

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Dianna Azbill

and

04-03438
Kansas City, Missouri

Name of Respondents

UMB Scout Brokerage Services, Inc.
National Financial Services, LLC
Fidelity Management Trust Co.

Name of Third Party Respondent

Lora Lee Dudley Individually and As Personal Representative of the
Estate of Lloyd Lee Hatfield

Nature of the Dispute: Customer vs. Members and Non-Member.

REPRESENTATION OF PARTIES

Dianna Azbill ("**Claimant**") was represented by Paul K. Hentzen, Esq., Hentzen Law Firm, Leawood, Kansas.

UMB Scout Brokerage Services, Inc. ("**Respondent UMB Scout**") was represented by Patrick J. Whalen, Esq., Spencer Fane Britt & Browne LLP, Kansas City, Missouri.

National Financial Services, LLC ("**Respondent National Financial**") and Fidelity Management Trust Co. ("**Respondent Fidelity**") were represented by Michael G. Shannon, Esq., Brown Raysman Millstein Felder & Steiner LLP, New York, New York.

Lora Lee Dudley Individually and As Personal Representative of the Estate of Lloyd Lee Hatfield ("**Third Party Respondent**") was represented by Lyle Odo, Esq., Platte City, Missouri.

CASE INFORMATION

The Statement of Claim was filed on or about May 11, 2004. Claimant's Opposition to Motion for Pre-Hearing Dismissal by Respondent UMB Scout Brokerage Services, Inc. was filed on or about November 4, 2004. Claimant's Opposition to Motion for Pre-Hearing Dismissal by National

Financial Services LLC and Fidelity Management Trust Company was filed on or about August 9, 2004. Submission Agreement of Claimant Dianna Azbill was signed on May 4, 2004.

Statement of Answer was filed by Respondent UMB Scout Brokerage Services, Inc. on or about July 23, 2004. Respondent's Motion for Prehearing Dismissal was filed on or about October 25, 2004. Reply Brief in Support of Scout's Motion for Prehearing Dismissal was filed on or about November 12, 2004. Third Party Claim of Respondent UMB Scout Brokerage Services, Inc. was filed on or about May 31, 2005. Submission Agreement of Respondent UMB Scout Brokerage Services, Inc. was signed on May 25, 2004.

Motion of Respondents National Financial Services LLC and Fidelity Management Trust Company for Pre-Hearing Dismissal of the Statement of Claim with Answer was filed on or about July 26, 2004. Reply of Respondents National Financial Services LLC and Fidelity Management Trust Company in Further Support of Their Motion for Pre-Hearing Dismissal was filed on or about November 15, 2004. Third Party Claim of National Financial Services, LLC and Fidelity Management Trust Co. was filed on or about September 22, 2005. Submission Agreement of Respondent National Financial Services, LLC was signed on July 21, 2004.

Submission Agreement of Respondent Lora Lee Dudley Individually and As Personal Representative of the Estate of Lloyd Lee Hatfield was signed on July 1, 2005.

CASE SUMMARY

In the Statement of Claim, Claimant stated:

This dispute concerns an IRA account that was negligently paid to the contingent beneficiary instead of to the Claimant, Dianna Azbill, who was the designated primary beneficiary. Respondents were negligent for failing to clear up ambiguity in the beneficiary designation form before accepting it. Respondents were doubly negligent in turning around and paying out the account when there were competing claims for the proceeds and Respondents internal records revealed that they were confused about how to interpret the beneficiary designation form.

This negligence piled upon negligence denied the proceeds of the account to the designated primary beneficiary and destroyed the tax-favored nature of the account.

Claimant asserted the following causes of action: negligence, breach of fiduciary duty, and breach of contract.

UMB Scout denied the allegation set forth in the Statement of Claim. ...stated that the

Claimant attacks this express designation by speculating about Decedent's motives and the

consistency of the designation vis-à-vis his other conduct. Such an inquiry is neither relevant nor legally appropriate. The law requires intent be derived solely from the four corners of the document. As the designation's language is unambiguous, intent is reflected within the language of the contract. Claimant's theory that Respondents were under a duty to reconcile this express designation with other conduct and designations violates fundamental principles of contract law. Parol evidence purporting to vary or contradict terms of an express designation, upon which Claimant exclusively relies, is prohibited. Likewise, the designation is not rendered ambiguous simply because a party disputes the interpretation of the designation. As such, the academic and speculative exercise which Claimant now invites, divining an alleged subjective intent in lieu of the instrument's operative language, is foreclosed by law.

