
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Estate of Miller Johnson

Case Number: 04-03742

Name of the Respondents

L.H. Ross & Company

Franklin Ross Michelin

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

For the Estate of Miller Johnson, hereinafter referred to as "Claimant": Bradley R. Stark, Esq., Bradley R. Stark, P.A., Coral Gables, Florida.

Respondent Franklin Ross Michelin, hereinafter referred to as "Michelin," appeared pro se.

For Respondent L.H. Ross & Company ("L.H. Ross"), no appearance.

Respondents L.H. Ross and Michelin are hereinafter referred to collectively as "Respondents."

CASE INFORMATION

Statement of Claim filed on or about: May 20, 2004.

Miller Johnson signed the Uniform Submission Agreement: May 15, 2004.

Respondents L.H. Ross' and Michelin's Answer and Affirmative Defenses filed on or about: July 19, 2004.

Respondent L.H. Ross signed the Uniform Submission Agreement: July 16, 2004.

Respondent Michelin signed the Uniform Submission Agreement: July 16, 2004.

CASE SUMMARY

Claimant alleged the following causes of action: 1) breach of fiduciary duty; 2) unsuitability; 3) manipulation, misrepresentations and omissions; 4) unauthorized trading; 5) failure to execute; 6) failure to supervise; 7) gross negligence; and, 8) breach of contract. The causes of action relate to investments in common stocks, including but not necessarily limited to Sunopta, Inc. and private placement shares of Respondent L.H. Ross.

Unless specifically admitted in its Answers, Respondents L.H. Ross and Michelin denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant requested: 1) compensatory damages in an amount in excess of \$113,000.00, exclusive of legal interest; 2) other compensatory damages in excess of \$500.00, plus interest thereon at the legal rate; 3) disgorgement of all commissions and fees paid, plus legal interest; 4) costs, expenses and disbursements related to this arbitration proceeding; 5) attorneys' fees; 6) punitive damages in the amount of \$339,000.00; and, 7) such further relief deemed just and proper.

In their Answer and Affirmative Defenses, Respondents L.H. Ross and Michelin requested: 1) dismissal of the Statement of Claim in its entirety; 2) costs and attorneys' fees; and, 3) such further relief deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

At the commencement of the evidentiary hearing, Respondent Michelin moved to have the hearing postponed until he and Respondent L.H. Ross could retain legal counsel, as their prior counsel had unilaterally withdrawn from the case on March 28, 2005. The motion was denied.

Thereafter, Respondent Michelin moved to represent Respondent L.H. Ross. The motion was denied.

In the Statement of Claim, Claimant named two other individuals as respondents. At the commencement of the evidentiary hearing, a determination was made that no service of process had been made on those two individuals. As such, the Panel determined it had no jurisdiction over them.

During the evidentiary hearing, Respondent Michelin asserted motions to dismiss the case. The Panel denied the motions to dismiss.

As Miller Johnson was deceased at time of evidentiary hearing, the Panel ordered the substitution of the Estate of Miller Johnson for Miller Johnson.

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, 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:

Judgment is awarded to Claimant in the total amount of \$111,500.00. Panel found liability based on violations of sections 517.301 and 517.211, Florida Statutes. Respondent Michelin is found liable, jointly and severally with Respondent L.H. Ross, for \$62,500.00, while Respondent L.H. Ross is liable for the total amount of \$111,500.00.

Interest is awarded on the above amount, at the statutory rate, from March 31, 2005 through the date of payment of the Award.

Attorneys' fees, pursuant to sections 517.301 and 517.211, Florida Statutes, are referred to a court of competent jurisdiction for determination.

Any and all claims for relief not specifically addressed herein, including but not limited to Claimant's request for disgorgement, costs and expenses, and punitive damages, and Respondents L.H. Ross' and Michelin's request for costs and attorneys' fees, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

NASD 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, Respondent is a member firm and a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings.

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:

There were no three-day cancellation fees assessed during these proceedings.

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.

