
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Curtis S. Garth

Case Number: 04-03248

Names of the Respondents
Banc One Securities Corporation
Dean Witter Reynolds, Inc. (Morgan Stanley)
Pershing, a division of Donaldson, Lufkin & Jenrette Securities Corp.

Hearing Site: New Orleans, Louisiana

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

Curtis S. Garth, hereinafter referred to as "Claimant", appeared pro-se.

For Banc One Securities Corporation ("BOSC"), Dean Witter Reynolds, Inc. (Morgan Stanley) ("MSDW") and Pershing, a division of Donaldson, Lufkin & Jenrette Securities Corp. ("Pershing"), hereinafter collectively referred to as "Respondents": Elizabeth A. Jerdonek, Esq., Ulmer & Berne LLP, Cleveland, Ohio.

CASE INFORMATION

Statement of Claim filed on or about: April 30, 2004.

Claimant signed the Uniform Submission Agreement: April 30, 2004.

Statement of Answer and Joint Motion to Dismiss filed by Respondents on or about: August 3, 2004.

Respondent BOSC signed the Uniform Submission Agreement: July 28, 2004.

Respondent MSDW signed the Uniform Submission Agreement: July 28, 2004.

Respondent Pershing signed the Uniform Submission Agreement: December 10, 2004.

Response to Joint Motion to Dismiss filed by Claimant on or about: November 24, 2004.

Motion for Judgment on Pleading and Order for Judgment by Default filed by Claimant on or about: November 29, 2004.

Response to Motion for Judgment on Pleading and Order for Judgment by Default filed by Respondents on or about: December 3, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: fraud; misrepresentation; illegal and unauthorized trading; mismanagement of funds; theft; failure to provide information requested by Claimant; non-compliance with NASD rules and regulations; improper execution of trades; and, violations of Louisiana state and federal securities laws. The causes of action relate to the purchase in Claimant's account of shares of the common stock of HSPO and ZMTX.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$4,250,000.00, punitive damages in the amount of \$95,750,000.00, interest in the amount of \$2,250.00 and costs. Claimant additionally requested that Respondent Pershing be required to turn over ownership to Claimant of 38,500 shares of the common stock, LHSP0.

Respondents requested that judgment be rendered in their favor and that they be awarded their attorneys' fees, costs and forum fees in connection with the defense of this claim.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents filed a joint motion to dismiss in which they asserted, among other things, that Claimant's claims are barred by the applicable statutes of limitations. In his response, Claimant asserted that his claims are applicable pursuant to the NASD Code of Arbitration Procedure (the "Code"). The Panel denied Respondents' joint motion to dismiss.

Claimant filed a motion for default judgment which asserted Respondents failed to timely file an Answer to the Statement of Claim. In their response, Respondents asserted that an Answer to the Statement of Claim was timely filed. The Panel denied Claimant's motion for default judgment.

Claimant made a request for the Panel to make a final determination of this matter on the papers in lieu of conducting an evidentiary hearing, to which Respondents agreed. On or about January 31, 2005, the Panel issued an Order granting Claimant's request.

The parties 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 all written submissions filed by the parties, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims are dismissed, with prejudice.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are 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
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The Panel has determined to waive the initial claim filing fee in this matter.

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondents are member firms and parties.

Respondent BOSC's Member surcharge	= \$ 3,750.00
Respondent BOSC's Pre-hearing process fee	= \$ 750.00
<u>Respondent BOSC's Hearing process fee</u>	<u>= \$ 5,500.00</u>
Respondent BOSC's Total Member Fees	= \$10,000.00

Respondent MSDW's Member surcharge	= \$ 3,750.00
Respondent MSDW's Pre-hearing process fee	= \$ 750.00
<u>Respondent MSDW's Hearing process fee</u>	<u>= \$ 5,500.00</u>
Respondent MSDW's Total Member Fees	= \$10,000.00

Respondent Pershing's Member surcharge	= \$ 3,750.00
Respondent Pershing's Pre-hearing process fee	= \$ 750.00
<u>Respondent Pershing's Hearing process fee</u>	<u>= \$ 5,500.00</u>
Respondent Pershing's Total Member Fees	= \$10,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournments were requested 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 assessed 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.

Injunctive relief fees were not assessed 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions @ \$1,200.00/session	= \$2,400.00
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Pre-hearing conferences: October 25, 2004 1 session
 November 22, 2004 1 session

Total Forum Fees = \$2,400.00

The Panel has assessed forum fees of \$1,200.00 to Claimant.

The Panel has assessed forum fees of \$1,200.00 to Respondents, jointly and severally.

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.

There were no administrative costs incurred in this matter.

Fee Summary

Claimant is solely liable for:

<u>Forum Fees</u>	= \$ 1,200.00
<u>Total Fees</u>	= \$ 1,200.00
<u>Less Payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 1,200.00

Respondent BOSC is solely liable for:

<u>Member Fees</u>	= \$10,000.00
<u>Total Fees</u>	= \$10,000.00
<u>Less Payments</u>	= \$ 6,250.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 3,750.00

Respondent MSDW is solely liable for:

<u>Member Fees</u>	= \$10,000.00
<u>Total Fees</u>	= \$10,000.00
<u>Less Payments</u>	= \$10,000.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent Pershing is solely liable for:

<u>Member Fees</u>	= \$10,000.00
<u>Total Fees</u>	= \$10,000.00
<u>Less Payments</u>	= \$10,000.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 1,200.00
<u>Total Fees</u>	= \$ 1,200.00
<u>Less Payments</u>	= \$ 1,200.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

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

ARBITRATION PANEL

Larry M. Roedel, Esq.	-	Public Arbitrator, Presiding Chairperson
Kendall P. Hill	-	Public Arbitrator
Frederick S. Duncan	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

_____/s/_____
Larry M. Roedel, Esq.
Public Arbitrator, Presiding Chairperson

February 4, 2005
Signature Date

_____/s/_____
Kendall P. Hill
Public Arbitrator

February 4, 2005
Signature Date

_____/s/_____
Frederick S. Duncan
Non-Public Arbitrator

February 4, 2005
Signature Date

February 7, 2005
Date of Service (For NASD Dispute Resolution office use only)

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Larry M. Roedel, Esq.
Kendall P. Hill
Frederick S. Duncan

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Larry M. Roedel

Larry M. Roedel, Esq.
Public Arbitrator, Presiding Chairperson

2-4-05
Signature Date

Kendall P. Hill
Public Arbitrator

Signature Date

Frederick S. Duncan
Non-Public Arbitrator

Signature Date

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

NASD Dispute Resolution
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Larry M. Roedel, Esq.	-	Public Arbitrator, Presiding Chairperson
Kendall P. Hill	-	Public Arbitrator
Frederick S. Duncan	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Larry M. Roedel, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Kendall P. Hill
Public Arbitrator

Signature Date



Frederick S. Duncan
Non-Public Arbitrator

2/8/05

Signature Date

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ARBITRATION PANEL

Larry M. Roedel, Esq.
Kendall P. Hill
Frederick S. Duncan

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures

Larry M. Roedel, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Kendall P. Hill
Kendall P. Hill
Public Arbitrator

4/4/05
Signature Date

Frederick S. Duncan
Non-Public Arbitrator

Signature Date

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