

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Eli Epstein and Laurie Bilger (Claimants) v. Chase Investment Services Corp., J.P. Morgan Chase Bank, and David Ferman (Respondents)

Case Number: 04-01104

Hearing Site: New York, New York

Nature of the Dispute: Customer v. Member, Non-Member, and Associated Person

REPRESENTATION OF PARTIES

Claimants Eli Epstein ("Epstein") and Laurie Bilger ("Bilger") hereinafter collectively referred to as "Claimants": Richard S. Heller, Esq., Shustak Jalil & Heller, P.C., San Diego, CA.

Respondents Chase Investment Services Corp., ("Chase") and David Ferman ("Ferman"), hereinafter collectively referred to as "Respondents": Matthew C. Plant, Esq., Bressler, Amery & Ross, P.C., New York, NY.

Respondent J.P. Morgan Chase Bank ("J.P. Morgan") did not enter an appearance.

CASE INFORMATION

Statement of Claim filed on or about: February 18, 2004.

First Amended Statement of Claim filed on or about: April 1, 2004.

Claimant Epstein signed the Uniform Submission Agreement: February 10, 2004.

Claimant Bilger signed the Uniform Submission Agreement: February 10, 2004.

Joint Statement of Answer filed by Respondents on or about: May 24, 2004.

Respondent Chase did not sign the Uniform Submission Agreement.

Respondent Ferman did not sign Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: suitability, failure to disclose material facts, negligence, breach of fiduciary duty, unauthorized trading, respondeat superior, and failure to supervise.

The causes of action relate to the purchase of a Variable Annuity Contract issued by Keyport Benefit Life Insurance Company and Van Kempen Class A Mutual Funds.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$450,000.00; punitive damages in the amount of \$250,000.00; costs and expenses, including attorneys' fees and forum fees; pre-judgment interest; and such other relief that the Panel deems just and proper.

Respondents requested that the Statement of Claim be dismissed in its entirety and the Panel award other and further relief as they deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Chase and Ferman did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

On or about April 16, 2004, Claimants withdrew their claims against Respondent J.P. Morgan.

During the hearings, Respondents moved to exclude the expert's testimony on supervision. After due deliberation, the Panel denied this Motion.

During the hearings, Respondents moved to exclude the expert's testimony on damages relating to alternative investments. After due deliberation, the Panel granted this 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.

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 are liable for and shall pay to Claimants compensatory damages in the amount of \$85,000.00 plus interest at the prevailing New York legal rate from July 14, 2003 until the date the award is paid.
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 = \$ 375.00

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. Accordingly, Chase 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:

February 22-25, and March 17 2005 adjournment by Parties Waived
May 31-June 2, 2005 adjournment by Parties
Claimants' share = \$ 600.00
Respondents' share = \$ 600.00

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 a single arbitrator @ \$450.00 = \$ 900.00
Pre-hearing conferences: November 30, 2004 1 session
February 24, 2005 1 session

Two(2) Pre-hearing sessions with Panel @ \$1,200.00 = \$ 2,400.00
Pre-hearing conferences: September 9, 2004 1 session
February 17, 2005 1 session

Nine (9) Hearing sessions @ \$1,200.00 = \$10,800.00
Hearing Dates: August 15, 2005 2 sessions
August 16, 2005 2 sessions
August 17, 2005 2 sessions
August 18, 2005 2 sessions
August 19, 2005 1 session

Total Forum Fees = \$14,100.00

1. The Panel has assessed \$14,100.00 of the forum fees against Respondent Chase.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
<u>Adjournment Fee</u>	= \$ 600.00
Total Fees	= \$ 975.00
<u>Less payments</u>	= \$ 1,575.00
Refund Due Claimants	= \$ 600.00

2. Respondent Chase is solely liable for:

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	= \$14,100.00
Total Fees	= \$21,100.00
<u>Less payments</u>	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$14,100.00

4. Respondents Chase and Ferman are jointly and severally liable for:

<u>Adjournment Fees</u>	= \$ 600.00
Total Fees	= \$ 600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 600.00


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

ARBITRATION PANEL

Madelon M. Rosenfeld, Esq.	-	Public Arbitrator, Presiding Chairperson
Dorothy E. Morris	-	Public Arbitrator
Preston V. Pumphrey	-	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.


Madelon M. Rosenfeld, Esq.
Public Arbitrator, Presiding Chairperson

8-26-05
Signature Date

Dorothy Morris
Public Arbitrator

Signature Date

Preston V. Pumphrey
Non-Public Arbitrator

Signature Date

AUGUST 29, 2005
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

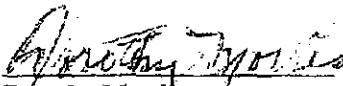
Madelon M. Rosenfeld, Esq.	-	Public Arbitrator, Presiding Chairperson
Dorothy E. Morris	-	Public Arbitrator
Preston V. Pumphrey	-	Non-Public Arbitrator

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.

Madelon M. Rosenfeld, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Dorothy Morris
Public Arbitrator

Aug. 24, 2005

Signature Date

Preston V. Pumphrey
Non-Public Arbitrator

Signature Date

AUGUST 29, 2005

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Madelon M. Rosenfeld, Esq.	-	Public Arbitrator, Presiding Chairperson
Dorothy E. Morris	-	Public Arbitrator
Preston V. Pumphrey	-	Non-Public Arbitrator

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 Madelon M. Rosenfeld, Esq.
 Public Arbitrator, Presiding Chairperson

 Signature Date

 Dorothy Morris
 Public Arbitrator

 Signature Date


 Preston V. Pumphrey
 Non-Public Arbitrator

8/24/05
 Signature Date

AUGUST 29, 2005
 Date of Service (For NASD Dispute Resolution use only)