

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

DeMarco Stone Funeral Home Inc., Demarco Stone Funeral Home Pension and Profit Sharing Plan fbo Michael A. DeMarco, Michael A. DeMarco, and Janet DeMarco (Claimants) v. David P. Vanderzee (Respondent)

Case Number: 04-02846

Hearing Site: Albany, New York

Nature of the Dispute: Customer vs. Associated Person.

REPRESENTATION OF PARTIES

Claimants DeMarco Stone Funeral Home Inc. ("DeMarco Stone Funeral Home"), Demarco Stone Funeral Home Pension and Profit Sharing Plan fbo Michael A. DeMarco ("DeMarco Stone Funeral Home PPS"), Michael A. DeMarco ("M. DeMarco"), and Janet DeMarco ("J. DeMarco") hereinafter collectively referred to as "Claimants": Seth D. Finkell, Esq., Herzog, Engstrom & Koplovitz, P.C., Albany, NY.

Respondent David P. Vanderzee ("Vanderzee") hereinafter referred to as "Respondent": Marc H. Goldberg, Esq., Honen & Wood, P.C., Albany, NY.

CASE INFORMATION

Statement of Claim filed on or about: April 15, 2004.

Claimants signed the Uniform Submission Agreement: April 15, 2004.

Statement of Answer filed by Respondent on or about: June 4, 2004.

Respondent signed the Uniform Submission Agreement: May 25, 2004 and August 11, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: securities fraud; breach of fiduciary duty; and fraud. The causes of action relate to various investments in Private Mortgage Investment Services, Inc. (PMIS) such as debentures and common stock.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$250,000.00, which includes damages for lost opportunity, punitive damages, interest, costs, and reasonable attorneys' fees.

Respondent requested that the Panel dismiss the Statement of Claim, costs and disbursements, and such other and further relief as is just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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

1. With regard to claims one and three the Panel finds that there was insufficient evidence presented to support these claims and the Panel therefore provides no relief with regard to them.
2. With regard to claim two the Panel finds that there was sufficient evidence presented to conclude that the Respondent did breach his fiduciary responsibility to the Claimants. However, the Panel also finds that the Claimants must bear some of the responsibility for their decisions. The Panel is therefore awarding the Claimants recovery of their original investment as well as a moderate rate of return on that investment through December 2004, but not relief with regard to any costs associated with recovery of these investments.
3. Based on the points above, the Panel has determined that the Claimants are entitled to recover the sum of \$146,848.51. However, since Claimants have already recovered a sum from Northwestern Mutual Investment Services, LLC., whose current value is greater than that amount (\$154,468.95), the Panel finds that the Respondent does not owe the Claimants any additional funds.
4. 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

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, Northwestern Mutual Investment Services, LLC is the Respondent's firm.

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:

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$1,125.00
Pre-hearing conference: August 25, 2004 1 session

Four (4) Hearing sessions @ \$1,125.00 = \$4,500.00
Hearing Dates: December 6, 2004 2 sessions
December 7, 2004 2 sessions

Total Forum Fees = \$5,625.00

1. The Panel has assessed \$2,812.50 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$2,812.50 of the forum fees against Respondent.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$2,812.50
Total Fees	= \$3,112.50
<u>Less payments</u>	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$1,687.50

2. Respondent is solely liable for:

<u>Forum Fees</u>	= \$2,812.50
Total Fees	= \$2,812.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$2,812.50

3. Northwestern Mutual Investment Services, LLC is solely liable for:

<u>Member Fees</u>	= \$5,200.00
Total Fees	= \$5,200.00
<u>Less payments</u>	= \$4,450.00
Balance Due NASD Dispute Resolution	= \$ 750.00

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

ARBITRATION PANEL

Ira A. Auerbach	-	Public Arbitrator, Presiding Chairperson
Alan K. Bloom, CPA	-	Public Arbitrator
John Lawrence Jones	-	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.

Ira A. Auerbach

Ira A. Auerbach
Public Arbitrator, Presiding Chairperson

12/13/04
Signature Date

Alan K. Bloom, CPA
Public Arbitrator

Signature Date

John Lawrence Jones
Non-Public Arbitrator

Signature Date

December 21, 2004

Date of Service (For NASD Dispute Resolution use only)

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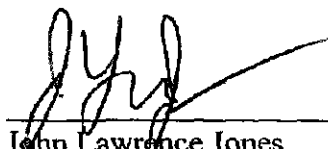
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