
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Donald R. Boyer and Mary C. Boyer

Case Number: 04-02345

Name of the Respondent

Dunwoody Brokerage Services, Inc.

Hearing Site: Atlanta, Georgia

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Donald R. Boyer and Mary C. Boyer, hereinafter collectively referred to as "Claimants":
Bruce W. Barnes, Esq., Bruce W. Barnes, P.A., Clearwater, Florida.

For Dunwoody Brokerage Services, Inc., hereinafter referred to as "Respondent": Jeffrey W.
Melcher, Esq., Buker, Jones & Haley, P.C., Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on or about: April 5, 2004.

Correction to Statement of Claim filed by Claimants on or about: July 15, 2004.

Claimants signed the Uniform Submission Agreement: March 17, 2004.

Affirmative Defenses, Answer and Counterclaim filed by Respondent on or about: May 26,
2004.

Respondent signed the Uniform Submission Agreement: May 25, 2004.

Motion to Dismiss filed by Respondent on or about: July 6, 2004.

Response to Motion to Dismiss filed by Claimants on or about: July 15, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; unsuitability; negligence; negligent supervision; and, negligent misrepresentation and/or fraud. The causes of action relate to the purchase and sale of the following mutual funds in Claimants' account: EuroPacific Growth Fund; the Growth Fund of America; the New Prospective Fund; the Investment Company of America Fund; the Oppenheimer Mainstreet Growth and Income Fund; the Putnam Health Fund; the Putnam Capital Opportunities Fund; and, the Putnam Vista Fund.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim, asserted various defenses and asserted a Motion to Dismiss on the basis that if Claimants had followed the advice of Respondent's registered representative and had remained invested in the securities products recommended, there would not have been a loss.

In response to the Motion to Dismiss, Claimants denied the assertions made therein.

RELIEF REQUESTED

Claimants requested compensatory damages in excess of \$112,000.00, plus interest, punitive damages and attorney's fees pursuant to Section 13-6-11 of the Georgia Code.

Respondent requested dismissal of the Statement of Claim, attorney's fees and travel expenses.

OTHER ISSUES CONSIDERED AND DECIDED

On or about September 16, 2004, the Panel issued an order denying Respondent's Motion to Dismiss.

Respondent asserted a Counterclaim for costs and attorney's fees only. No evidence or argument was presented at the evidentiary hearing with respect to the Counterclaim. As such, the Panel deemed the Counterclaim moot.

During the evidentiary hearing, Claimants presented evidence demonstrating losses greater than those set forth in the Statement of Claim and requested punitive damages. Respondent did not object. In addition, Claimants withdrew their request for attorney's fees. As such, the Panel determined to conform the pleadings to the evidence.

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

Respondent is liable on the claims of breach of fiduciary duty and unsuitability and shall pay to Claimants compensatory damages in the amount of \$203,427.00, pre-judgment interest specifically excluded.

Respondent is liable and shall pay to Claimants punitive damages in the amount of \$25,000.00 pursuant to O.C.G.A. §51-12-5.1 and Georgia case law e.g. *E.F. Hutton v. Weeks*, 166 Ga.App. 443 (1983).

Respondent is liable and shall pay to Claimants expert witness fees in the amount of \$6,400.00.

Respondent is liable and shall pay to Claimants the sum of \$300.00 representing reimbursement of the claim filing fee previously paid by Claimants to NASD Dispute Resolution.

Any and all claims for relief not specifically addressed herein are denied.

FEEES

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 = \$ 300.00

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. In this matter, the member firm Dunwoody Brokerage Services, Inc. is a party.

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were filed 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 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: November 19, 2004 1 session

One (1) Pre-hearing session with the Panel @ \$1,125.00 = \$1,125.00
Pre-hearing conference: September 16, 2004 1 session

Four (4) Hearing sessions @ \$1,125.00 = \$ 4,500.00
Hearing Dates: December 8, 2004 2 sessions
December 9, 2004 2 sessions

Total Forum Fees = \$6,075.00

The Panel has assessed the total forum fees of \$6,075.00 to Respondent.

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:

<u>Initial Filing Fee</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 6,075.00
Total Fees	= \$11,075.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 6,075.00

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

ARBITRATION PANEL

Patrick Emery Longan	-	Public Arbitrator, Presiding Chairperson
Frank A. Lightmas, Esq.	-	Public Arbitrator
Stephen B. Agricola	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/

12/15/04

Patrick Emery Longan
Public Arbitrator, Presiding Chairperson

Signature Date

/s/

12/16/04

Frank A. Lightmas, Esq.
Public Arbitrator

Signature Date

/s/

12/16/04

Stephen B. Agricola
Non-Public Arbitrator

Signature Date


12/16/04

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

Concurring Arbitrators' Signatures

Patrick Emery Longan
Public Arbitrator, Presiding Chairperson

Signature Date


Frank A. Lightmas, Esq.
Public Arbitrator

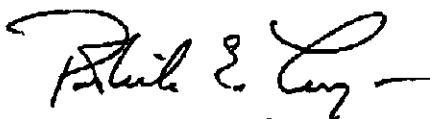
12/16/04
Signature Date

Stephen B. Agricola
Non-Public Arbitrator

Signature Date

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

Concurring Arbitrators' Signatures



Patrick Emery Longan
Public Arbitrator, Presiding Chairperson

December 15, 2004

Signature Date

Frank A. Lightmas, Esq.
Public Arbitrator

Signature Date

Stephen B. Agricola
Non-Public Arbitrator

Signature Date

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Concurring Arbitrators' Signatures

Patrick Emery Longan
Public Arbitrator, Presiding Chairperson

Signature Date

Frank A. Lightmas, Esq.
Public Arbitrator

Signature Date



Stephen B. Agricola
Non-Public Arbitrator

12-16-04
Signature Date

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