

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Ervin General Partnership, Dennis Smith, M.D. and Julie Benner Smith, Edward and Camille Underwood, Eric and Karen Saul and L. Lee Lancaster, M.D.

and

03-06449
Nashville, Tennessee

Name of Respondents

J.J.B. Hilliard, W.L. Lyons, Inc.
LeLand Shawn Breskow

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

REPRESENTATION OF PARTIES

Ervin General Partnership, Dennis Smith, M.D. and Julie Benner Smith, Edward and Camille Underwood, Eric and Karen Saul and L. Lee Lancaster, M.D. ("**Claimants**") were represented by Alix Coulter Cross, Esq., Harwell Howard Hyne Gabbert & Manner, PC, Nashville, Tennessee and Stephen W. Grace, Esq., Nashville, Tennessee.

J.J.B. Hilliard, W.L. Lyons, Inc. and LeLand Shawn Breskow ("**Respondents**") were represented by Elizabeth A. Jerdonek, Esq. and Jeffrey S. Dunlap, Esq., Ulmer & Berne, LLP, Cleveland, Ohio.

CASE INFORMATION

The Statement of Claim was filed on or about September 8, 2003. Submission Agreement of Claimant Ervin General Partnership was signed on July 29, 2003. Claimants Response in Opposition to Motion to Dismiss was filed on or about January 23, 2004. Amended Statement of Claim was filed on or about July 1, 2004. Claimant Eric Saul's Second Amended Statement of Claim was filed on or about August 19, 2004. Submission Agreement of Dennis Smith, M.D. was signed on August 18, 2003. Submission Agreement of Julie Benner Smith was signed on August 18, 2003. Submission Agreement of Edward Underwood was signed on August 1, 2003. Submission Agreement of Camille Underwood was signed on August 1, 2003. Submission Agreement of Eric Saul was signed on September 4, 2004. Submission Agreement of Karen Saul was signed on September 5, 2003. Submission Agreement of L. Lee Lancaster, M.D. was signed on July 29, 2003.

Motion to Dismiss was filed by Respondents on or about November 20, 2003. Joint Answer to the Amended Statement of Claim and Counterclaim Against Eric Saul was filed by Respondents on or about August 20, 2004. Joint Answer to Claimant Eric Saul's Second Amended Statement of Claim was filed on or about September 21, 2004. Submission Agreement of Respondent J.J.B. Hilliard, W.L. Lyons, Inc. was signed on November 24, 2003. Submission Agreement of LeLand Shawn Breskow was signed on November 19, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: misrepresentations, omission of facts, fraud, breach of fiduciary duty, violation of section 10 of the Securities Exchange Act and Rule 10b-5, violation of section 20 of the Securities Exchange Act, violation of Tennessee and Florida Blue Sky Laws. Claimants specifically stated in the Amended Statement of Claim:

...Respondents told the Investors that WebAccess was surpassing expectation, rapidly growing revenues, and building strong business alliances. In June and July 2002, Respondents aggressively solicited the Investors to increase their initial investment in an offering of Series E Convertible Preferred Stock (the "Series E Stock"). Respondents warned Investors that their failure to purchase the Series E Stock would likely result in others reaping the benefits of WebAccess's imminent breakthrough because their initial investment would be severely diluted if they did not participate in the new round. Soon after the Investors committed significant new funds, however, WebAccess unceremoniously closed its doors. To date, the Investors, who lost everything, have received few answers to explain the abrupt unraveling of a business that was, days before closing its doors, touted by Respondents was having its best month ever.

Claimants' losses were caused by the material misstatements and concealment of material facts by Respondents, J.J.B. Hilliard, W.L. Lyons ("Hilliard Lyons") and Shawn Breskow, in connection with Claimants' investments in WebAccess. The Ervin General Partnership, Dr. Lancaster, Dr. and Mrs. Smith, and Mr. and Mrs. Underwood are Hilliard Lyons account holders. Eric Saul, who with his wife is a claimant, is a former Hilliard Lyons account executive who was terminated by the Company after he sought answers from Respondents and refused to remain silent about the WebAccess fiasco.

