

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Thomas R. Ryan, Claimant v. Ned Michael Shanahan, Bridget Marie Burgess, and SAFECO Investment Services, Inc., Respondents

Case Number: 03-06284

Hearing Site: Seattle, Washington

Nature of Dispute: Associated Person v. Associated Persons and Member Firm

REPRESENTATION OF PARTIES

For Claimant:

G. Thomas Ryan, Esq.
Law Offices of G. Thomas Ryan
Puyallup, Washington

For Respondents:

Shannon L. McDougald, Esq.
Perkins Coie
Seattle, Washington

CASE INFORMATION

Statement of Claim filed: August 27, 2003

Claimant's Uniform Submission Agreement signed: August 22, 2003

Joint Statement of Answer filed by Respondents: November 4, 2003

Respondent Ned Michael Shanahan's Uniform Submission Agreement: None filed

Respondent Bridget Marie Burgess' Uniform Submission Agreement: None filed

Respondent SAFECO Investment Services, Inc.'s Uniform Submission Agreement: None filed

CASE SUMMARY

Claimant alleges that Respondents improperly required that he disgorge all gross profits realized from trading in "hot issue" IPO's in accounts which were in his name and in which he had a beneficial interest at other brokerages. The amount of disgorgement sought by Respondent SAFECO Investment Services, Inc. (hereinafter referred to as SAFECO) was \$11,680.38. Claimant alleges that he provided Respondent SAFECO with reasonable alternatives for resolving the dispute, including disgorging a lesser amount, or submitting the matter to Mediation or Arbitration before the NASD. Respondents refused to agree to Claimant's suggestions for resolution. Thereafter, Claimant's relationship with Respondent SAFECO was terminated.

Claimant alleges further, that his U-5 states that the "Reason for Termination" was "Failure of representative to disgorge funds related to sales of hot issue IPO'S".

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim. Respondents allege that Claimant improperly owned or maintained a beneficial interest in accounts at other brokerages where "hot issue" IPO's were traded. Respondents further allege that Claimant did not notify these brokerages of his correct status as a registered person in the securities industry. Respondents maintain that they thoroughly investigated Claimant's participation in these accounts and then offered Claimant a reasonable solution to a violation of NASD Rule 2110 by requesting that as a condition of his continuing relationship with the Company, Claimant should disgorge the profits from trading in "hot issue" IPO's in these accounts. Respondents allege that when Claimant refused this offer, they had no choice but to terminate his relationship with the Company.

Respondents further contend that the Reason for Termination on the U-5 is correct and accurate and should not be changed.

RELIEF REQUESTED

Claimant seeks compensatory damages in the sum of \$45,625.00, unspecified lost commissions from January 16, 2003, lost income for being unable to take referrals and/or work with current clients, lost income from the closure of his Merrill Lynch Account in the amount of \$9,000.00, and costs, including attorney's fees, witness fees and filing fees. In addition, Claimant seeks expungement of the reason for his termination which is "Failure of representative to disgorge funds related to sales of hot issue IPO'S from his U-5".

Respondents seek dismissal of all of Claimant's claims with prejudice and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

At the commencement of the arbitration hearing, the parties stipulated that all claims against Respondents Ned Michael Shanahan and Bridget Marie Burgess should be dismissed, with prejudice. The parties further stipulated to the expungement of all reference to the above captioned arbitration from the U-5 of Respondents Ned Michael Shanahan and Bridget Marie Burgess registration records maintained by the NASD Central Registration Depository ("CRD").

Respondents Ned Michael Shanahan, Bridget Marie Burgess and SAFECO Investment Services, Inc. did not file with NASD Dispute Resolution properly executed submission agreements but are required to submit to arbitration pursuant to the Code and having answered the claim, are bound by the determination of the Panel on all issues submitted.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

FINDINGS AND CONCLUSIONS

The Panel confirms the stipulation of the parties dismissing all claims against Respondents Ned Michael Shanahan and Bridget Marie Burgess. The Panel recommends the expungement of all references to the above captioned arbitration from Respondents Ned Michael Shanahan and Bridget Marie Burgess' U-5 registration records maintained by the NASD Central Registration Depository ("CRD").

As to Claimant's claims against the sole remaining Respondent, SAFECO Investment Services, Inc., the Panel find as follows:

In 1997, Claimant disclosed his beneficial interest in other brokerage accounts wherein IPO's were traded to Respondent SAFECO's business predecessor.

