

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimants

Edwin L. Clemmer and Mary A. Clemmer

vs.

04-00543  
Louisville, Kentucky

Respondents

J.J.B. Hilliard, W.L. Lyons, Inc.  
Harry Vance Lucke

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Nature of the Dispute: Customers vs. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Edwin L. Clemmer and Mary A. Clemmer ("**Claimants**") were represented by Benjamin D. Allen, Esq., Yunker & Associates, Lexington, Kentucky.

J.J.B. Hilliard, W.L. Lyons, Inc. ("**J.J.B. Hilliard**") and Harry Vance Lucke ("**Lucke**"), hereinafter collectively referred to as ("**Respondents**"), were represented by Kenneth F. Berg, Esq., Ulmer & Berne LLC, Chicago, Illinois.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 28, 2004. The Submission Agreements of Claimants, Edwin L. Clemmer and Mary A. Clemmer, were signed on or about December 3, 2003. Claimants' Motion to Change Venue was filed on or about March 31, 2004.

The Statement of Answer was filed by Respondents, J.J.B. Hilliard, W.L. Lyons, Inc. and Harry Vance Lucke on or about March 25, 2004. The Submission Agreement of Respondent, J.J.B. Hilliard, W.L. Lyons, Inc., was signed on or about March 25, 2004. The Submission Agreement of Respondent, Harry Vance Lucke, was signed on or about March 3, 2004. Respondents' Response to the Motion to Change Venue was filed on or about May 7, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty and failure to supervise. The causes of action related to the order executions of the following stocks: AOL Time Warner, Inc., Intel Corp., Merck & Co., Inc., Microsoft Corp., Qwest Comm. Intl., Tyco International Ltd.

New, and WorldCom, Inc. Claimants alleged that the Respondents recommended an aggressive portfolio that was not suitable for them which caused them to suffer a significant financial loss.

Unless specifically admitted in their Answer, Respondents, J.J.B. Hilliard, W.L. Lyons, Inc. and Harry Vance Lucke, denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants failed to state a claim in which relief can granted; Claimants' claim are barred in whole or in part by the doctrines of waiver, ratification and estoppel; Claimants failed to mitigate their damages; and Claimants' claims are time-barred.

### **RELIEF REQUESTED**

Claimants requested an award of \$60,000.00 in compensatory damages, plus costs, attorney's fees and any other relief to which they may be entitled.

Respondents requested that the claims asserted against them be denied in their entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

On June 3, 2004, the Panel issued an order denying Claimants' Motion to Change Venue.

At the end of Claimants' case, the Respondents argued their Motion to Dismiss. The Panel denied the motion.

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

1. Claimants' claims, each and all, are dismissed with prejudice;
2. 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; and
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.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain 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 that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firm is J.J.B. Hilliard, W.L. Lyons, Inc.

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

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

1	Pre-hearing session with Panel	X	750.00	\$	750.00
	June 3, 2004	1	Session		
3	Hearing sessions	X	750.00	\$	2,250.00
	October 11, 2004	2	Sessions		
	October 12, 2004	1	Session		
	Total Forum Fees			\$	<u>3,000.00</u>

The Arbitration Panel has assessed \$3,000.00 of the forum fees, jointly and severally, to Edwin L. Clemmer and Mary A. Clemmer.

**Fee Summary**

Claimants, Edwin L. Clemmer and Mary A. Clemmer, are jointly and severally liable for:

Initial Filing Fee	= \$	225.00
<u>Forum Fees</u>	= \$	<u>3,000.00</u>
Total Fees	= \$	3,225.00
<u>Less payments</u>	= \$	<u>-975.00</u>
Balance Due to NASD Dispute Resolution	= \$	2,250.00

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

<u>Member Fees</u>	= \$	<u>3,550.00</u>
Total Fees	= \$	3,550.00
<u>Less payments</u>	= \$	<u>-3,550.00</u>
Balance Due to 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**

Alan Weiss, J.D. - Public Arbitrator, Presiding Chair

John P. McShane - Public Arbitrator

Stuart S. Billington - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Alan Weiss, J.D.  
Alan Weiss, J.D.  
Public Arbitrator, Presiding Chair

10/15/04  
Signature Date

/s/ John P. McShane  
John P. McShane  
Public Arbitrator

10/14/04  
Signature Date

/s/ Stuart S. Billington  
Stuart S. Billington  
Non-Public Arbitrator

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Signature Date

  
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Non-Public Arbitrator

OCT. 15, 2004  
Signature Date

\_\_\_\_\_  
Date of service