Claimant Eric Saul asserted the following causes of action in the Second Amended Statement of Claim: violation of the Tennessee Public Protection Act and common law retaliatory discharge. The causes of action relate to the allegations that Mr. Saul was wrongfully terminated.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated:

Claimants are wealthy, sophisticated and intelligent investors with a documented history of investing in WebAccess, a start-up technology company. Unfortunately, and due to circumstances outside the control of Hilliard Lyons and Breskow, WebAccess failed and Claimants lost money. Claimants seek to hold Hilliard Lyons, merely the placement agent for WebAccess, and its employee, Breskow, responsible for their losses. The evidence will show that Hilliard Lyons and Breskow, who had limited, if any, duties to the Claimants, satisfied those duties. They undertook best efforts to secure financing for WebAccess pursuant to their engagement by the company and made no misrepresentations to the Claimants or other potential investors as they solicited the financing for WebAccess.

Respondents specifically stated in their Counterclaim that if they are somehow liable to the Claimants for misrepresentations and omissions in connection with the WebAccess investments, then Respondents request that the Panel order Eric Saul to contribute to any such award.

RELIEF REQUESTED

Claimants requested an award in the amount of \$1,000,000 in compensatory damage, plus punitive damages, pre-judgment interest, costs and attorneys' fees. In the Second Amended Statement of Claim, Eric Saul requested an award of unspecified damages, plus punitive damages, costs and attorney's fees.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In the counterclaim, Respondents requested an award of unspecified damages, plus expungement, costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

After considering Respondents Motion to Dismiss and all submissions thereto, the Arbitration Panel denied the Motion to Dismiss.

Claimants Ervin General Partnership, Dennis Smith, M.D. and Julie Benner Smith, Edward and Camille Underwood and L. Lee Lancaster, M.D. resolved their claims prior to the hearing and did not appear.

At the close of Claimant's evidence, Respondents' moved for directed verdict. The Panel denied the request.

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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents J.J.B. Hilliard, W.L. Lyons, Inc. and LeLand Shawn Breskow are liable for and shall pay to Claimant Eric Saul the sum of \$80,000.00 (**eighty thousand and no cents**) as compensatory damages.
2. Respondents J.J.B. Hilliard, W.L. Lyons, Inc. and LeLand Shawn Breskow are liable for and shall pay to Claimant Eric Saul the sum of \$24,558.00 (**twenty four thousand five hundred fifty eight and no cents**) as attorney fees and expenses.
3. Respondents J.J.B. Hilliard, W.L. Lyons, Inc. and LeLand Shawn Breskow are liable for and shall pay to Claimant Eric Saul the sum of \$31,329.00 (**thirty one thousand three hundred twenty nine and no cents**) as interest at the rate of 8% per annum on \$50,000.00 from June 16, 2000 until February 16, 2006 and on \$30,000.00 from July 10, 2002 until February 16, 2006.
4. Respondent J.J.B. Hilliard, W.L. Lyons, Inc. is liable for and shall pay to Claimant Eric Saul the sum of \$345,434.00 (**three hundred forty five thousand four hundred thirty four and no cents**) as compensatory damages.
5. Respondent J.J.B. Hilliard, W.L. Lyons, Inc. is liable for and shall pay to Claimant Eric Saul the sum of \$50,000.00 (**fifty thousand and no cents**) as attorney fees and expenses.
6. Pursuant to the agreement between Claimants Ervin General Partnership, Dennis Smith, M.D. and Julie Benner Smith, Edward and Camille Underwood and L. Lee Lancaster, M.D. and Respondent Breskow, the Panel recommends the expungement of all reference to the claims asserted by Claimants Ervin General Partnership, Dennis Smith, M.D. and Julie Benner Smith, Edward and Camille Underwood and L. Lee Lancaster, M.D. in this arbitration from Respondent LeLand Shawn Breskow'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 LeLand Shawn Breskow must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. This recommendation of expungement does not include expungement of any claims asserted by Claimant Saul.
7. 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.

