

**STIPULATED AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Claimant

Dr. Herbert L. Bircoll, individually and
on behalf of STC CUST IRA f/b/o
Herbert L. Bircoll

and

Case Number: 04-00211
Hearing Site: Detroit, Michigan

Respondents

Linsco/Private Ledger Corp., and
Timothy E. Zimcosky

NATURE OF DISPUTE

Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

Dr. Herbert L. Bircoll, individually and on behalf of STC CUST IRA f/b/o Herbert L. Bircoll ("Claimant") was represented by John T. Getz, Esq. and Christine Montalvo, Esq., Feldman & Getz, LLP, Boca Raton, Florida.

Linsco/Private Ledger Corp. ("LPL") and Timothy E. Zimcosky ("Zimcosky"), hereinafter collectively referred to as "Respondents," were represented by Amanda C. Hawley, Esq., Linsco/Private Ledger Corp., Boston, Massachusetts.

CASE INFORMATION

The Statement of Claim was filed on or about January 13, 2004. The Submission Agreement of Claimant was signed on or about December 16, 2003.

The Statement of Answer was filed jointly by Respondents on or about March 9, 2004. The Submission Agreement of LPL was signed on or about March 8, 2004 by David J. Freniere, Senior Vice President. The Submission Agreement of Zimcosky was signed on or about March 8, 2004.

CASE SUMMARY

Claimant asserted claims against Respondents seeking to recover alleged "losses" in his investment values, and asserted the following legal theories in support of his claims: breach of Michigan's Uniform Securities Act and federal securities laws, unsuitability, breach of fiduciary duty, negligence, misrepresentations, omissions, fraud and violation of NASD rules. The causes of action related to Claimant's allegations that Respondents sold the stocks in Claimant's IRA account and invested in mutual funds unacceptable to Claimant's investment objectives including: Eaton Vance Floating Rate Fund, Fidelity Advisor High Income Fund, Fidelity Advisor Intermediate Bond Fund, Liberty Acorn Fund and Scudder Dreman High Return Fund.

Respondents denied all allegations made in the Statement of Claim, and asserted factual and legal defenses to the claims. Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses, including: (1) Claimant approved, authorized and ratified the investments and acts complained of, and accordingly, is precluded from asserting claims based on those decisions as a basis of recovery; (2) investments recommended were entirely consistent with Claimant's express and designated investment objective; (3) any declines in the value of Claimant's investments during Claimant's period of investment with Respondents resulted solely from the vagaries and volatilities of the securities markets and not from any purported wrongdoing by Respondents; (5) Respondents fully complied with all securities rules and regulations; (6) Claimant has failed to mitigate his alleged damages, and assumed the risks associated with his investments; and (7) Respondents acted in good faith and at no time acted intentionally or negligently as alleged in the claim, or acted in any manner to cause any of the alleged damages.

RELIEF REQUESTED

Claimant requested an award in the amount of \$300,000.00 in compensatory damages, punitive damages, attorneys' fees, costs and any other relief the panel deemed appropriate.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. Respondent Zimcosky requested expungement of all references to this matter from his CRD record.

OTHER ISSUES CONSIDERED & DECIDED

Zimcosky requested that the panel enter an award of expungement of all references to the above captioned arbitration from the NASD Central Registration Depository ("CRD") records of Zimcosky, with the understanding that pursuant to NASD Notice to Members 99-09, Zimcosky must obtain confirmation from a court of competent jurisdiction before CRD

will execute the expungement directive. Claimant did not oppose the request for expungement of this matter from Zimcosky's CRD record.

