

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Bruce E. Allen, as the Personal Representative of the Estate of Brent D. Brockman

and

03-06238
Omaha, Nebraska

Name of Respondents

Broker Dealer Financial Services Corp. d/b/a BDF Investments
Michael T. Sherzan
David E. Kernen

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

REPRESENTATION OF PARTIES

Bruce E. Allen, as the Personal Representative of the Estate of Brent D. Brockman ("**Claimant**") was represented by Lawrence L. Marcuci, Esq., Marcucci & Conger, P.L.C., West Des Moines, Iowa.

Broker Dealer Financial Services Corp. d/b/a BDF Investments, Michael T. Sherzan and David E. Kernen ("**Respondents**") were represented by Rolf Aronsen, Esq., Mason City, Iowa.

CASE INFORMATION

The Statement of Claim was filed on or about August 28, 2003. The Submission Agreement of Claimant Bruce E. Allen, as the Personal Representative of the Estate of Brent D. Brockman was signed on or about August 18, 2003.

The Statement of Answer was filed by Respondent Broker Dealer Financial Services Corp. d/b/a BDF Investments on or about October 15, 2003. The Submission Agreement of Respondent Broker Dealer Financial Services Corp. d/b/a BDF Investments was signed on or about October 1, 2003. The Submission Agreement of Respondent Michael T. Sherzan was signed on or about January 20, 2003. The Submission Agreement of Respondent David E. Kernen was signed on or about October 10, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; fraud; conversion; and interference with contract. The causes of action relate to two securities accounts. Claimant

alleged that Respondents refused to honor his Power of Attorney and denied the liquidation of the funds in the two securities accounts.

Claimant specifically stated the following:

Because the Respondents continued to refuse requests for information about the other account, Bruce was forced to pursue the matter in court and an order was obtained that provided for access to Brent's assets. The court proceeding was, again, too late to be of help in obtaining money to pay for Brent's medical and hospice care. Brent died on July 28, 2001. Despite Bruce's repeated requests for Brent's money, to help pay for Brent's medical expenses, the Respondents eventually liquidated the remaining account and gave all of the money to the other person listed on the account.

Unless specifically admitted in their Answer, Respondents Broker Dealer Financial Services Corp. d/b/a BDF Investments, Michael T. Sherzan and David E. Kernen denied the allegations made in the Statement of Claim and asserted the following defenses: Breach of contract: Respondents had a contractual agreement with Brent D. Brockman; They did everything proper to protect Mr. Brockman and his assets and followed all rules, procedures, and laws regarding the determining of authority before allowing third parties any access to their client's account; Fraud: Respondents made no misrepresentations or non-disclosures to Claimant, Allen, at any time; For fraud to exist there has to be only misrepresentation or non-disclosure but there has to be a justifiable reliance on the part of Claimant; Claimant relied on nothing Respondents did or said at any time; Conversion: Respondents had a duty to determine authority to access information and assets of their client's account; Respondents promptly addressed those issues, provided Claimant's attorney with needed documents to liquidate, and Claimant's attorney sent documents to Delaware Charter and process was started by them to liquidate; The process was stopped by a temporary Guardian and Conservator of the Decedent, Brent Brockman, ordering the liquidation to stop; Subsequent to that order, Mr. Brockman died; Interference with Contract: Respondent's did not interfere with any contract between Claimant, Allen the Decedent, Brent Brockman, at any time; and Respondent only requested proper documentation and authority for any accounts that were held in Mr. Brockman's name before any liquidation could be commenced.

RELIEF REQUESTED

Claimant requested an award in the amount of \$143,000.00 in actual damages, plus \$500,000.00 in punitive damages, the costs of this action and for such other legal and equitable relief as is found to be appropriate under the circumstances.

Respondents requested that the claims asserted against them be denied in its entirety and that they be awarded their costs, arbitration fees and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

The Claimant submitted their Pre-hearing Brief on or about April 13, 2004.

The Respondents' submitted their Pre-hearing Brief on or about April 14, 2004.

The Panel made the following rulings at the hearing:

At the outset of the hearing, Claimant objected that he had not received a copy of Respondents' witness list in conformance with NASD Rules. Although the Respondents did not file a witness list in a timely fashion, at a pre-hearing conference March 25, 2004, the Respondents did verbally identify his witnesses. A decision was made to allow Respondents' witnesses because there was no surprise to the Claimant, and the spirit of the rule was complied with.

