

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Brenda Exline

v.

04-03461
Denver, Colorado

Respondents

ABD Financial Services, Inc.,
ABD Insurance and Financial Services, Inc.,
Rothman Marks, Inc.,
Rothman Marks Portfolio Management, L.L.C.,
Rothman Marks Charter Fund, L.P.,
and Darryl Clark Marks

Nature of Dispute: Customer v. Member, Non-Members and Associated Person

REPRESENTATION OF PARTIES

Brenda Exline ("Claimant") was represented by Thomas Frost, Esq., and Erwin Shustak, Esq., of Shustak Jalil & Heller, P.C., San Diego, California.

ABD Financial Services, Inc. ("ABD Financial"), ABD Insurance and Financial Services, Inc., Rothman Marks, Inc., Rothman Marks Portfolio Management, L.L.C., Rothman Marks Charter Fund, L.P., and Darryl Clark Marks ("Marks"), hereinafter referred to as "Respondents," were represented by Thomas A. Mauriello, Esq., of the Law Offices of Thomas D. Mauriello, San Francisco, California.

CASE INFORMATION

The Statement of Claim was filed on or about May 5, 2004. The Submission Agreement of Claimant was signed on or about March 6, 2004.

The Statement of Answer was filed jointly by Respondents, ABD Insurance and Financial Services, Inc., ABD Financial Services, Inc., Rothman Marks, Inc., Rothman Marks Portfolio Management, L.L.C. and Rothman Marks Charter Fund, L.P., and Darryl Clark Marks on or about August 19, 2004. The Submission Agreement of Respondent, ABD Insurance and Financial Services, Inc., was signed on or about August 4, 2004. The Submission Agreement of Respondent, ABD Financial Services, Inc., was signed on or about August 4, 2004. The Submission Agreement of Respondent, Darryl Clark Marks, was signed on or about August 3, 2004.

CASE SUMMARY

Claimant asserted causes of action including the following: violation of state and federal securities laws; common law fraud; breach of fiduciary duty; negligent misrepresentation; violation of NASD and NYSE Rules of Practice; failure to supervise; breach of contract; negligence; unsuitability and unauthorized trading. The causes of action related to Claimant's allegation that Respondent Marks mismanaged her accounts by investing in various unspecified growth and technology stocks, which according to Claimant were both unauthorized and unsuitable. Claimant alleged that Marks ignored her investment objectives and failed to implement appropriate asset allocation or hedge strategies to protect Claimant's accounts. Claimant further alleged that Respondents failed to implement a supervisory system to prevent Marks from his reckless conduct.

Respondents denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimant failed to state a claim upon which relief can be granted; Claimant was fully advised of and understood the nature of the securities purchased in her Rothman Marks accounts; Claimant approved, participated in, and ratified the acts and transactions that she complains about, Claimant is therefore barred from any recovery under the doctrines of waiver, estoppel and ratification; the diminution in value in Claimant's investments was caused, in whole or in part, by market declines and economic conditions outside the control of Respondents; Claimant's damages, if any, are barred because of her failure to mitigate her alleged damages; and Claimant voluntarily assumed the risks of the transactions at issue.

RELIEF REQUESTED

Claimant requested an award of \$775,000 in compensatory damages, plus \$250,000 in punitive damages, interest, attorneys' fees, costs and any other relief the panel deemed just and equitable.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, Respondents requested that the Panel include in its award a directive to expunge any and all references to this matter from Darryl Clark Marks' permanent registration records maintained by the Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED & DECIDED

Respondents, Rothman Marks, Inc., Rothman Marks Portfolio Management, L.L.C., and Rothman Marks Charter Fund, L.P., did not file with NASD Dispute Resolution properly executed submissions to arbitration but having answered the claim, and appeared through counsel at the hearings, are bound by the determination of the arbitration panel on all issues submitted.

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 originals remain on file with NASD Dispute Resolution ("NASD").

AWARD

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

1. Respondents, ABD Insurance and Financial Services, Inc., ABD Financial Services, Inc., Rothman Marks, Inc., Rothman Marks Portfolio Management, L.L.C., Rothman Marks Charter Fund, L.P., and Darryl Clark Marks are jointly and severally liable for and shall pay to Claimant, Brenda Exline, the sum of Four Hundred Fifty Thousand Dollars and No Cents (\$450,000.00) in compensatory damages;
2. Respondents, ABD Insurance and Financial Services, Inc., ABD Financial Services, Inc., Rothman Marks, Inc., Rothman Marks Portfolio Management, L.L.C., Rothman Marks Charter Fund, L.P., and Darryl Clark Marks are jointly and severally liable for and shall pay to Claimant, Brenda Exline, interest on the above-stated sum at the rate of 3.5% per annum from and including February 28, 2002, through and including the date this award is paid in full;
3. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages, are denied with prejudice; and
4. 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.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 500

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 is ABD Financial Services, Inc.