8. 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, not specifically awarded or otherwise provided for above.

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
Counterclaim claim 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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is J.J.B. Hilliard, W.L. Lyons, Inc.

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

Adjournment Fees

Adjournments requested during these proceedings:

October 19-22, 2004, joint arbitration adjournment request (fee waived by panel).	= \$1,200.00
April 19-22, 2005, joint mediation adjournment request.	= \$1,500.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted or each decision rendered on a discovery-related motion on the papers. 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:

3	Pre-hearing session(s) with Panel	@	1,200.00	\$	3,600.00
	March 30, 2004	1	session		
	May 24, 2004	1	session		
	July 21, 2005	1	session		
9	Hearing sessions	@	1,200.00	\$	10,800.00
	February 13, 2006	3	sessions		
	February 14, 2006	2	sessions		
	February 15, 2006	3	sessions		
	February 16, 2006	1	session		
	Total Forum Fees			\$	14,400.00

The Arbitration Panel has assessed \$14,400.00 of the forum fees jointly and severally to J.J.B. Hilliard, W.L. Lyons, Inc. and LeLand Shawn Breskow.

Fee Summary

Claimants, Ervin General Partnership, Dennis Smith, M.D. and Julie Benner Smith, Edward and Camille Underwood, Eric and Karen Saul and L. Lee Lancaster, M.D. are jointly and severally liable for:

Initial Filing Fee	= \$	375.00
Mediation Adjournment Fee	= \$	750.00
Total Fees	= \$	1,125.00
<u>Less payments</u>	= \$	-2,175.00
Balance to be refunded by NASD Dispute Resolution	= \$	-1,050.00

Respondent, J.J.B. Hilliard, W.L. Lyons, Inc., is liable for:

Member Fees	= \$	7,000.00
Total Fees	= \$	7,000.00
<u>Less payments</u>	= \$	-13,100.00
Balance applied to fee below	= \$	-6,100.00

Respondents, J.J.B. Hilliard, W.L. Lyons, Inc. and LeLand Shawn Breskow are jointly and severally liable for:

Type Filing Fee	= \$	500.00
Mediation Adjournment Fee	= \$	750.00
<u>Forum Fees</u>	= \$	14,400.00
Total Fees	= \$	15,650.00
<u>Less payments</u>	= \$	-6,100.00
Balance Due NASD Dispute Resolution	= \$	9,550.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Fred M. Acuff, Jr., Esq. - Public Arbitrator, Presiding Chair
Donald J. Reis, Esq. - Public Arbitrator
George Michael Cross - Non-Public Arbitrator

Concurring Arbitrators:

Fred M. Acuff, Jr.
Fred M. Acuff, Jr., Esq.
Public Arbitrator, Presiding Chair

03/31/06
Signature Date

Donald J. Reis
Donald J. Reis, Esq.
Public Arbitrator

03/31/06
Signature Date

George Michael Cross
George Michael Cross
Non-Public Arbitrator

04/03/06
Signature Date

4/3/06
Date of Service (For NASD office use only)

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Donald J. Reis, Esq. - Public Arbitrator

George Michael Cross - Non-Public Arbitrator

Concurring Arbitrators:



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Public Arbitrator, Presiding Chair

3-31-06

Signature Date

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Public Arbitrator

Signature Date

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Public Arbitrator, Presiding Chair


Donald J. Reis, Esq.

Public Arbitrator

Signature Date



Signature Date

George Michael Cross
Non-Public Arbitrator

Signature Date

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NASD REGULATION

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Public Arbitrator, Presiding Chair

Signature Date

Donald J. Reis, Esq.
Public Arbitrator

Signature Date

George Michael Cross
George Michael Cross
Non-Public Arbitrator

4-3-06
Signature Date

Date of Service (For NASD office use only)