
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Jeffrey Buffoni
Rebecca Forbes

Case Number: 03-06378

Names of the Respondents

Herbert J. Sims & Co., Inc.
Alan Z. Appelbaum
William B. Sims

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Jeffrey Buffoni ("Buffoni") and Rebecca Forbes ("Forbes"), hereinafter collectively referred to as "Claimants": Michael H. Schaalman, Esq., Quarles & Brady LLP, Milwaukee, Wisconsin.

For Herbert J. Sims & Co., Inc. ("HJS"), Alan Z. Appelbaum ("Appelbaum") and William B. Sims ("Sims"), hereinafter collectively referred to as "Respondents": Daniel S. Newman, Esq. and Mark Raymond, Esq., Tew Cardenas LLP, Miami, Florida until their substitution as counsel on or about January 12, 2005. Thereafter, Daniel S. Newman, Esq., Broad and Cassel, Attorneys at Law, Miami, Florida appeared for Respondents.

CASE INFORMATION

Statement of Claim filed on or about: September 3, 2003.

Claimants signed the Uniform Submission Agreement: August 27, 2003.

Statement of Answer, Motion to Dismiss and Counterclaim filed by Respondents on or about: December 8, 2003.

Respondents did not file executed Uniform Submission Agreements.

Response to Counterclaim filed by Claimants on or about: February 13, 2004.

Motion to Amend the Statement of Claim filed by Claimants on or about: May 14, 2004.

Response to Motion to Amend the Statement of Claim filed by Respondents on or about: June 7, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: violation of Chapter 517 of the Florida Statutes; intentional misrepresentation (fraud); negligent misrepresentation; strict liability misrepresentation; negligent supervision; violation of fiduciary duties under NASD, NYSE and MRSB rules; and, common law breach of fiduciary duty. The causes of action relate to the purchase and sale of numerous bonds in Claimant Buffoni's account including, but not limited to, the following: DALLAS TX HFC BROWNSTONE APT B GTD INVST; ST. PETERSBURG FLA HSG AUTH HSG REV RFDG REG ROGALL; CAMDEN CNTY NJ

PULLUTN CTL FING AUTH SOLID WASTE; ALLEGHENY CNTY PA INDL DEV AUTH REV KROGER CO; MCMINN CNTY TENN INDL DEV BRD POLLUTN CTR REV; WEIRTON W VA POLLUTN CTL REV RFDG – WEIRTON STEEL; NORTHHAMPTON CNTY PA IDA REV – BETHLEHEM STEEL; FARMINGTON NM PCR RFDG PUB SVC SAN JUAN; AND, PHILADELPHIA PA AUTH FOR INDL DEV SPL FACS REV US AIRWAYS and the purchase of a WEIRTON W VA POLLUTN CTL REV RFDG- WEIRTON STEEL bond in Claimant Forbes' account. In addition, unless specifically admitted in their Response to Counterclaim, Claimants denied the allegations made therein.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim, asserted various defenses and asserted a Motion to Dismiss the Statement of Claim as to Respondents HJS and Sims on the basis that Claimants sought recovery for damages allegedly incurred from trading at other firms. In addition, Respondents asserted a claim for abuse of process in their Counterclaim.

In response to the Motion to Dismiss, Claimants denied the assertions therein.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$700,000.00, punitive damages in the amount of \$1,400,000.00, the return of all commissions paid to Respondent Appelbaum and reasonable attorney's fees and costs incurred pursuant to Section 517.211(6) of the Florida Statutes. In addition, Claimants requested that the Counterclaim be dismissed.

Respondents requested that the Panel enter an award dismissing Claimants' claims. In addition, as asserted in their Counterclaim, Respondents requested an unspecified amount of compensatory damages, costs, attorneys' fees, pre-award interest and any other relief deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determinations of the Panel on all issues submitted.

On or about March 11, 2004, the Panel issued an order denying Respondents' Motion to Dismiss with leave to renew the motion at the conclusion of Claimants' case at the evidentiary hearing.

On or about July 16, 2004, the Panel issued an order denying Claimants' Motion to Amend the Statement of Claim.

During the evidentiary hearing on or about November 15, 2004, Respondents asserted an ore tenus request renewing their Motion to Dismiss to which Claimants objected. At the conclusion

of Claimants' case, the Panel granted Respondents' Motion to Dismiss with respect to Respondent Sims.

During the evidentiary hearing on or about June 13, 2005, Respondents asserted an ore tenus request that the Panel enter an Order expunging this matter from the NASD Central Registration Depository (the "CRD") records of Respondents. Claimants did not file an objection to this request.