Member surcharge	= \$ 2,800
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 5,000

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with the Chairperson x \$ 450	= \$ 900
--	----------

Pre-hearing conferences:	12/17/2004	1 session
	03/24/2005	1 session

One (1) Pre-hearing session with Panel x \$ 1,200	= \$ 1,200
---	------------

Pre-hearing conference:	10/27/2004	1 session
-------------------------	------------	-----------

Nine (9) Hearing sessions with Panel x \$ 1,200	= \$ 10,800
---	-------------

Hearing Dates:	04/04/2005	2 sessions
	04/05/2005	2 sessions
	04/06/2005	2 sessions
	04/07/2005	3 sessions

Total Forum Fees	= \$ 12,900
------------------	-------------

The Arbitration Panel has assessed \$ 6,450 of the forum fees to Brenda Exline

The Arbitration Panel has assessed \$ 6,450 of the forum fees jointly and severally to ABD Financial Services, Inc., ABD Insurance and Financial Services, Inc., Rothman Marks, Inc., Rothman Marks Portfolio Management, L.L.C., Rothman Marks Charter Fund, L.P., and Darryl Clark Marks.

FEE SUMMARY

Claimant, Brenda Exline, is liable for:

Initial Filing Fee	= \$ 500
<u>Forum Fees</u>	= \$ 6,450
Total Fees	= \$ 6,950
<u>Less payments</u>	= \$ 1,700
Balance Due NASD Dispute Resolution	= \$ 5,250

Respondent, ABD Financial Services, Inc., is liable for:

Member Fees	= \$ 8,550
Total Fees	= \$ 8,550
<u>Less payments</u>	= \$ 8,550
Balance Due NASD Dispute Resolution	= \$ 0

Respondents, ABD Financial Services, Inc., ABD Insurance and Financial Services, Inc., Rothman Marks, Inc., Rothman Marks Portfolio Management, L.L.C., Rothman Marks Charter Fund, L.P., and Darryl Clark Marks, are jointly and severally liable for:

Forum Fees	= \$ 6,450
Total Fees	= \$ 6,450
<u>Less payments</u>	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 6,450

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

ARBITRATION PANEL

Lillian S. Lehrburger, Esq. - Public Arbitrator, Presiding Chair
Fred W. Roecker - Public Arbitrator
Gordon A. Yale, CPA - Non-Public Arbitrator

Concurring Arbitrators:

Lillian S. Lehrburger, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Fred W. Roecker
Public Arbitrator

Signature Date

Gordon A. Yale, CPA
Non-Public Arbitrator


Signature Date

4/26/05
Date of Service (NASD use only)

ARBITRATION PANEL

Lillian S. Lehrburger, Esq. - Public Arbitrator, Presiding Chair
Fred W. Roecker - Public Arbitrator
Gordon A. Yale, CPA - Non-Public Arbitrator

Concurring Arbitrators:


Lillian S. Lehrburger, Esq.
Public Arbitrator, Presiding Chair

4.26.05
Signature Date

Fred W. Roecker
Public Arbitrator

Signature Date

Gordon A. Yale, CPA
Non-Public Arbitrator

Signature Date


Date of Service (NASD use only)

NASD Dispute Resolution
Arbitration No. 04-03461
Award Page 6 of 6

ARBITRATION PANEL

Lillian S. Lehrburger, Esq. - Public Arbitrator, Presiding Chair
Fred W. Roecker - Public Arbitrator
Gordon A. Yale, CPA - Non-Public Arbitrator

Concurring Arbitrators:

Lillian S. Lehrburger, Esq.
Public Arbitrator, Presiding Chair


Fred W. Roecker
Public Arbitrator

Gordon A. Yale, CPA
Non-Public Arbitrator

Signature Date

4-26-05
Signature Date

Signature Date

4/26/05
Date of Service (NASD use only)

ARBITRATION PANEL

Lillian S. Lehrburger, Esq. - Public Arbitrator, Presiding Chair
Fred W. Roecker - Public Arbitrator
Gordon A. Yale, CPA - Non-Public Arbitrator

Concurring Arbitrators:

Lillian S. Lehrburger, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Fred W. Roecker
Public Arbitrator

Signature Date

Gordon A. Yale
Gordon A. Yale, CPA
Non-Public Arbitrator

4/26/05
Signature Date

4/26/05
Date of Service (NASD use only)