

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Stephen and Melissa Godfrey

and

03-06499
Kansas City, Missouri

Name of Respondents

TD Waterhouse Investor Services, Inc.
Sunflower Asset Management Inc.
Joseph N. Kain

Nature of the Dispute: Customers vs. Member, Non-Member and Associated Person.

REPRESENTATION OF PARTIES

Stephen and Melissa Godfrey ("**Claimants**") were represented by Roger N. Walter, Esq., Morris, Laing, Evans, Brock & Kennedy, Topeka, Kansas.

TD Waterhouse Investor Services, Inc. ("**Respondent TD Waterhouse**") was represented by Miles D. Hart, Esq., Hertz Schram & Saretsky, P.C., Bloomfield Hills, Michigan.

Sunflower Asset Management Inc. ("**Respondent Sunflower**") and Joseph N. Kain ("**Respondent Kain**") hereinafter referred to as ("**Sunflower Respondents**") were represented by Charles T. Engel, Esq., Cosgrove, Webb & Oman, Topeka, Kansas.

CASE INFORMATION

The Statement of Claim was filed on or about September 8, 2003. Submission Agreement of Claimants Stephen and Melissa Godfrey was signed on August 23, 2003.

Statement of Answer was filed by Respondent TD Waterhouse Investor Services, Inc. on or about July 7, 2004.

Statement of Answer was filed by Respondent Sunflower Asset Management Inc. and Joseph N. Kain on or about June 23, 2004. Submission Agreement of Respondent Joseph N. Kain was signed on February 26, 2004.

CASE SUMMARY

Claimant alleged that:

In October of 2001, Kain met with the Godfreys at their residence in Harper, Kansas to discuss their investment needs and goals. The Godfreys clearly expressed to Kain their investment concerns due to previous losses in the market. They stated they wanted safe, conservative investments and expressly told Kain to avoid small cap and mid cap stocks or unproven companies. They advised him that Melissa Godfrey was three years away from her anticipated retirement. Kain advised the Godfreys that SAM only dealt in well-researched securities which had a proven record of performance and that it did its own independent analysis to insure that the client's best interests were served through an individually tailored investment program.

Based on the representations of Kain and recommendations of Williams and TDW, the Godfreys signed an advisory agreement with Kain and SAM dated October 19, 2001. Subsequently, on December 1, 2001, they transferred approximately \$226,000 in assets held in six separate TDW accounts to SAM's management and control.

Under the terms of the investment advisory agreement SAM and Kain had total discretionary authority over the investment of assets committed to SAM's management. T.D. Waterhouse and Williams maintained custody of the assets and implemented the investment decisions made by SAM and Kain.

Contrary to the Godfrey's stated wishes, instructions, investment goals and their risk profile, Kain purchased stocks in high-risk, unproven companies and implemented an aggressive, high-risk investment strategy. Within eleven (11) months after assuming management of the Godfrey's assets, the \$226,000 in assets had declined in value to \$126,692 in value, a loss of approximately \$100,000.

Once the Godfreys noticed the nature of the investment decisions implemented by Kain and the precipitous decline in their account net asset value, Stephen Godfrey contacted Jim Williams to discuss his concerns over how the accounts were being managed. Mr. Williams indicated he would call Kain to discuss these concerns. However, no response was forthcoming, except that Kain, on November 5, 2002, tersely informed the Godfreys he was resigning from management of the accounts without further comment or correspondence. Kain expressed the investment management philosophy that he neither desired nor would tolerate client input or interference with his investment decisions.

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

The Sunflower Respondents admit that the parties entered into an investment advisory agreement which grants discretionary authority to Sunflower Asset Management. The Sunflower Respondents further affirmatively state that the agreement speaks for itself. The Sunflower Respondents further deny that they independently made investment decisions and conveyed them to T.D. Waterhouse and Williams. Rather, all discretionary authority and investment decisions were made in consultation with the investment objectives and guidelines established by the clients, the Godfreys.

RELIEF REQUESTED

Claimants requested an award against Respondents for the following:

- a) Loss of investment principal in excess of 85,000;
- b) Loss of investment opportunity or income based on the "well-managed" portfolio theory, and/or interest at a rate of 15% per annum as set forth in K.S.A. 17-1268(a);
- c) Attorneys fees as provided in K.S.A. 17-1268 and the law generally; and
- d) Such other relief as deemed fair and equitable under the circumstances.

The Sunflower Respondents requested that the Claimants take nothing by way of their Statement of Claim, that this action be dismissed in its entirety, and that the Sunflower Respondents be awarded their costs and expenses herein, including attorneys fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Sunflower Asset Management Inc. did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim is bound by the determination of the arbitration panel on all issues submitted.