Here, as the Trial Court ruled, there is no ambiguity in the term "estate." Decedent was instructed to write "estate" in the primary beneficiary section if he wanted his estate to be the beneficiary of the IRA. He wrote "estate" in the designated space. The fact that he wrote other names in other parts of the form or also designated his estate as a contingent beneficiary does not create ambiguity in his otherwise clear and unambiguous beneficiary designation.

Respondents National Financial Services LLC and Fidelity Management Trust Company denied the allegation set forth in the Statement of Claim. ...stated as follows:

Hatfield completed the IRA beneficiary designation, he wrote in Estate, he gave the form to Scout, Scout input the data into the data system exactly as Hatfield had provided it and Fidelity paid the account proceeds in accordance with it. Fidelity had no duty to Hatfield, much less to Azbill to question the instructions received.

RELIEF REQUESTED

Claimant requested an award of compensatory damages in the amount of \$217,261 so that she will net out \$141,220 after taxes; interest on the compensatory damages at the rate of 12% simple interest, compounded annually (interest from August 29, 2002 up to April 30, 2004 calculated to be \$45,537); attorneys' fees (\$91,979 up to the inception of this arbitration proceeding with additional fees awarded at the discretion of the arbitration panel); and punitive damages in the amount of \$250,000.

Respondent UMB Scout requested that the Panel enter judgment against Claimant on her arbitration claim and allow her to pursue the remedy she is currently prosecuting in Probate Court. In addition, UMB Scout requested an award of its costs defending this matter and the related legal actions. In its Third Party Claim, Respondent UMB Scout requested that the panel release it from all liability; that it be awarded indemnification from Third Party Respondent for the full amount of any award to Claimant in the event that the Panel awards Claimant any damages from it.

Respondents National Financial Services LLC and Fidelity Management Trust Company requested that the panel dismiss the claims against them and assess all costs against Claimant. In their Third Party Claim, Respondents National Financial Services LLC and Fidelity Management Trust Company requested that the panel release them from all liability; that they be awarded indemnification from Third Party Respondent for the full amount of any award to Claimant in the event that the Panel awards Claimant any damages from them

OTHER ISSUES CONSIDERED & 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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Arbitration Panel finds that the beneficiary designation form is ambiguous and that Claimant is the primary beneficiary of Lloyd Lee Hatfield's IRA account with UMB Scout Brokerage Services, Inc., National Financial Services, LLC, and Fidelity Management Trust Co.
2. Respondents UMB Scout Brokerage Services, Inc., National Financial Services, LLC, and Fidelity Management Trust Co. shall pay to Claimant Dianna Azbill the sum of \$69,416.00 (Sixty Nine Thousand Four Hundred Sixteen Dollars and No Cents).
3. Interest at the rate of 12% per annum is awarded on the above stated sum from March 30, 2004 to the date of the award. Thereafter interest at the rate of 9% per annum is awarded.
4. Of the \$140,000 asset paid to the Estate of Lloyd Lee Hatfield from the IRA's account, it is ordered that \$128,000 should be distributed to Claimant Dianna Azbill and \$12,000 should be distributed to Lora Lee Dudley.
5. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

6. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

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
Third Party Claim filing fees	= \$1,000.00

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. In this matter, the member firm(s) are UMB Scout Brokerage Services, Inc. and National Financial Services, LLC.

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	2,750.00
Total Member Fees	\$	5,200.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

3	Pre-hearing session(s) with Panel	x	1,125.00	\$	3,375.00
	October 13, 2004	1	session		
	April 21, 2005	1	session		
	May 13, 2005	1	session		
4	Hearing sessions	x	1,125.00	\$	4,500.00
	November 16, 2005	2	sessions		
	November 17, 2005	2	sessions		
	Total Forum Fees			\$	7,875.00

The Arbitration Panel has assessed \$2,625.00 of the forum fees to Dianna Azbill.

