

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

William C. Mortimore,
Claimant,

Case Number: 04-03016

Hearing Site: Milwaukee, Wisconsin

v.

GunnAllen Financial, Inc., Joseph P. Ratti, Phil Michals, and Mary Gunn,
Respondents.

GunnAllen Financial, Inc., Phil Michals and Joseph Ratti,
Third-Party Claimants,

v.

Charles J. Kerns, Sr., Parsons Financial, LLC, Kautilya Sharma and Geek Securities, Inc.,
Third-Party Respondents.

Nature of the Dispute: Customer vs. Member Firm and Associated Persons

REPRESENTATION OF PARTIES

William C. Mortimore ("Mortimore"), hereinafter referred to as "Claimant": Michael H. Schaalman, Esq., Robert J. Pluta, Esq. and Natalie G. Maciolek, Esq. of Quarles & Brady, LLP, located in Milwaukee, Wisconsin.

GunnAllen Financial, Inc. ("GunnAllen"), Joseph P. Ratti ("Ratti") and Phil Michals ("Michals"), hereinafter collectively referred to as "Respondents": Michael H. Ference, Esq. and Sameer Rastogi, Esq. of Sichenzia Ross Friedman Ference, LLP, located in New York, New York.

Mary Gunn ("Gunn") hereinafter referred to as Respondent Gunn: Michael H. Ference, Esq. and Sameer Rastogi, Esq. of Sichenzia Ross Friedman Ference, LLP, New York, New York. Gunn was later represented by Michael Gilmore, Esq. Sims Moss Kline & Davis, LLP, located in Mineola, New York. Mr. Gilmore filed his appearance for Gunn on November 7, 2005.

Respondents, Charles J. Kerns ("Kerns"), Parsons Financial, LLC ("Parsons"), Kautilya Sharma ("Sharma") and Geek Securities, Inc. ("Geek") did not appear in this matter.

CASE INFORMATION

Statement of Claim filed on or about: April 26, 2004

Mortimore signed the Uniform Submission Agreement: April 21, 2004

Statement of Answer, Motion to Dismiss and Third-Party Claim filed by Respondents,

GunnAllen, Michals and Ratti, on or about: August 23, 2004

Respondents, GunnAllen and Ratti, did not submit signed Uniform Submission Agreements.

Respondent Michals submitted a signed Uniform Submission Agreement dated January 31, 2006.

Claimant filed a response to Respondents' Motion to Dismiss on or about: October 15, 2004

Claimant filed a Motion to Amend Statement of Claim and Amended Statement of Claim on or about: November 8, 2004

Respondents, GunnAllen, Michals and Ratti, filed an Opposition to Claimant's Motion to Amend Statement of Claim on or about: January 28, 2005

Claimant filed a Reply to Respondents' Opposition to Amended Statement of Claim on or about: February 7, 2005

Claimant filed a Second Amended Statement of Claim on or about: April 15, 2005

A Second Motion to Dismiss Or, In The Alternative, Statement of Answer and Counterclaim filed by Respondents, GunnAllen, Michals, Ratti and Gunn, on or about: July 25, 2005

Claimant's Response to Respondents' Second Motion to Dismiss filed on: September 6, 2005

Respondents' Reply to Claimant's Response to Second Motion to Dismiss filed on: September 19, 2005

CASE SUMMARY

Claimant asserted the following causes of action: negligence, conversion, failure to supervise and breach of fiduciary duty. The causes of action relate to a Collateral Loan Agreement and Merge stock.

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

1. Claimant's allegations are insufficiently particular to adequately apprise Respondents of the claims asserted against them, and therefore, preclude effective defense of those claims.
2. Claimant fails to state a claim upon which relief can be granted against Respondents.
3. Respondents *never made any misrepresentations to Claimant.*
4. Claimant's losses, if any, were caused or contributed to by Claimant's own conduct and, not by Respondents. As a result, Claimant is responsible for any and all losses.
5. Claimant's damages are speculative, remote and not supported by the evidence presented to the Panel.
6. Claimant's claims against Respondent are barred by the doctrine of laches.
7. Claimant's claims against Respondents are barred by Claimant's failure to mitigate his damages.
8. Claimant's claims against Respondents are barred by the doctrines of waiver, ratification and estoppel.

Respondents GunnAllen and Ratti filed a Counterclaim for abuse of process asserting that Claimant maliciously, and without probable cause, filed a frivolous action against them. Respondents Michals and Gunn, while not initially parties to this Counterclaim, appeared to be joined with GunnAllen and Ratti as Counterclaimants in subsequent pleading and argument. The arbitrators regard all four as Counterclaimants and they are deemed to be such in this award.