There were no injunctive relief fees assessed during these proceedings.

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:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00 per session = \$ 2,250.00

Pre-hearing conference: October 14, 2004 1 session

March 30, 2005 1 session

Two (2) Hearing sessions with Panel @ \$1,125.00 per session = \$ 2,250.00

Hearing Dates: March 31, 2005 2 sessions

Total Forum Fees = \$ 4,500.00

The Panel has assessed forum fees in the amount of \$2,250.00 to Claimant.

The Panel has assessed forum fees in the amount of \$2,250.00 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 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 during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Claim Filing Fee = \$ 300.00

Forum Fees = \$ 2,250.00

Total Fees = \$ 2,550.00

Less payments = \$ 1,425.00

Balance Due NASD Dispute Resolution = \$ 1,125.00

Respondent L.H. Ross is solely liable for:

Member Fees = \$ 5,200.00

Total Fees = \$ 5,200.00

Less payments = \$ 5,200.00

Balance Due NASD Dispute Resolution = \$ 0.00

Respondents L.H. Ross and Michelin are jointly and severally liable for:

Forum Fees = \$2,250.00

Total Fees = \$2,250.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$2,250.00

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

ARBITRATION PANEL

<i>Steven R. Reininger, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Marianne Madsen</i>	-	<i>Public Arbitrator</i>
<i>Robert M. Schwedel</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
Steven R. Reininger, Esq.
Public Arbitrator, Presiding Chairperson

4/7/2005
Signature Date

/s/
Marianne Madsen
Public Arbitrator

4/7/2005
Signature Date

/s/
Robert M. Schwedel
Non-Public Arbitrator

4/6/2005
Signature Date

4/7/2005
Date of Service (For NASD Dispute Resolution office use only)

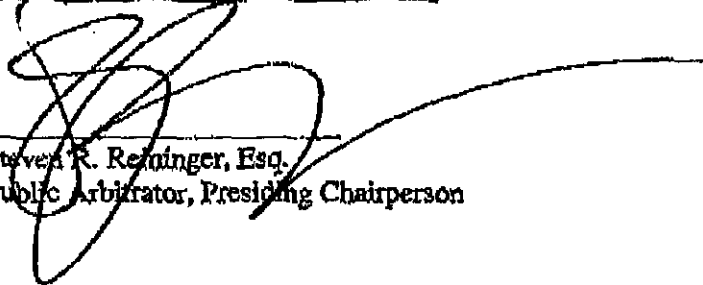
NASD Dispute Resolution
Arbitration No. 04-03742
Award Page 5

ARBITRATION PANEL

Steven R. Reininger, Esq.
Marianne Madsen
Robert M. Schwedel

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures



Steven R. Reininger, Esq.
Public Arbitrator, Presiding Chairperson

4/7/05
Signature Date

Marianne Madsen
Public Arbitrator

Signature Date

Robert M. Schwedel
Non-Public Arbitrator

Signature Date

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

04/06/2005 03:43 5614474927

NASD

PAGE 06/06

NASD Dispute Resolution
Arbitration No. 04-03742
Award Page 5

ARBITRATION PANEL

Steven R. Reininger, Esq.
Marianne Madsen
Robert M. Schwedel

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Steven R. Reininger, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Marianne Madsen

Marianne Madsen
Public Arbitrator

4/7/05

Signature Date

Robert M. Schwedel
Non-Public Arbitrator

Signature Date

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

04/06/2005 03:29 5514474927 NASD

Charles C. Roy
NASD Dispute Resolution
Arbitration No. 04-03742
Award Page 5

ARBITRATION PANEL

Steven R. Reininger, Esq.	-	Public Arbitrator, Presiding Chairperson
Marianne Madsen	-	Public Arbitrator
Robert M. Schwedel	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Steven R. Reininger, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Marianne Madsen
Public Arbitrator

Signature Date

Robert M. Schwedel
Robert M. Schwedel
Non-Public Arbitrator

4-6-2005
Signature Date

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