The parties agreed to proceed with two arbitrators subsequent to the withdrawal of Arbitrator Diane Nygaard.

Prior to the commencement of the hearing, Claimants had reached a settlement of the claims asserted against Respondent TD Waterhouse Investor Services, Inc.

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, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Sunflower Asset Management Inc. and Joseph N. Kain shall be and hereby are jointly and severally liable for and shall pay to Claimants Stephen and Melissa Godfrey the sum of \$20,000.00 (**Twenty Thousand Dollars and No Cents**) as compensatory damages.
2. 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.
3. 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 = \$225.00

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(are) TD Waterhouse Investor Services, Inc.

| | | |
|-------------------------|----|-----------------|
| Member surcharge | \$ | 1,100.00 |
| Pre-hearing process fee | \$ | 750.00 |
| Hearing process fee | \$ | 1,700.00 |
| Total Member Fees | \$ | <u>3,550.00</u> |

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

| | | | | | |
|---|-----------------------------------|---|----------|----|-----------------|
| 2 | Pre-hearing session(s) with Panel | x | 750.00 | \$ | 1,500.00 |
| | June 14, 2004 | 1 | session | | |
| | February 22, 2005 | 1 | | | |
| 6 | Hearing sessions | x | 750.00 | \$ | 4,500.00 |
| | April 19, 2005 | 2 | sessions | | |
| | April 20, 2005 | 2 | sessions | | |
| | April 21, 2005 | 2 | sessions | | |
| | Total Forum Fees | | | \$ | <u>6,000.00</u> |

The Arbitration Panel has assessed \$5,250.00 of the forum fees jointly and severally to Sunflower Asset Management Inc. and Joseph N. Kain.

Fee Summary

Claimants, Stephen and Melissa Godfrey shall be and hereby are jointly and severally liable for:

| | | |
|---|------|----------|
| Initial Filing Fee | = \$ | 225.00 |
| Total Fees | = \$ | 225.00 |
| <u>Less payments</u> | = \$ | -975.00 |
| Balance to be refunded by NASD Dispute Resolution | = \$ | - 750.00 |

Respondent, TD Waterhouse Investor Services, Inc., shall be and hereby is liable for:

| | | |
|-------------------------------------|------|-----------|
| Member Fees | = \$ | 3,550.00 |
| Total Fees | = \$ | 3,550.00 |
| <u>Less payments</u> | = \$ | -2,950.00 |
| Balance Due NASD Dispute Resolution | = \$ | 600.00 |

Respondents, Sunflower Asset Management Inc. and Joseph N. Kain, shall be and hereby are jointly and severally liable for:

| | | |
|-------------------------------------|------|----------|
| <u>Forum Fees</u> | = \$ | 6,000.00 |
| Total Fees | = \$ | 6,000.00 |
| <u>Less payments</u> | = \$ | -0.00 |
| Balance Due NASD Dispute Resolution | = \$ | 6,000.00 |

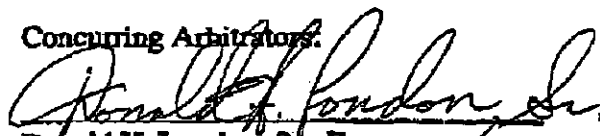
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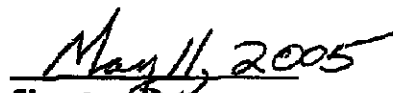
All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Donald H. Loudon, Sr., Esq. - Public Arbitrator, Presiding Chair
Douglas A. Spier - Non-Public Arbitrator

Concurring Arbitrators.


Donald H. Loudon, Sr., Esq.
Public Arbitrator, Presiding Chair


Signature Date

Douglas A. Spier
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Donald H. Loudon, Sr., Esq. - Public Arbitrator, Presiding Chair
Douglas A. Spier - Non-Public Arbitrator

Concurring Arbitrators:

Donald H. Loudon, Sr., Esq.
Public Arbitrator, Presiding Chair



Douglas A. Spier
Non-Public Arbitrator

Signature Date

5/11/05

Signature Date

Date of Service (For NASD office use only)

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ARBITRATION PANEL

Donald H. Loudon, Sr., Esq. - Public Arbitrator, Presiding Chair
Douglas A. Spier - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Donald H. Loudon, Sr.

Donald H. Loudon, Sr., Esq.
Public Arbitrator, Presiding Chair

May 11, 2005

Signature Date

/s/ Douglas A. Spier

Douglas A. Spier
Non-Public Arbitrator

May 11, 2005

Signature Date

Date of Service (For NASD office use only)