Respondents filed a Third-Party claim against Kerns, Parsons, Sharma and Geek asserting that any misconduct found to have occurred during the events at issue in this matter and to have been the

cause of Claimant's losses, was the misconduct of the Third-Party Respondents, and not of the Third-Party Claimant, and that the Third-party Respondents should bear the responsibility for Claimant's losses.

RELIEF REQUESTED

Claimant, William C. Mortimore, requested \$6,010,000.00 as compensatory damages; and punitive damages in the amount of \$6,000,000.00.

Respondents, GunnAllen, Michals and Ratti, requested that the claims against them be dismissed; and for recovery of attorney's fees and costs.

Respondents' Counterclaim requested that Claimant reimburse them for the cost of their defense.

Respondents' Third-Party Claim requested that they be indemnified by Third-Party Respondents, Kerns, Parsons, Sharma and Geek, for any loss or liability resulting from the claims asserted in the Statement of Claim, and for their attorney's fees and other costs.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents, GunnAllen, Ratti and Gunn, did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement 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.

Upon review of the file, the undersigned arbitrators (the "Panel") determined that Respondents, Kerns, Parsons, Sharma and Geek received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents, Geek and Sharma, did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

On February 17, 2005, the Panel issued an Order with respect to Respondents' second Motion to Dismiss Statement of Claim for failure to state a cause of action; to dismiss Phil Michals from the case as a person who is not subject to the jurisdiction of NASD and who has not agreed to arbitrate any dispute with Claimant; and Claimant's Motion to Amend the Statement of Claim. The Panel's Order stated:

1. Respondents' Motion to Dismiss the Statement of Claim is denied.
2. Respondents' Motion to Dismiss Respondent Phil Michals from this arbitration is denied.
3. Claimant's Motion to Amend the Statement of Claim is granted in part and denied in part. It is granted insofar as it adds a claim for securities fraud against Respondents GunnAllen Financial, Inc., Phil Michals and Joseph Ratti, and is denied insofar as it seeks to add Mary Gunn as a Respondent in this matter. However, Claimant is given leave to file a Second Amended Statement of Claim naming Mary Gunn as a Respondent which Second Amended Statement of Claim, if filed, shall specify the relevant facts upon which the claim against said Mary Gunn is based and the remedies sought against her.

Pursuant to the Motion to Dismiss filed by Respondents, GunnAllen, Michals, Ratti and Gunn, the Panel entered an Order dated October 25, 2005, which states in part:

Respondents' Motion to Dismiss Claimant's claim based on violation of the securities laws of Florida and Wisconsin is denied. It is noted that Claimant's claim based on violation of New York securities laws has been withdrawn.

The arbitrators have not completed their deliberations and have not yet reached a decision on the motion to dismiss all claims against Respondent Mary Gunn. [D]eliberations will be resumed and the Arbitrators' ruling on Respondents' motion will be forwarded to the parties promptly upon its issuance.

On November 3, 2005, the Panel further deliberated on Respondent Gunn's motion to dismiss and issued the following Order on November 4, 2005:

In ruling on a motion to dismiss a claim prior to evidentiary hearing, all allegations in the Statement of Claim are presumed to be true, all reasonable inferences favorable to Claimant that may be drawn from those allegations are drawn, and the Statement of Claim is read in the light most favorable to Claimant. Applying these principles in the present case, the Arbitrators rule that Respondents' Motion to Dismiss Claimant's claims against Mary Gunn is denied and it is so ordered.

On November 18, 2005, during a telephonic pre-hearing conference, Claimant requested that his claim against Respondent Gunn be dismissed without prejudice, preserving his right to assert any such claim in a separate arbitration. Respondent Gunn's counsel stated on behalf of Gunn, that he had no objection and the arbitrators, by their November 22, 2005 Order, dismissed the claims against Respondent Gunn without prejudice.

At the hearing, Respondents once again moved to dismiss all claims against them on the ground that Claimant's counsel had improperly introduced before the Panel the subject of Respondents' insurance coverage. The Panel denied their motion. The Chair stated that the arbitrators would disregard the matter of Respondents' insurance coverage and any reference to that subject in the record.

