Forum Fees	\$ 6,075.00
<u>Adjournment Fee</u>	<u>\$ 1,200.00</u>
Total Fees	\$ 7,275.00
<u>Less Payments</u>	<u>\$ 0.00</u>
BALANCE DUE NASD DISPUTE RESOLUTION	\$ 7,275.00

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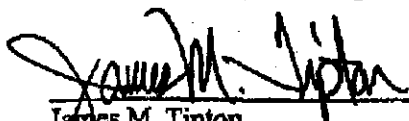
ARBITRATION PANEL

G. Maynard Green, Public Arbitrator, Presiding Chair
James M. Tipton, Public Arbitrator
Peter J. Conlon, Jr., Industry Arbitrator

CONCURRING ARBITRATORS:

G. Maynard Green
Public Arbitrator, Presiding Chair

Signature Date


James M. Tipton
Public Arbitrator

5/25/2005
Signature Date

Peter J. Conlon, Jr.
Industry Arbitrator

Signature Date

5/24/05 Klu
Date of Service (For NASD Dispute Resolution office use only)

Respondents, Sid Loric and Linsco Private Ledger Financial Services a/k/a LPL Financial Service are jointly and severally liable for:

Forum Fees	\$ 6,075.00
Adjournment Fee	\$ 1,200.00
Total Fees	\$ 7,275.00
Less Payments	\$ 0.00
BALANCE DUE NASD DISPUTE RESOLUTION	\$ 7,275.00

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ARBITRATION PANEL

G. Maynard Green, Public Arbitrator, Presiding Chair
James M. Tipton, Public Arbitrator
Peter J. Conlon, Jr., Industry Arbitrator

CONCURRING ARBITRATORS:

G. Maynard Green
Public Arbitrator, Presiding Chair

Signature Date

James M. Tipton
Public Arbitrator

Signature Date


Peter J. Conlon, Jr.
Industry Arbitrator

25 May 05
Signature Date

5/26/05 
Date of Service (For NASD Dispute Resolution office use only)

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 03-05809

Mary Ann Coppock, c/f Kacie Freer UTMA/CT, Claimant v. Michael Boyarsky and Felicia A. Klug, and Merrill Lynch, Pierce, Fenner & Smith, Inc., Respondents

ATTORNEYS:

Claimant Mary Ann Coppock, c/f Kacie Freer UTMA/CT ("Claimant") appeared *pro se*, through Mary Ann Coppock, Wallingford, CT.

For Respondents Michael Boyarsky and Felicia A. Klug, and Merrill Lynch, Pierce, Fenner & Smith, Inc. (collectively "Respondents") appeared Lauryn J. Hart, Esq., in-house counsel, Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY.

NATURE OF DISPUTE: Customer v. Member and Associated Persons.

DATE FILED: August 8, 2003.

CASE SUMMARY: Claimant alleged that Respondent Boyarsky placed her in investments that were not suitable to her needs and objectives. Claimant maintained that due to Respondents' actions, the account suffered losses. Claimant's claim involved the AIM Dent Fund.

Claim Data

Claim: \$10,000.00

Filing Fees: \$325.00

Award Data

Award: \$.00

Filing Fees: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of Claimant are dismissed in their entirety. 2) All other relief requests are denied. 3) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Felicia A. Klug's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Klug must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. 4) NASD Dispute Resolution shall retain the \$325.00 filing fee that the Claimant deposited previously. 5) Claimant is liable for and shall pay to NASD Dispute Resolution the sum of \$500.00 for forum fees incurred from telephonic pre-hearing conferences held on June 29, 2004 and August 19, 2004.

OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. has paid to NASD Dispute Resolution the \$325.00 Member Surcharge previously invoiced.

OTHER ISSUES: 1) On or about July 28, 2004, Claimant amended her claim to include Merrill Lynch, Pierce, Fenner & Smith, Inc. as a Respondent and to reflect that Respondent Felicia A. Klug be withdrawn as a Respondent from this matter. 2) On or about August 20, 2004, NASD Dispute Resolution was notified that the parties agreed to waive their right to a hearing and have this matter decided solely upon the pleadings and exhibits filed by the parties. 3) On or about December 22, 2003, Respondents made a motion to dismiss with their Answer. The Arbitrator initially denied the motion and subsequently granted the motion.

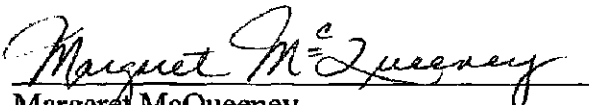
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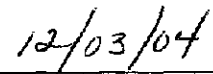
Margaret McQueeney

Sole Public Arbitrator

AFFIRMATION

I, Margaret McQueeney, 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.


Margaret McQueeney


Signature Date

December 13, 2004
Date of Service (For NASD-DR office use only)