With respect to Respondents' exhibits, Claimant objected to their introduction because they had not been identified as exhibits prior to the hearing. Respondents' counsel confirmed that he had sent all of the documents he now listed as exhibits to the Claimant's counsel, and counsel verified receipt of the documents. Most of the documents Claimant complained about were provided to Respondents by Claimant in pre-hearing exchange. The documents were not voluminous or complicated, and the panel allowed Respondents to utilize his exhibits.

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 original(s) remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims, each and all, are denied and dismissed with prejudice.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Michael T. Sherzan's and David E. Kernan'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, Respondents Sherzan's and Kernan's must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

3. That 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.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

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 = \$375.00

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Broker Dealer Financial Services Corp. d/b/a BDF Investments.

Member surcharge	\$	2,250.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	<u>4,000.00</u>
Total Member Fees	\$	7,000.00

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 lasts four (4) hours or less. Fees associated with these proceedings are:

1 Pre-hearing session with Panel	x	1,200.00	\$	1,200.00
January 21, 2004	1 session			
1 Pre-hearing session with one Arbitrator	x	450.00	\$	450.00
March 25, 2004	1 session			
3 Hearing sessions	x	1,200.00		
April 15, 2004	2 sessions			2,400.00

April 16, 2004	1	session	1,200.00
Total Forum Fees		\$	5,250.00

The Arbitration Panel has assessed \$2,625.00 of the forum fees to Bruce E. Allen, as the Personal Representative of the Estate of Brent D. Brockman.

The Arbitration Panel has assessed \$2,625.00 of the forum fees to Broker Dealer Financial Services Corp. d/b/a BDF Investments.

Fee Summary

Claimant, Bruce E. Allen, as the Personal Representative of the Estate of Brent D. Brockman, shall be and hereby is liable for:

Initial Filing Fee	= \$	375.00
<u>Forum Fees</u>	= \$	<u>2,625.00</u>
Total Fees	= \$	3,000.00
<u>Less payments</u>	= \$	<u>-1,575.00</u>
Balance Due NASD Dispute Resolution	= \$	1,425.00

Respondent, Broker Dealer Financial Services Corp. d/b/a BDF Investments, shall be and hereby is liable for:

Member Fees	= \$	7,000.00
<u>Forum Fees</u>	= \$	<u>2,625.00</u>
Total Fees	= \$	9,625.00
<u>Less payments</u>	= \$	<u>-7,000.00</u>
Balance Due NASD Dispute Resolution	= \$	2,625.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

W. Russell Bowie, Esq. - Public Arbitrator, Presiding Chair
James R. Baratta - Public Arbitrator
Rhonda S. McCarthy - Non-Public Arbitrator

NASD Dispute Resolution
Arbitration No. 03-06238
Award Page 6 of 6

Concurring Arbitrators:

/s/ W. Russell Bowie, Esq.

W. Russell Bowie, Esq.
Public Arbitrator, Presiding Chair

05/09/04

Signature Date

/s/ James R. Baratta

James R. Baratta
Public Arbitrator

05/06/04

Signature Date

/s/ Rhonda S. McCarthy

Rhonda S. McCarthy
Non-Public Arbitrator

05/05/04

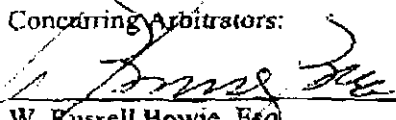
Signature Date

05/10/04

Date of service

NASD Dispute Resolution
Arbitration No. 03-06238
Award Page 6 of 6

Concurring Arbitrators:


W. Russell Bowie, Esq.
Public Arbitrator, Presiding Chair

5/9/04
Signature Date

James R. Baratta
Public Arbitrator

Signature Date

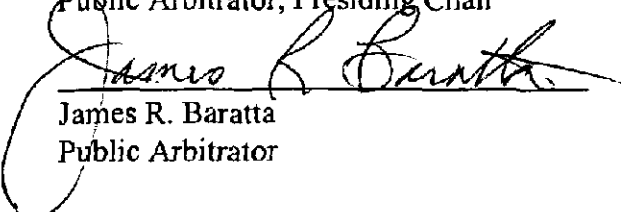
Rhonda S. McCarthy
Non-Public Arbitrator

Signature Date

Concurring Arbitrators:

W. Russell Bowie, Esq.
Public Arbitrator, Presiding Chair

Signature Date



James R. Baratta
Public Arbitrator

5-6-2004

Signature Date

Rhonda S. McCarthy
Non-Public Arbitrator

Signature Date

Concurring Arbitrators:

W. Russell Bowie, Esq.
Public Arbitrator, Presiding Chair

Signature Date

James R. Baratta
Public Arbitrator

Signature Date

Rhonda S. McCarthy
Rhonda S. McCarthy
Non-Public Arbitrator

5-5-2004
Signature Date