

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

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In the Matter of the Arbitration Between

Name of Claimant

Sue Ellen Young Knolle

and

Case Number: 04-04195  
Hearing Site: Houston, Texas

Names of Respondents

Lucien, Stirling & Grey Financial Corp., and  
Robert Stirling Phipps

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**NATURE OF DISPUTE**

Customer v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Sue Ellen Young Knolle ("**Claimant**") was represented by Robert E. Lapin, Esq., Lapin & Landa, LLP, Houston, Texas.

Lucien, Stirling & Grey Financial Corp. ("**LSG**") was represented by James G. Ruiz, Esq., Winstead, Sechrest & Minick, Austin, Texas.

Robert Stirling Phipps ("**Phipps**") was represented by Stephen H. Lee, Esq., Doyle, Restrepo, Harvin & Robbins, LLP, Houston, Texas.

**CASE INFORMATION**

The Statement of Claim was filed on or about June 15, 2004. The Submission Agreement of Claimant, Sue Ellen Young Knolle, was signed on or about June 10, 2004. Claimant filed a Response to the Motion to Dismiss on or about October 21, 2004. On or about January 6, 2005, Claimant filed a Supplemental Response to the Motion to Dismiss.

Statement of Answer was filed by Respondent, Lucien, Stirling & Grey Financial Corp., on or about September 27, 2004. The Submission Agreement of Respondent, Lucien, Stirling & Grey Financial Corp., was signed on or about September 24, 2004.

The Motion to Dismiss, Objection to Jurisdiction, and Subject Thereto, Statement of Answer was filed by Respondent, Robert Stirling Phipps, on or about October 1, 2004. On

or about January 17, 2005, Respondent Phipps filed a Reply in Support of his Motion to Dismiss.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, omissions, suitability and negligence. The causes of action relate to the recommendation and purchase of various unspecified securities. Claimant alleged that Respondents made unsuitable investments for her investment objective by combining more than 90% of her portfolio into equity investments, namely variable annuities.

Unless specifically admitted in its Answer, Respondent LSG denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim failed to particularize facts encompassing a legal theory and which LSG could be held liable for any damage; Claimant is barred from any recovery because she directed, authorized, consented to, and/or ratified all transactions; any monetary loss claimant allegedly suffered was due to market conditions outside the control of LSG and its representatives; each transaction was expressly authorized and approved by Claimant; and Claimant failed to mitigate her damages.

Unless specifically admitted in his Answer, Respondent Phipps denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim failed to state any cause of action against Phipps for which relief may be granted; Claimant cannot meet the burden of proving "loss causation," as required under the law; Phipps did not make any untrue statements of material fact or omit to state any material fact that Phipps knew or in the exercise of reasonable care could have known to be untrue; and any measure of damages must be adjusted as a result of general market declines.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$500,000.00
Punitive/Exemplary Damages	\$100,000.00
Interest	Unspecified
Attorney's Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

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

Respondent, Robert Stirling Phipps, did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim is bound by the determination of the arbitration panel on all issues submitted.

On or about March 24, 2005, Claimant's notified NASD that they have settled all claims against Respondent Phipps.

The Panel wants to clarify that this award does not address the liability, if any, of Lucien Sterling & Gray Investment Advisors, a company not regulated by NASD and who did not agree to arbitrate this dispute.

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 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.) Claimant's claims, each and all, are hereby denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

### **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 = \$ 375.00

### **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. In this matter, the member firm is Lucien, Stirling & Grey Financial Corp.

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

### **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 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 x \$1,200.00	= \$ 2,400.00
Pre-hearing conferences: November 29, 2004	1 session
February 1, 2005	1 session
Four (4) Hearing sessions x \$1,200.00	= \$ 4,800.00
Hearing Dates: March 28, 2005	2 sessions
March 29, 2005	2 sessions
Total Forum Fees	= \$ 7,200.00

The Arbitration Panel has assessed \$7,200.00 of the forum fees to Lucien, Stirling & Grey Financial Corp.

### **Fee Summary**

Claimant, Sue Ellen Young Knolle, is liable for:

Initial Filing Fee	= \$ 375.00
Total Fees	= \$ 375.00
Less payments	= \$ 1,575.00
Refund Due to Claimant	= \$ 1,200.00

Respondent, Lucien, Stirling & Grey Financial Corp., is liable for:

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 7,200.00
Total Fees	= \$14,200.00
Less payments	= \$ 6,450.00
Balance Due NASD Dispute Resolution	= \$ 7,750.00

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

**ARBITRATION PANEL**

James Mervin Benson, Jr., Esq. - Public Arbitrator, Presiding Chair  
Leonard S. Alpert - Public Arbitrator  
Gregory E. Cater - Non-Public Arbitrator

Concurring Arbitrators:

/s/ James Mervin Benson, Jr., Esq.  
James Mervin Benson, Jr., Esq.  
Public Arbitrator, Presiding Chair

March 31, 2005  
Signature Date

/s/ Leonard S. Alpert  
Leonard S. Alpert  
Public Arbitrator

March 31, 2005  
Signature Date

/s/ Gregory E. Cater  
Gregory E. Cater  
Non-Public Arbitrator

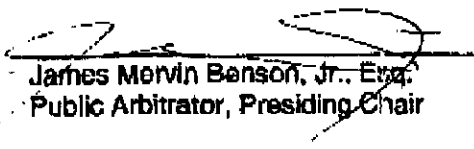
March 31, 2005  
Signature Date

March 31, 2005  
Date of Service (For NASD office use only)

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Public Arbitrator, Presiding Chair

3-31-03  
Signature Date

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Public Arbitrator

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3/31/05  
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