

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 04-00378

J. Clayton Davie, M.D.
L. Paul Kassouf, Trustee for Davie Children
Charlotte Gunn

Names of the Respondents

Hearing Site: Atlanta, Georgia

Merrill Lynch
Bruce Chappell & Associates
Bruce Chappell
J.R. Melikian

Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

For J. Clayton Davie, M.D. ("Davie"), L. Paul Kassouf, Trustee for Davie Children ("Kassouf") and Charlotte Gunn ("Gunn"), hereinafter collectively referred to as "Claimants": Jack B. McNamee, Esq. and J. Flint Liddon, Esq., McNamee & Liddon, Birmingham, Alabama.

For Merrill Lynch ("Merrill"), Bruce Chappell & Associates ("Chappell & Associates"), Bruce Chappell ("Chappell") and J.R. Melikian ("Melikian"), hereinafter collectively referred to as "Respondents": S. Lawrence Polk, Esq. and Brian C. Hale, Esq., Sutherland Asbill & Brennan LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on or about: January 16, 2004.
Claimant Davie signed but did not date the Uniform Submission Agreement.
Claimant Kassouf signed the Uniform Submission Agreement: January 27, 2004.
Claimant Gunn signed the Uniform Submission Agreement: January 30, 2004.
Statement of Answer filed by Respondents on or about: April 28, 2004.
Respondent Merrill signed the Uniform Submission Agreement: March 2, 2004.
Respondent Melikian signed the Uniform Submission Agreement: April 23, 2004.
Respondents Chappell and Chappell & Associates signed the Uniform Submission Agreement: April 23, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: unauthorized trading; unauthorized margin activity; failure to execute orders; and, violations of federal and state securities laws and Merrill regulations. The causes of action relate to Claimants' investments in Tidewater, Inc. and Genesis Health Ventures.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimants Davie and Gunn requested damages of \$35,000.00 together with interest from the date of loss in addition to their attorneys' fees and costs and punitive damages. Claimants Davie and Kassouf requested damages of \$579,000.00 together with interest from the date of loss in addition to their attorneys' fees and costs and punitive damages.

Respondents requested that the arbitration panel issue an award dismissing the Statement of Claim in its entirety; assessing all forum fees and costs against Claimants; expunging this matter from the Central Registration Depository ("CRD") records of Respondents Chappell and Melikian; and, granting such other, further and different relief as the arbitration panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents moved to dismiss all claims of Claimants Kassouf and Gunn as having been abandoned because they did not appear or prosecute them at the hearing. Respondents also moved to dismiss all claims of Claimant Davie other than those arising out of the sale of Genesis Health Ventures as having been abandoned. Claimant Davie appeared at the hearing and did not oppose the motions and the same were taken under advisement by the Panel. The Panel decided to grant the motions during executive session following the taking of testimony and the claims are dismissed.

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:

The complaint is dismissed and all remaining claims of Claimant Davie are denied.

Claimant Davie is to pay Respondents' attorneys' fees in the amount of \$48,582.50 and the authority for this award is found in Section 517.211 of the Florida Statutes and Section 12-19-272 of the Alabama Code. Claimant Davie is also to pay Respondents' litigation expenses in the amount of \$1,148.46 and travel expenses in the amount of \$5,000.00.

Claimant Davie admitted the claim against Respondent Melikian was a mistake but made no effort to correct it prior to hearing. The Motion for Expungement filed on her behalf is, therefore, granted because the claim, allegation or information against her is false. The Motion for Expungement filed on behalf of Respondent Chappell is granted because the claim, allegation

or information against him is clearly erroneous.

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

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, 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 = \$375.00

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 is a party.

Member surcharge = \$2,250.00

Pre-hearing process fee = \$750.00

Hearing process fee = \$4,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with the Panel @ \$1,200.00 = \$2,400.00

Pre-hearing conferences: June 25, 2004 1 session

December 2, 2004 1 session

Three (3) Hearing sessions @ \$1,200.00 = \$3,600.00

Hearing Dates: February 15, 2005 2 sessions

February 16, 2005 1 session

Total Forum Fees = \$6,000.00

The Panel has assessed \$3,000.00 of the forum fees jointly and severally to Claimants.

The Panel has assessed \$3,000.00 of the forum fees jointly and severally to Respondents.

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.

No administrative costs were incurred in this matter.

FEE SUMMARY

Claimants are jointly and severally liable for:

Initial Filing Fee = \$375.00
Forum Fees = \$3,000.00

Total Fees = \$3,375.00

Less payments = \$1,575.00

Balance Due NASD Dispute Resolution = \$1,800.00

Respondent Merrill is solely liable for:

Member Fees = \$7,000.00

Total Fees = \$7,000.00

Less payments = \$7,000.00

Balance Due NASD Dispute Resolution	= \$0.00
Respondents are jointly and severally liable for:	
Forum Fees	= \$3,000.00
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Total Fees	= \$3,000.00
Less payments	= \$3,000.00
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Balance Due NASD Dispute Resolution	= \$0.00

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

ARBITRATION PANEL

Lawrence M. Oberdank, Esq.	-	Public Arbitrator, Presiding Chair
David E. Morris, Sr.	-	Public Arbitrator
Thomas M. Johnson, Jr., Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

_____/S/_____
Lawrence M. Oberdank, Esq.
Public Arbitrator, Presiding Chair

Signature Date

_____/S/_____
David E. Morris, Sr.
Public Arbitrator

Signature Date

_____/S/_____
Thomas M. Johnson, Jr., Esq.
Non-Public Arbitrator

Signature Date

March 2, 2005
Date of Service (For NASD Dispute Resolution office use only)

Balance Due NASD Dispute Resolution	= \$0.00
Respondents are jointly and severally liable for:	
Forum Fees	= \$3,000.00
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Total Fees	= \$3,000.00
Less payments	= \$3,000.00
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Thomas M. Johnson, Jr., Esq.	-	Non-Public Arbitrator


Concurring Arbitrators' Signatures

Lawrence M. Oberdank, Esq.
Public Arbitrator, Presiding Chair

Signature Date

David E. Morris, Sr.
Public Arbitrator

Signature Date



Thomas M. Johnson, Jr., Esq.
Non-Public Arbitrator

2/24/05

Signature Date

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

Balance Due NASD Dispute Resolution	= \$0.00
Respondents are jointly and severally liable for:	
Forum Fees	= \$3,000.00
Total Fees	= \$3,000.00
Less payments	= \$3,000.00
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Concurring Arbitrators' Signatures

Lawrence M. Oberdank, Esq.
Public Arbitrator, Presiding Chair

Signature Date


David B. Morris, Sr.
Public Arbitrator

3/2/05
Signature Date

Thomas M. Johnson, Jr., Esq.
Non-Public Arbitrator

Signature Date

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

Balance Due NASD Dispute Resolution	= \$0.00
Respondents are jointly and severally liable for:	
Forum Fees	= \$3,000.00
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Less payments	= \$3,000.00
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Lawrence M. Oberdank
Lawrence M. Oberdank, Esq.
Public Arbitrator, Presiding Chair

2/24/05
Signature Date

David E. Morris, Sr.
Public Arbitrator

Signature Date

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Non-Public Arbitrator

Signature Date

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