At the end of the evidentiary hearing on or about June 14, 2005, the Panel granted Respondents' Motion to Dismiss with respect to Respondent HJS but denied the motion to dismiss Respondent Appelbaum.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimants' claims are denied in their entirety.

Respondents' Counterclaim for abuse of process is denied.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondents Sims and HJS' registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Sims and HJS must obtain confirmation from a court of competent jurisdiction before the NASD CRD will execute the expungement directive.

Respondents' request to expunge this matter from the NASD CRD records of Respondent Appelbaum is denied.

Any and all claims for relief not specifically addressed herein, including Claimants request for punitive damages and the parties' respective requests for attorneys' fees, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 500.00
Counterclaim filing fee	= \$ 500.00

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 Herbert J. Sims & Co., Inc. is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were filed in this matter.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

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:

Three (3) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$1,350.00
Pre-hearing conferences:	
May 21, 2004	1 session
July 23, 2004	1 session
August 27, 2004	1 session
Five (5) Pre-hearing sessions with the Panel @ \$1,200.00	= \$6,000.00
Pre-hearing conferences:	
March 11, 2004	1 session
July 16, 2004	1 session
November 1, 2004	1 session
April 25, 2005	1 session
May 12, 2005	1 session

Twenty-three (23) Hearing sessions @ \$1,200.00 = \$27,600.00

Hearing Dates:	November 15, 2004	3 sessions
	November 16, 2004	3 sessions
	November 17, 2004	3 sessions
	November 18, 2004	2 sessions
	November 19, 2004	2 sessions
	April 19, 2005	2 sessions
	April 20, 2005	2 sessions
	April 21, 2005	2 sessions
	June 13, 2005	2 sessions
	June 14, 2005	2 sessions

Total Forum Fees = \$34,950.00

The Panel has assessed \$17,475.00 of the forum fees to Claimant Buffoni.

The Panel has assessed \$17,475.00 of the forum fees to Respondent Appelbaum.

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 are not limited to: additional copies of arbitrator awards; copies of audio transcripts; retrieval of documents from archives; interpreters; and, security.

June 3, 2005, costs incurred for copies of pleadings requested by Respondents \$15.50

The Panel has assessed the total administrative costs of \$15.50 to Respondents jointly and severally.

Fee Summary

Claimant Buffoni is solely liable for:

<u>Forum Fees</u>	= \$17,475.00
<u>Total Fees</u>	= \$17,475.00
<u>Less payments</u>	= \$ 1,200.00
<u>Balance Due NASD Dispute Resolution</u>	= \$16,275.00

Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less payments</u>	= \$ 500.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent HJS is solely liable for:

<u>Member Fees</u>	= \$ 8,550.00
<u>Total Fees</u>	= \$ 8,550.00
<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Appelbaum is solely liable for:

<u>Forum Fees</u>	= \$17,475.00
<u>Total Fees</u>	= \$17,475.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$17,475.00

Respondents are jointly and severally liable for:

<u>Counterclaim Filing Fee</u>	= \$ 500.00
<u>Administrative Costs</u>	= \$ 15.50
<u>Total Fees</u>	= \$ 515.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 515.50

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

ARBITRATION PANEL

Herbert Branitsky, Esq.	-	Public Arbitrator, Presiding Chairperson
Lawrence S. Silver, Esq.	-	Public Arbitrator
David L. Hodgson	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/

06/23/05

Herbert Branitsky, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

/s/

06/23/05

Lawrence S. Silver, Esq.
Public Arbitrator

Signature Date

/s/

06/23/05

David L. Hodgson
Non-Public Arbitrator

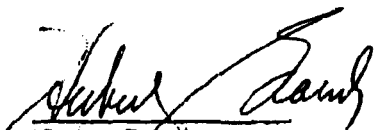
Signature Date

06/23/2005

Date of Service (For NASD Dispute Resolution office use only)

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Public Arbitrator, Presiding Chairperson

6/23/05
Signature Date



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Public Arbitrator

Signature Date

David L. Hodgson
Non-Public Arbitrator

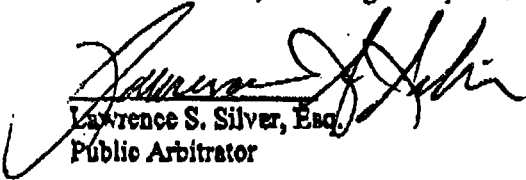
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