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, GunnAllen Financial, Inc., Phil Michals and Joseph Ratti, are jointly and severally liable for and shall pay Claimant, William C. Mortimore, the sum of \$939,547.00 as compensatory damages, plus pre-award interest in the amount of \$134,501.95.
2. Respondents' Counterclaim is dismissed in its entirety with prejudice.
3. With respect to the Third-Party Claim, the arbitrators note that the individual Third-Party Respondents are in prison serving lengthy terms and the corporate Third-Party Respondents are apparently defunct. None of them submitted a Uniform Submission

Agreement or otherwise agreed to be a party to this proceeding, and none appeared or was represented at the hearing, although one, Kerns was deposed by both Claimant and Respondents and his deposition was entered into evidence.

The arbitrators find that they lack jurisdiction over two of the Third-Party Respondents, Parsons and Kerns, since they were neither members of NASD, nor associated with or employed by a member during the relevant time period and, as noted, neither has agreed to be a party to this proceeding.

The arbitrators further find that the nature of the Third-Party claim is such that it would best be heard in a single proceeding to which all four Third-Party Respondents are parties.

The arbitrators further find that the evidence adduced at the hearing with respect to the Third-Party claim was not sufficient, in any event, to permit the Panel to arrive at an award with respect to that claim.

In consequence of the foregoing and pursuant to Rule 10305(a) of the NASD Code of Arbitration Procedure, the Third-Party Claim is dismissed and the parties are referred to their judicial remedies or to any dispute resolution forum they may agree upon. This dismissal is without prejudice to any claims or defenses available to any party to said claim.

3. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
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	= \$ 600.00
Third-Party Claim filing fee	= \$ 5,000.00

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. Accordingly, GunAllen Financial, Inc. is a party to this proceeding and is assessed the following:

Member surcharge	= \$ 3,750.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,500.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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:

Four (4) Pre-hearing sessions with a single arbitrator @ \$450.00 = \$ 1,800.00

Pre-hearing conferences: September 19, 2005 1 session
 October 10, 2005 1 session
 November 14, 2005 1 session
 November 30, 2005 1 session

Five (5) Pre-hearing sessions with Panel @ \$1,200.00 = \$ 6,000.00

Pre-hearing conferences: January 19, 2005 1 session
 February 17, 2005 1 session
 October 14, 2005 1 session
 October 20, 2005 1 session
 November 18, 2005 1 session

Eighteen (18) Hearing sessions @ \$1,200.00 = \$21,600.00

Hearing Dates: December 6, 2005 2 sessions
 December 7, 2005 2 sessions
 December 8, 2005 2 sessions
 December 9, 2005 2 sessions
 December 12, 2005 2 sessions
 December 13, 2005 3 sessions
 December 14, 2005 2 sessions
 January 31, 2006 3 sessions

Total Forum Fees = \$29,400.00

1. The Panel has assessed 50% of the total forum fees in the amount of \$14,700.00 solely to Claimant, William C. Mortimore.
2. The Panel has assessed 50% of the total forum fees in the amount of \$14,700.00 jointly and severally to Respondents, GunnAllen Financial, Inc., Phil Michals and Joseph Ratti.

Fee Summary

1. Claimant, William C. Mortimore, is solely liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$14,700.00
Total Fees	= \$15,300.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$13,500.00

2. Respondent, GunnAllen Financial, Inc. is solely liable for:

Member Fees	= \$10,000.00
Less payments	= \$10,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents, GunnAllen Financial, Inc., Phil Michals and Joseph Ratti, are jointly and severally liable for:

Third-Party Claim Filing Fee	= \$ 5,000.00
Forum Fees	= \$14,700.00

<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$19,700.00

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

ARBITRATION PANEL

Herbert S. Channick, Esq.	-	Public Arbitrator, Presiding Chairperson
John Fennig, Esq.	-	Public Arbitrator
Florence Z. Enders	-	Non-Public Arbitrator

Concurring Arbitrators' Signature(s)

/s/ Herbert S. Channick, Esq.
Herbert S. Channick, Esq.
Public Arbitrator, Presiding Chairperson

2/14/04
Signature Date

/s/ John Fennig, Esq.
John Fennig, Esq.
Public Arbitrator

2/15/06
Signature Date

/s/ Florence Z. Enders
Florence Z. Enders
Non-Public Arbitrator

2/14/06
Signature Date

2/15/06
Date of Service (For NASD Dispute Resolution use only)

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Herbert S. Channick
 Herbert S. Channick, Esq.
 Public Arbitrator, Presiding Chairperson

Feb. 14, 2006
 Signature Date

John Fennig, Esq.
 Public Arbitrator

Signature Date

Florence Z. Enders
 Non-Public Arbitrator

Signature Date

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Public Arbitrator


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