The Arbitration Panel has assessed \$2,625.00 of the forum fees to UMB Scout Brokerage Services, Inc.

The Arbitration Panel has assessed \$2,625.00 of the forum fees jointly and severally to National Financial Services, LLC and Fidelity Management Trust Co.

Fee Summary

Claimant, Dianna Azbill, is liable for:

Initial Filing Fee	= \$	300.00
<u>Forum Fees</u>	= \$	2,625.00
Total Fees	= \$	2,925.00
<u>Less payments</u>	= \$	-1,425.00
Balance Due NASD Dispute Resolution	= \$	1,500.00

Respondent, UMB Scout Brokerage Services, Inc., is liable for:

Third Party Claim Filing Fee	= \$	1,000.00
Member Fees	= \$	5,200.00
<u>Forum Fees</u>	= \$	2,625.00
Total Fees	= \$	8,825.00
<u>Less payments</u>	= \$	-7,325.00
Balance Due NASD Dispute Resolution	= \$	1,500.00

Respondent, National Financial Services, LLC, is liable for:

Member Fees	= \$	5,200.00
Total Fees	= \$	5,200.00
<u>Less payments</u>	= \$	-5,200.00
Balance Due NASD Dispute Resolution	= \$	0.00

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Respondents, National Financial Services, LLC and Fidelity Management Trust Co. are jointly and severally liable for:

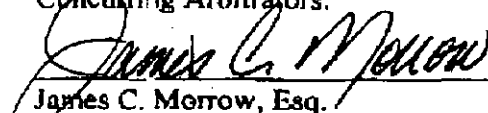
Third Party Claim Filing Fee	= \$	1,000.00
Forum Fees	= \$	2,625.00
Total Fees	= \$	3,625.00
Less payments	= \$	-4,150.00
Balance to be refunded to Fidelity by NASD Dispute Resolution	= \$	- 525.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

James C. Morrow, Esq. - Public Arbitrator, Presiding Chair
Eric T. Williams, Esq. - Public Arbitrator
Leslie J. Wilson - Non-Public Arbitrator

Concurring Arbitrators:


James C. Morrow, Esq.
Public Arbitrator, Presiding Chair

2/20/06
Signature Date

Eric T. Williams, Esq.
Public Arbitrator

Signature Date

Leslie J. Wilson
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Third Party Claim Filing Fee	= \$	1,000.00
Forum Fees	= \$	2,625.00
Total Fees	= \$	3,625.00
Less payments	= \$	-4,150.00
Balance to be refunded to Fidelity by NASD Dispute Resolution	= \$	- 525.00

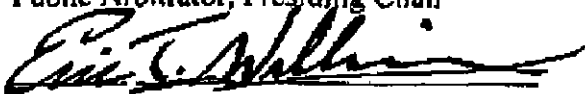
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Eric T. Williams, Esq. - Public Arbitrator
Leslie J. Filson - Non-Public Arbitrator

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Public Arbitrator, Presiding Chair


Eric T. Williams, Esq.
Public Arbitrator

Signature Date


Signature Date

Leslie J. Filson
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution
Arbitration No. 04-03438
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Respondents, National Financial Services, LLC and Fidelity Management Trust Co. are jointly and severally liable for:

Third Party Claim Filing Fee	= \$	1,000.00
Forum Fees	= \$	2,625.00
Total Fees	= \$	3,625.00
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Balance to be refunded to Fidelity by NASD Dispute Resolution	= \$	- 525.00

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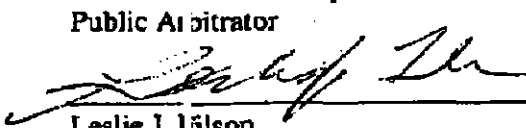
Concurring Arbitrators:

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Public Arbitrator, Presiding Chair

Signature Date

Eric T. Williams, Esq.
Public Arbitrator

Signature Date


Leslie J. Filson
Non-Public Arbitrator

2-22-06
Signature Date

Date of Service (For NASD office use only)