

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant

Ray C. Donaldson

Case Number: 04-00385

Name of the Respondents

McDonald Investments, Inc. and
Charles H. Garrido

Hearing Site: Indianapolis, Indiana

NATURE OF DISPUTE

Customer vs. Member Firm and Associated Person

REPRESENTATION OF PARTIES

William C. Wagner, Esq. of the law firm Sommer Bernard Ackerson, P.C., located in Indianapolis, Indiana represented Claimant, Ray C. Donaldson ("Donaldson"), hereinafter referred to as "Claimant."

Thomas E. Satrom, Esq. of the law firm Locke Reynolds, LLP, located in Indianapolis, Indiana, represented Respondents, McDonald Investments, Inc. ("McDonald") and Charles H. Garrido, Jr. ("Garrido"), hereinafter collectively referred to as "Respondents."

CASE INFORMATION

Statement of Claim filed on or about January 19, 2004. Claimant Donaldson signed the Uniform Submission Agreement on January 19, 2004.

Statement of Answer filed by Respondents McDonald and Garrido on April 15, 2004. Respondent McDonald signed the Uniform Submission Agreement on February 5, 2004. Respondent Garrido signed the Uniform Submission Agreement on July 20, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty, constructive fraud, omission of fact, misrepresentations, suitability and civil action by crime victim. The causes of action relate to Account Nos. 22252033, 22252047, 22252071, 22252170, 22252108, 22252066 and 22252052 and invested in large-cap, blue-chip stocks such as Microsoft, Intel, Johnson & Johnson, Bank of America and equity index funds. Claimant asserted that these were speculative stocks and were unsuitable to Claimant's needs and objectives.

Unless specifically admitted in its Answer, Respondents McDonald and Garrido denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim and each claim purportedly stated therein fail to state valid claims for relief;
2. The NASD Conduct Rules do not provide any private right of action for Claimant;
3. Respondents did not owe any fiduciary duty to Claimant and, therefore, cannot be liable for the alleged breach of such duty;
4. The decline in the value of Mr. Donaldson's accounts were the result of acts and/or omission of persons other than Respondents, including Mr. Donaldson;
5. Claimant's reliance on Indiana Code Section 24-24-3-1 is misplaced as no crime was committed by Respondents;
6. Claimant's request for treble damages to "punish and deter" Respondents seeks relief not authorized in this proceeding and imposition of punitive damages upon Respondents in this case would be violative of the United States and Indiana constitutions; and
7. Claimant's requests for relief are barred in whole or in part by the applicable statute of limitations.

RELIEF REQUESTED

Claimant Donaldson requested \$1,000,000.00 in compensatory damages, treble damages in amount of \$2,000,000.00, 8% interest, attorney's fees, filing fees and costs.

Respondents McDonald and Garrido requested denial and dismissal of all claims in Claimant's Statement of Claim, attorney's fees and costs and for further relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, McDonald Investments, Inc. and Charles H. Garrido, Jr., are jointly and severally liable for and shall pay to Claimant, Ray C. Donaldson, the sum of \$678,633.00 as compensatory damages.
2. Respondent, McDonald Investments, Inc. and Charles H. Garrido, Jr., are jointly and severally liable for and shall pay to Claimant, Ray C. Donaldson, the sum of \$82,816.00 for attorney's fees. In deciding to award attorney's fees, the Panel considered Indiana Code §23-2-1-19, the pleadings filed by counsel, as well as the arguments presented on behalf of the parties, and determined that authority existed for an award of attorney's fees to the Claimant.
3. Respondent, McDonald Investments, Inc. and Charles H. Garrido, Jr., are jointly and severally liable for and shall pay to Claimant, Ray C. Donaldson, the sum of \$15,613.00 for costs.
4. Parties shall bear all other costs, including attorneys' fees, except as specified herein.
5. Any and all relief not specifically addressed herein, including treble damages, is denied.

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	= \$ 500.00
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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. Accordingly, McDonald Investments, Inc. is a party and is assessed the following fees:

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: None.

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:

One (1) Pre-hearing session with a single arbitrator @ \$ 450.00 = \$ 450.00
Pre-hearing conference: October 5, 2004 1 session

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$ 1,200.00
Pre-hearing conference: July 14, 2004 1 session

Seven (7) Hearing sessions @ \$1,200.00 = \$ 8,400.00
Hearing Dates: December 14, 2004 2 sessions
December 15, 2004 2 sessions
December 16, 2004 3 sessions

Total Forum Fees = \$10,050.00

1. The Panel assessed 50% of the total forum fees in the amount of \$5,025.00 solely to Claimant, Ray C. Donaldson.
2. The Panel assessed 50% of the total forum fees in the amount of \$5,025.00 jointly and severally to Respondents, McDonald Investments, Inc. and Charles H. Garrido.

FFR SUMMARY

1. Claimant, Ray C. Donaldson, is solely liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	<u>= \$ 5,025.00</u>
Total Fees	= \$ 5,525.00
<u>Less payments</u>	<u>= \$ 1,700.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,825.00

2. Respondent, McDonald Investments, Inc. is solely liable for:

Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	<u>= \$ 5,025.00</u>
Total Fees	= \$13,575.00
<u>Less payments</u>	<u>= \$ 8,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 5,025.00

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

ARBITRATION PANEL

Joseph L. Claypool, Esq.	-	Public Arbitrator, Presiding Chairperson
Judy Estabrook Sheppard	-	Public Arbitrator
Jeffrey Richard Chiapetta	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Joseph L. Claypool, Esq.
Public Arbitrator, Presiding Chairperson

12/28/04
Signature Date

Jeffrey Richard Chiapetta
Non-Public Arbitrator

12/28/04
Signature Date

Dissenting Arbitrator's Signature

The dissenting arbitrator has provided the following statement:

I concur on liability, but dissent in regard to the damages awarded and would award a lower sum. The reason is, over the life of the account, there were no out of pocket losses; there was profit of \$573,430.00; withdrawals were made in the amount of \$1,672,853.00; and this was a fees-only discretionary account.

Judy Estabrook Sheppard
Public Arbitrator

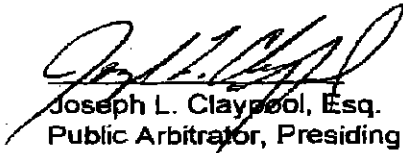
12/28/04
Signature Date

12/28/04
Date of Service (For NASD Dispute Resolution office use only)

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Jeffrey Richard Chiappetta	-	Non-Public Arbitrator

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Judy Estabrook Sheppard
Public Arbitrator

12-28-04
Signature Date

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