The parties entered into an agreement to present to the Panel a Stipulated Award. The parties to this arbitration, by and through their respective counsel of record, hereby stipulate as follows:

WHEREAS, Claimant brought certain claims against Respondents in the above captioned arbitration;

WHEREAS, Respondents have denied and continue to deny all material allegations of Claimant's claims;

WHEREAS, Claimant withdrew his claims against Timothy E. Zimcosky on or about April 27, 2005;

WHEREAS, the remaining parties, Claimant and Linsco/Private Ledger Corp. entered in to a Release and Settlement Agreement regarding Claimant's claims;

WHEREAS, pursuant to the Settlement Agreement, Claimant agreed to dismiss Respondents from this arbitration with prejudice;

WHEREAS, Respondent, Timothy E. Zimcosky did not make any monetary contribution to settlement;

WHEREAS, Claimant desires that his complaint against Timothy E. Zimcosky be expunged from his Form U4s, Form U5s, and any other NASD reporting documents and record.

The parties have agreed that the Stipulated 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 NASD Dispute Resolution ("NASD").

AWARD

In lieu of a hearing and upon the motion of the parties for the entry of an Award, the written stipulation thereto, and after considering the pleadings and the request for the Stipulated Award, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) All claims having been withdrawn or settled, the same are hereby dismissed with prejudice and without costs, except as specified hereinafter;

- 2.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Timothy E. Zimcosky's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Zimcosky must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
- 3.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fee for the claim:

Initial claim filing fee = \$300.00

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 person at the time of the events giving rise to the dispute. In this matter, the member firm is Linsco/Private Ledger Corp.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

Adjournment Fees

Adjournments requested during these proceedings:

May 3-6, 2005, adjournment requested jointly by the parties = \$ 1,125.00

Forum Fees and Assessments

The Panel has assessed 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:

One (1) Pre-hearing session with Panel x \$1,125.00	= \$ 1,125.00
Pre-hearing conference: June 30, 2004 1 session	
<u>Total Forum Fees</u>	<u>= \$ 1,125.00</u>

The Arbitration Panel has assessed \$562.50 of the forum fees to Claimant, Dr. Herbert L. Bircoll, individually and on behalf of STC CUST IRA f/b/o Herbert L. Bircoll.

The Arbitration Panel has assessed \$562.50 of the forum fees jointly and severally to Respondents, Linsco/Private Ledger Corp., and Timothy E. Zimcosky.

Fee Summary

Claimant, Dr. Herbert L. Bircoll, individually and on behalf of STC CUST IRA f/b/o Herbert L. Bircoll, is liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 562.50
Forum Fees	= \$ 562.50
<u>Total Fees</u>	<u>= \$ 1,425.00</u>
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent, Linsco/Private Ledger Corp., is liable for:

<u>Member Fees</u>	<u>= \$ 5,200.00</u>
<u>Total Fees</u>	<u>= \$ 5,200.00</u>
<u>Less payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Linsco/Private Ledger Corp. and Timothy E. Zimcosky, are jointly and severally liable for:

Adjournment Fee	\$ 562.50
Forum Fees	= \$ 562.50
<u>Total Fees</u>	<u>= \$ 1,125.00</u>
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,125.00

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

ARBITRATION PANEL

Ina N. Otto, Esq. - Public Arbitrator, Presiding Chair
Matthew W. Schlegel, Esq. - Public Arbitrator
William C. Kubicz - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Ina N. Otto, Esq.
Ina N. Otto, Esq.
Public Arbitrator, Presiding Chair

May 17, 2006
Signature Date

/s/ Matthew W. Schlegel, Esq.
Matthew W. Schlegel, Esq.
Public Arbitrator

May 17, 2006
Signature Date

/s/ William C. Kubicz
William C. Kubicz
Non-Public Arbitrator


May 17, 2006
Signature Date

May 17, 2006
Date of Service (For NASD office use only)

ARBITRATION PANEL

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Matthew W. Schlegel, Esq. - Public Arbitrator
William C. Kubicz - Non-Public Arbitrator

Concurring Arbitrators:



Ina N. Otto, Esq.
Public Arbitrator, Presiding Chair

5/17/06

Signature Date

Matthew W. Schlegel, Esq.
Public Arbitrator

Signature Date

William C. Kubicz
Non-Public Arbitrator

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