

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Donald R. Johnston

Case Number: 04-04332

Name of the Respondent
InterSecurities, Inc. and
Gregory James Hildebrand

Hearing Site: Dallas, Texas

NATURE OF THE DISPUTE

Public Customer v. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Claimant Donald R. Johnston, hereinafter referred to as "Claimant": Richard H. Elliot, Esq. of the Law Offices of Richard H. Elliot, located in Dallas, Texas.

Respondents InterSecurities, Inc. ("InterSecurities") and Gregory James Hildebrand ("Hildebrand"), hereinafter collectively referred to as "Respondents": Katherine C. Lake, Esq. of the firm of Fowler White Boggs Banker, P.A., located in Tampa, Florida.

CASE INFORMATION

Statement of Claim filed: June 21, 2004.

Claimant signed the Uniform Submission Agreement: May 31, 2004.

Statement of Answer filed by Respondents: September 23, 2004.

Respondent InterSecurities signed the Uniform Submission Agreement: July 6, 2004.

Respondent Hildebrand signed the Uniform Submission Agreement: September 28, 2004.

Claimant's Pre-Hearing Brief filed on: March 21, 2005.

Respondents' Arbitration Brief filed on: March 23, 2005.

Respondents' Memorandum on the Availability of Punitive Damages under Louisiana Law filed on: April 15, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; negligence and breach of the NASD Rules; breach of contract; violation of the Louisiana Securities Law; and the failure of InterSecurities to supervise its employee. These causes of action related to Respondents investing all his retirement funds in a high cost, tax-deferred Western Reserve Variable Annuity within an IRA Rollover Account.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following affirmative defenses:

1. Claimant was fully advised of and understood the nature of the investments purchased in his account;
2. Claimant received prospectuses or disclaimer documentation for all of his investments which disclosed the investments' nature and associated risks;
3. Claimant's claims are barred by the doctrine of estoppel;
4. Claimant's claims are barred by the doctrine of ratification;
5. Claimant's claims are barred by the doctrine of waiver;
6. Claimant's losses were caused by acts, events, and/or conditions beyond Respondents' control;
7. Claimant failed to act with due diligence in connection with his investments and failed to timely disaffirm the transactions and acts complained of in the Statement of Claim despite his knowledge of these alleged actions and transactions;
8. Claimant failed to mitigate damages;
9. Claimant's claims are barred by the doctrine of unclean hand;
10. Claimant's losses were proximately caused by his own decisions, conduct, and/or negligence, and not by any action or inaction of Respondents. Therefore, the Claimant's claims are barred in whole or in proportion to his negligence that contributed to his losses;
11. Claimant's claims arise out of a contractual relationship and, as a result, all of the non-contractual claims are barred by the economic loss doctrine;
12. Claimant's claims are barred by the doctrine of express assumption of risk;
13. Claimant's claims are barred by the principles of comparative negligence;
14. Respondents had in place procedures and a system for applying such procedures which was reasonably designed to prevent and detect the alleged securities violations;
15. Claimant's claims are in whole or in part barred by the statute of limitations and/or laches; and,
16. Claimant is not entitled to recovery against the Respondents because Respondents acted in good faith at all times and exercised reasonable diligence.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages

In excess of \$543,000.00

Punitive Damages

As determined by the arbitrators to deter such egregious actions by Respondent in the future

Interest

See below

Attorneys' Fees

Reasonable and necessary fees

Other Costs

Unspecified

Other Monetary/Non-Monetary Relief if any:

Rescission of the variable annuity transaction executed by Respondents in Don Johnston's IRA Rollover retirement account, plus interest from May 1, 1998 to the date of the award as prescribed by Louisiana law, plus such other relief as the Panel deemed just and proper.

At hearing, Claimant's requests were revised to \$938,000.00 in compensatory damages, \$500,000 in punitive damages and \$350,000.00 in attorneys' fees.

Respondents requested that Johnston's claims should be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

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, and the pre-hearing briefs, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted by Claimant Donald R. Johnston are dismissed and denied in their entirety;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated in this decision;
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Gregory James Hildebrand's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Gregory James Hildebrand must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;

4. Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents;
5. Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact:
 - A. The claim, allegation, or information is factually impossible or clearly erroneous;
6. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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
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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, InterSecurities, Inc. is a party and the following member fees are assessed:

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed: None.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

One (1) Pre-hearing session) with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: March 11, 2005 1 session	

One (1) Pre-hearing session with Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: November 9, 2004 1 session	

Six (6) Hearing sessions @ \$1,200.00	= \$ 7,200.00
Hearing Date: April 12, 2005	2 sessions
April 13, 2005	2 sessions
April 14, 2005	2 sessions
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Total Forum Fees	= \$ 8,850.00

The Panel has assessed \$4,425.00 of the forum fees to Claimant Donald R. Johnston and has assessed \$4,425.00 of the forum fees, jointly and severally, to Respondents InterSecurities, Inc. and Gregory James Hildebrand.

FEE SUMMARY

Claimant Donald R. Johnston is solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 4,425.00
Total Fees	= \$ 4,800.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 3,225.00

Respondent InterSecurities, Inc. is solely liable for:

Member Fees	= \$ 7,000.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents InterSecurities, Inc. and Gregory James Hildebrand are jointly and severally liable for:

Forum Fees	= \$ 4,425.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 4,425.00

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

ARBITRATION PANEL

Carol A. Freeland - Public Arbitrator, Presiding Chairperson
Malcolm W. Clarrissimeaux, PhD - Public Arbitrator
Charles T. Dix - Non-Public Arbitrator

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Concurring Arbitrators' Signatures

Carol A. Freeland
Carol A. Freeland
Public Arbitrator, Presiding Chairperson

4.22.05
Signature Date

Malcolm W. Clarrissimeaux, PhD
Public Arbitrator

Signature Date

Charles T. Dix
Non-Public Arbitrator

Signature Date

4/22/05 [Signature]
Date of Service (For NASD Dispute Resolution office use only)

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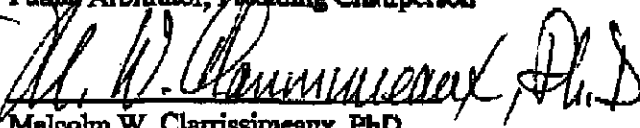
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