

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Linda Perry (Claimant) v. PFS Investments, Inc. (Respondent)

Case Number: 04-00646

Hearing Site: Columbus, Ohio

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

Claimant Linda Perry ("Perry") hereinafter referred to as "Claimant": Charles S. Wuest, Esq., previously Debra B. Hayes, Esq., Woska & Hayes, L.L.P., Kingwood, TX.

Respondent PFS Investments, Inc. ("PFS") hereinafter referred to as "Respondent": Marlon H. Little, Jr., Esq., Zeiger, Tigges, Little & Lindsmith, LLP, Columbus, OH.

CASE INFORMATION

Statement of Claim filed on or about: January 23, 2004.

Response to Motion to Dismiss filed by Claimant on or about: August 18, 2004.

Claimant signed the Uniform Submission Agreement: February 20, 2004.

Motion to Dismiss and Statement of Answer filed by Respondent on or about: August 3, 2004.
Reply Memorandum in Support of its Motion to Dismiss and Answer filed by Respondent on or about: September 3, 2004.

Respondent signed the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: control person liability; violation of Section 20(a) of The Exchange Act; failure to diversify; breach of fiduciary duty; breach of contract; violation of Know Your Customer Rule; unsuitability; failure to supervise; violations of securities laws; violation of security regulatory rules; violation of the West Virginia Uniform Securities Act; violation of the West Virginia General Consumer Protection Act; common law claims; and failure to hedge. The causes of action relate to the Smith Barney Fundamental Value Fund.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$193,000.00, including but not limited to all direct losses in the accounts, all charges to the accounts, lost earnings, pre-judgment and post-judgment interest; costs, including forum fees, hearing session fees, and costs, reasonable attorneys' fees under West Virginia statutory law and common law as well as under NASD and NYSE Rules of Fair Practice, costs and expenses including expert witness fees, punitive damages, all damages allowable under the West Virginia General Consumer Protection Act, and all other and further relief to which she may be entitled. In the Response to Respondent's Motion to Dismiss, Claimant requested that the motion be denied in its entirety, along with any other relief sought therein, and that Respondent be required to appear at the hearing on the merits, and that the Panel determine the liability of the Respondent to Claimant based on all of the evidence.

Respondent requested that the Panel dismiss Claimant's Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

On or about November 22, 2004, the parties and Panel held a telephonic pre-hearing conference regarding Respondent's Motion to Dismiss. At a deliberation held on December 2, 2004, the Panel determined that at the present time Claimant lacks the standing to bring this arbitration and dismissed the claim without prejudice.

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.

AWARD

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

1. Claimant's claims are dismissed in their entirety, without prejudice.
2. Any and all relief not specifically addressed herein, including punitive 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	= \$300.00
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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, PFS Investments, Inc. is a party.

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

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:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00	= \$2,250.00
Pre-hearing conferences: October 7, 2004 1 session	
November 22, 2004 1 session	
<hr/> Total Forum Fees	<hr/> = \$2,250.00

1. The Panel has assessed 50% of the forum fees for the October 7, 2004 telephonic pre-hearing conference in the amount of \$562.50 and 100% of the forum fees for the November 22, 2004 telephonic pre-hearing conference in the amount of \$1,125.00 for total forum fees in the amount of \$1,687.50 against Claimant.
2. The Panel has assessed 50% of the forum fees for the October 7, 2004 telephonic pre-hearing conference in the amount of \$562.50 against Respondent.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,687.50
<hr/> Total Fees	<hr/> = \$1,987.50
Less payments	= \$1,425.00
<hr/> Balance Due NASD Dispute Resolution	<hr/> = \$ 562.50

2. Respondent is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$ 562.50
<hr/> Total Fees	<hr/> = \$5,762.50
Less payments	= \$2,450.00
<hr/> Balance Due NASD Dispute Resolution	<hr/> = \$3,312.50

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

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ARBITRATION PANEL

Jeffrey M. Bain, Esq.	-	Public Arbitrator, Presiding Chairperson
Kevin R. McDermott, Esq.	-	Public Arbitrator
Bernard A. Breton	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Jeffrey M. Bain, Esq.
Public Arbitrator, Presiding Chairperson

December 8, 2004
Signature Date

Kevin R. McDermott, Esq.
Public Arbitrator

Signature Date

Bernard A. Breton
Non-Public Arbitrator

Signature Date

December 8, 2004
Date of Service (For NASD Dispute Resolution use only)

NASD REGULATION

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Bernard A. Breton	-	Non-Public Arbitrator

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Jeffrey M. Bain, Esq.
Public Arbitrator/Presiding Chairperson

Signature Date

Kevin R. McDermott, Esq.
Public Arbitrator

Signature Date

Bernard A. Breton
Non-Public Arbitrator

Signature Date

December 8, 2004

Date of Service (For NASD Dispute Resolution use only)

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Jeffrey M. Bain, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Kevin R. McDermott, Esq.
Public Arbitrator

Signature Date


Bernard A. Breton
Non-Public Arbitrator

12-7-2004
Signature Date

December 8, 2004
Date of Service (For NASD Dispute Resolution use only)