

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Dorothy M. Hopkins, individually and as Trustee of the Dorothy M. Hopkins Trust, and William C. Hopkins, as Trustee of the Dorothy M. Hopkins Trust

and

04-03756  
Kansas City, Missouri

Name of Respondents

UMB Scout Brokerage Service, Inc.  
Mark Wheeler Harris

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

**REPRESENTATION OF PARTIES**

Dorothy M. Hopkins, individually and as Trustee of the Dorothy M. Hopkins Trust, and William C. Hopkins, as Trustee of the Dorothy M. Hopkins Trust ("**Claimants**") were represented by John J. Miller, Esq., Law Office of John J. Miller, P.C., Kansas City, Missouri.

UMB Scout Brokerage Service, Inc. ("**Respondent UMB Scout**") and Mark Wheeler Harris ("**Respondent Wheeler**") hereinafter referred to as ("**Respondents**") were represented by W. Perry Brandt, Esq., Bryan Cave LLP, Kansas City, Missouri.

**CASE INFORMATION**

The Statement of Claim was filed on or about May 25, 2004. Submission Agreement of Claimant Dorothy M. Hopkins, individually and as Trustee of the Dorothy M. Hopkins Trust, and William C. Hopkins, as Trustee of the Dorothy M. Hopkins Trust was signed on April 30, 2004.

Statement of Answer was filed by Respondents UMB Scout Brokerage Service, Inc. and Mark Wheeler Harris on or about June 2, 2004. Submission Agreement of Respondent UMB Scout Brokerage Service, Inc. was signed on June 2, 2004. Submission Agreement of Respondent Mark Wheeler Harris was signed on July 13, 2004.

**CASE SUMMARY**

In their Statement of Claim, Claimants alleged that Respondents recommended unsuitable

transactions in their account, and Respondents misrepresented and omitted material facts concerning the transactions. Claimants asserted violations of the Missouri Securities Act; misrepresentation and omission; negligence; and breach of fiduciary duty.

In their Answer, Respondents stated that Claimants' claims are without merit and should be dismissed. Respondents asserted the following affirmative defenses: the Statement of Claim fails to state any claim upon which relief can be granted; Claimants' alleged claims are barred by applicable statutes of limitations; Claimants are barred from recovering from Respondents under the doctrines of ratification, account stated, estoppel, waiver and laches; Claimants have failed to mitigate their alleged damages; any losses suffered by Claimants were the result of economic and market conditions to which Claimants assumed all risk of loss; comparative fault and/or contributory negligence must be considered in determining the amount of damages; UMB at all times exercised good faith with respect to Claimants' account and investments; Claimants' claims are barred because Respondents did not intend to commit any act or omission which allegedly resulted in the Claimants being deceived or defrauded; and Respondents did not act with intent, scienter or in a reckless manner.

#### **RELIEF REQUESTED**

In their Statement of Claim, Claimants requested an award against Respondents jointly and severally for restoration of losses in the sum of \$192,887; disgorgement of margin interest, commissions and fees; restoration of interest and charges associated with Mrs. Hopkins' home equity line of credit to pay her unanticipated tax liability; damages for the amount that Claimants' invested assets would now be worth had they been suitably managed in accordance with the Claimants' investment objectives, and/or interest as provided by statute; punitive damages to punish Respondents and to deter others from similar misconduct; Claimants' costs and expenses, including attorneys' fees; and such other relief as the panel deems just and proper.

In their Answer, Respondents requested that the Statement of Claim be dismissed, and that Respondents be awarded their costs and reasonable attorneys' fees incurred.

#### **OTHER ISSUES CONSIDERED & DECIDED**

At the close of Claimants' evidence, Respondents asserted a Motion for Judgment. After considering the evidence presented and the pleadings submitted, the Arbitration Panel denied the motion.

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents UMB Scout Brokerage Service, Inc. and Mark Wheeler Harris shall be jointly and severally liable for and shall pay to Claimants Dorothy M. Hopkins, individually and as Trustee of the Dorothy M. Hopkins Trust, the sum of \$61,032.00 (**Sixty One Thousand Thirty Two Dollars and No Cents**) as compensatory damages.
2. Interest at the rate of 5% per annum is awarded on the above stated sum from and inclusive of September 30, 2002 to and inclusive of the date this award is paid in full.
3. Respondents UMB Scout Brokerage Service, Inc. and Mark Wheeler Harris shall be jointly and severally liable for and shall pay to Claimants Dorothy M. Hopkins, individually and as Trustee of the Dorothy M. Hopkins Trust, the sum of \$17,250.00 (**Seventeen Thousand Two Hundred Fifty Dollars and No Cents**) as attorneys' fees.
4. Respondents UMB Scout Brokerage Service, Inc. and Mark Wheeler Harris shall be jointly and severally liable for and shall pay to Claimants Dorothy M. Hopkins, individually and as Trustee of the Dorothy M. Hopkins Trust, the sum of \$487.00 (**Four Hundred Eighty Seven Dollars and No Cents**) as costs.
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

### **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) is UMB Scout Brokerage Service, Inc..

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:

1	Pre-hearing session(s) with Panel	x	1,125.00	\$	1,125.00
	October 13, 2004	1	session		
8	Hearing sessions	x	1,125.00	\$	9,000.00
	June 7, 2005	2	Sessions		
	June 8, 2005	2	Sessions		
	June 9, 2005	2	Sessions		
	June 10, 2005	2	Sessions		
	Total Forum Fees			\$	10,125.00

The Arbitration Panel has assessed \$10,125.00 of the forum fees jointly and severally to UMB Scout Brokerage Service, Inc. and Mark Wheeler Harris.