By October, 1999, Respondent SAFECO had become the successor company with whom Claimant had a Registered Representative Sales Agreement. Respondent, SAFECO was doing business as a full service broker. In its Registered Representative Sales Agreements to which Claimant was a party, in its compliance training materials, and in its compliance manual, Respondent SAFECO made clear and specific reference to its requirement that its Registered Representatives not maintain accounts or have a beneficial interest in accounts that traded in "hot issue" IPO's.

Claimant was obligated to familiarize himself with these contractual and regulatory requirements as a condition of his continuing relationship with Respondent SAFECO. At the arbitration hearing, Claimant acknowledged that he had received notice of these requirements and was familiar with them.

When Respondent SAFECO's compliance personnel discovered that Claimant had active accounts at one or more other brokerages, they conducted a thorough investigation. Respondent SAFECO recognized that before Respondent SAFECO and its predecessors became a full service broker, Claimant could have participated in these "hot issue" IPO's, given his limited Series 6 license. Respondent SAFECO also recognized that Claimant had given notice of his participation in these accounts to Respondent SAFECO's business predecessor, at least once in 1997.

In light of this history, and the current status of SAFECO, and given the clear requirements of the NASD rules and Respondent SAFECO's own regulatory materials, Respondent SAFECO sought an equitable solution for the current violation of the NASD Rules by Claimant.

The Panel finds that SAFECO's requirement of disgorgement of all profits earned on these accounts from trading in "hot issue" IPO's was reasonable and proper under the circumstances.

The Panel finds further, that upon Claimant's refusal to disgorge these profits, Respondent SAFECO was completely within its rights to terminate Claimant's sales representative relationship.

It is also the conclusion of this Panel, that given the notice provided to Respondent SAFECO's predecessors of Claimant's participation in these accounts, that some accommodation in terms of assessing the costs of these proceedings is appropriate under the circumstances.

AWARD

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

- 1) Pursuant to the stipulation of the parties, all claims against Respondents Ned Michael Shanahan and Bridget Marie Burgess are dismissed with prejudice.
- 2) Claimant's claims against Respondent SAFECO are dismissed with prejudice.
- 3) Claimant's request for the expungemnt of Claimant's U-5 is denied.
- 4) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Ned Michael Shanahan and Bridget Marie Burgess U-5 registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondents Ned Michael Shanahan and Bridget Marie Burgess must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 5) The parties shall bear their respective costs, including attorney's fees.
- 6) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 175.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm SAFECO Investment Services, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 875.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$1,000.00</u>
Total Member Fees	= \$ 2,625.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$600.00/session	= \$ 600.00
Pre-hearing conference: January 22, 2004	1 session
(2) Hearing sessions @ \$600.00/session	= \$1,200.00
Hearing: June 16, 2004	2 sessions
Total Forum Fees	= \$1,800.00

1. The Panel assessed \$900.00 of the forum fees to Claimant.
2. The Panel assessed \$900.00 of the forum fees to Respondent SAFECO Investment Services, Inc.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 175.00
Forum Fees	= \$ 900.00
Total Fees	= \$1,075.00
Less payments	= \$(775.00)
Balance Due NASD Dispute Resolution	= \$ 300.00
2. Respondent SAFECO Investment Services, Inc. is charged with the following fees and costs:

Member Fees	= \$ 2,625.00
Forum Fees	= \$ 900.00
Total Fees	= \$ 3,525.00
Less payments	= \$(2,625.00)
Balance Due NASD Dispute Resolution	= \$ 900.00

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

ARBITRATION PANEL

William J. Bender, JD	-	Public Arbitrator, Presiding Chair
John F. Lymburner	-	Public Arbitrator
Robert W. Pillitteri	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



William J. Bender, JD
Chair, Public Arbitrator

6-29-04

Signature Date

John F. Lymburner
Public Arbitrator

Signature Date

Robert W. Pillitteri
Non-Public Arbitrator

Signature Date

6/29/04

Date of Service


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Signature Date



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Public Arbitrator

June 29, 2004

Signature Date

Robert W. Pillitteri
Non-Public Arbitrator

Signature Date

6/29/04

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Consenting Arbitrators' Signatures

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Chair, Public Arbitrator

Signature Date

John F. Lymburner
Public Arbitrator

Signature Date


Robert W. Pillitteri
Non-Public Arbitrator

6-29-04
Signature Date

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