### **Fee Summary**

Claimants, Dorothy M. Hopkins, individually and as Trustee of the Dorothy M. Hopkins Trust, and William C. Hopkins, as Trustee of the Dorothy M. Hopkins Trust shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$	300.00
Total Fees	= \$	300.00
<u>Less payments</u>	= \$	-1,425.00
Balance to be refunded by NASD Dispute Resolution	= \$	-1,125.00

Respondent, UMB Scout Brokerage Service, Inc., shall be 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

Respondents, UMB Scout Brokerage Service, Inc. and Mark Wheeler Harris, shall be jointly and severally liable for:

<u>Forum Fees</u>	= \$	10,125.00
Total Fees	= \$	10,125.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	10,125.00

All balances are due to NASD Dispute Resolution

**ARBITRATION PANEL**

Hon. Donald B. Clark - Public Arbitrator, Presiding Chair  
Sandra E. Price, Esq. - Public Arbitrator  
John R. Lepley, CFP, J.D. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Donald B. Clark  
Hon. Donald B. Clark  
Public Arbitrator, Presiding Chair

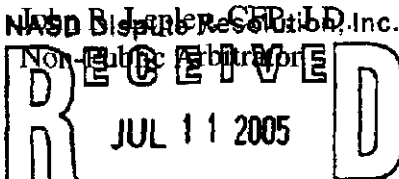
June 30, 2005  
Signature Date

/s/ Sandra E. Price  
Sandra E. Price, Esq.  
Public Arbitrator

July 9, 2005  
Signature Date

/s/ John R. Lepley  
John R. Lepley, CFP, J.D.  
Non-Public Arbitrator

June 29, 2005  
Signature Date



Date of Service (For NASD office use only)

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Member Fees	= \$	5,200.00
Total Fees	= \$	5,200.00
Less Payments	= \$	-5,200.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, UMB Securities Brokerage Service, Inc. and Mark Wheeler Harris, shall be jointly and severally liable for:

Forum Fees	= \$	10,125.00
Total Fees	= \$	10,125.00
Less Payments	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	10,125.00

All balances are due to NASD Dispute Resolution

#### ARBITRATION PANEL

Hon. Donald B. Clark - Public Arbitrator, Presiding Chair  
 Sandra E. Price, Esq. - Public Arbitrator  
 John R. Lepley, CFP, J.D. - Non-Public Arbitrator

Consenting Arbitrators:

Donald B. Clark  
 Hon. Donald B. Clark  
 Public Arbitrator, Presiding Chair

6/30/05  
 Signature Date

Sandra E. Price, Esq.  
 Public Arbitrator

Signature Date

John R. Lepley, CFP, J.D.  
 Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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 Arbitration No. 04-03756  
 Award Page 3 of 3

Member Fees	= \$	5,200. 0
Total Fees	= \$	5,200. 0
Less payments	= \$	5,200. 0
Balance Due NASD Dispute Resolution	= \$	0. 0

Respondents, UMB Securities Brokerage Service, Inc. and Mark Wheeler Harris, shall be jointly and severally liable for:

Forum Fees	= \$	10,125. 0
Total Fees	= \$	10,125. 0
Less payments	= \$	0. 0
Balance Due NASD Dispute Resolution	= \$	10,125. 0

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### **ARBITRATION PANEL**

Hon. Donald B. Clark - Public Arbitrator, Presiding Chair  
 Sandra E. Price, Esq. - Public Arbitrator  
 John R. Lepley, CFP, J.D. - Non-Public Arbitrator

Concurring Arbitrators:

Hon. Donald B. Clark  
 Public Arbitrator, Presiding Chair

  
 Sandra E. Price, Esq.  
 Public Arbitrator

Signature Date

07-09-05  
 Signature Date

John R. Lepley, CFP, J.D.  
 Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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

Respondents, UMB Scout Brokerage Service, Inc. and Mark Wheeler Harris, shall be jointly and severally liable for:

Forum Fees	= \$	10,125.00
Total Fees	= \$	10,125.00
Less payments	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	10,125.00

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**ARBITRATION PANEL**

Hon. Donald B. Clark - Public Arbitrator, Presiding Chair  
Sandra E. Price, Esq. - Public Arbitrator  
John R. Lepley, CFP, J.D. - Non-Public Arbitrator

Concurring Arbitrators:

Hon. Donald B. Clark  
Public Arbitrator, Presiding Chair

Signature Date

Sandra E. Price, Esq.  
Public Arbitrator

Signature Date

John R. Lepley, CFP, J.D.  
Non-Public Arbitrator

Signature Date

June 29, 2005

Date of Service (For NASD office use only)