

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Names of the Claimants

Thomas J. and Emelia Weidner

Case Number: 04-04443

Names of the Respondents

Securities America, Inc.

David Biffen

Hearing Site: Philadelphia, PA

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

REPRESENTATION OF PARTIES

Claimants, Thomas J. and Emelia Weidner, hereinafter collectively referred to as "Claimants", were represented by Kyle M. Kulzer, Esq., Frank, Rosen, Snyder & Moss, L.L.P., Elkins Park, Pennsylvania.

Respondents, Securities America, Inc. ("Securities America") and David Biffen ("Biffen"), hereinafter collectively referred to as "Respondents", were represented by Denis Dice, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, P.C., Philadelphia, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on June 24, 2004.

Claimants signed the Uniform Submission Agreement on June 11, 2004.

Statement of Answer filed by Respondents on September 20, 2004.

A representative of Respondent Securities America signed the Uniform Submission Agreement on July 27, 2004.

Respondent Biffen signed the Uniform Submission Agreement on July 9, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: violation of § 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder; violations of the NASD and NYSE suitability rules; violations of §§401, 402, 403 and 404 of the Pennsylvania Securities Act of 1972; violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law; breach of contract and the covenant of good faith and fair dealing; breach of fiduciary duty; failure to supervise; *respondeat superior*; and, professional negligence. The causes of action relate to the purchase and sale of equities, funds and technology stocks.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses among others: failure to state a claim upon which relief may be granted; ratification; estoppel and/or laches; statutes of limitations; assumption of the risk; and, contributory/comparative negligence.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$300,000.00; treble damages; and, interest, costs, attorneys' fees, and punitive damages in unspecified amounts.

Respondents requested that Claimants' Statement of Claim be dismissed in its entirety; that an order be entered directing the expungement of any reference to this matter from Biffen's Central Registration Depository ("CRD") records; and, that attorneys' fees, costs and forum fees be assessed against Claimants or their counsel.

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:

1. The testimony presented at the hearing supports a finding that Claimants, and in particular Claimant, Thomas Weidner, while not highly sophisticated investors, had sufficient experience and knowledge of their/his own investments to understand the portfolio that they maintained in their accounts with Respondents, including the securities and transactions therein.
2. Respondent Biffen maintained notes of his various contacts with Claimants, and presented detailed testimony of his meetings and other communication with Claimants. In contrast, the testimony presented on behalf of Claimants by Claimant, Thomas Weidner, was often general and unspecific. For this reason, the Panel is compelled to give greater weight to the Respondents' version of the events that transpired herein.
3. Claimant, Thomas Weidner, asserts that he advised Respondent Biffen of his wife's, Emelia Weidner's, affliction with Alzheimer's disease. Thus, Claimants argue that Respondents had the duty to modify Claimants' investment strategy accordingly. Respondent Biffen testified that Claimant, Thomas Weidner, did not tell him about Emelia Weidner's, condition, and that he first learned about it when he read the statement of claim herein.
4. The Panel is convinced that, as elicited during cross-examination, Claimant, Thomas Weidner, apparently told Respondent Biffen about his wife's condition in July of 2000, but did not direct Respondent Biffen to change the way that he (Biffen) managed Claimants' accounts. Thus, as a result of what the Panel regards as a miscommunication between Claimant and Respondent, the Panel is constrained to conclude that the evidence supports a finding that Respondent, Biffen, was not informed that it would be necessary to change Claimants' investment goals as a result of Claimant, Emelia Weidner's, Alzheimer's disease.

5. The record is devoid of evidence to describe physical manifestations of Emelia Weidner's condition during her various meetings with Respondent Biffen. The evidence supports a finding that Claimant, Emelia Weidner was on medication during this period, and that the medication improved her ability to function. The Panel is, therefore, unable to conclude that Respondent Biffen should have recognized Emelia Weidner's condition, and, as a result, had an independent obligation either to change or suggest a change of Claimants' investment goals.
6. For the reasons set forth herein, and based on a consideration of the entirety of the testimony and documentary evidence presented herein, the Panel finds that the preponderance of the evidence supports the position urged by the Respondents, and for this reason dismisses, with prejudice, all of the claims asserted by Claimants.
7. The panel is unable to conclude that the evidence presented herein is sufficient to support or warrant the expungement of Respondent Biffen's CRD record.
8. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below.
9. Any and all relief not specifically addressed herein, including punitive and treble damages, is denied in its entirety.

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, Securities America is a party.

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

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: February 25, 2005 1 session	

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$ 1,200.00
Pre-hearing conference: November 19, 2004 1 session

Eight (8) Hearing sessions @ \$1,200.00 = \$ 9,600.00
Hearing Dates: June 7, 2005 2 sessions
June 8, 2005 2 sessions
June 9, 2005 3 sessions
August 9, 2005 1 session

Total Forum Fees = \$11,250.00

1. The Panel has assessed \$5,625.00 of the forum fees to Claimants.
2. The Panel has assessed \$5,625.00 of the forum fees to Respondents, jointly and severally.

Fee Summary

1. Claimants are liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$5,625.00</u>
Total Fees	= \$6,000.00
<u>Less payments</u>	<u>= \$1,575.00</u>
Balance Due NASD Dispute Resolution	= \$4,425.00

2. Respondent Securities America is solely liable for:

<u>Member Fees</u>	<u>= \$7,000.00</u>
Total Fees	= \$7,000.00
<u>Less payments</u>	<u>= \$7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$5,625.00</u>
Total Fees	= \$5,625.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$5,625.00

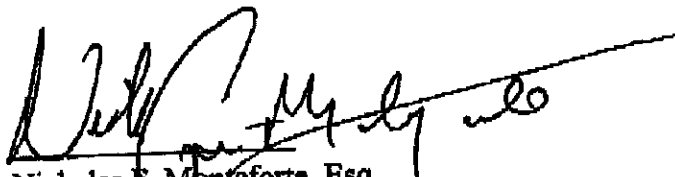
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Nickolas F. Monteforte, Esq.
Anita Vestal
Michael Quarto

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator, Panelist
- Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures


Nickolas F. Monteforte, Esq.
Public Arbitrator, Presiding Chairperson

Aug 16, 2005
Signature Date

Anita Vestal
Public Arbitrator, Panelist

Signature Date

Michael Quarto
Non-Public Arbitrator, Panelist

Signature Date

August 17, 2005
Date of Service (For NASD Dispute Resolution office use only)

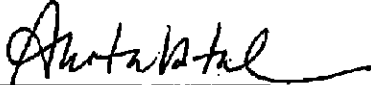
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Anita Vestal	-	Public Arbitrator, Panelist
Michael Quarto	-	Non-Public Arbitrator, Panelist

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Public Arbitrator, Presiding Chairperson

Signature Date



Anita Vestal
Public Arbitrator, Panelist



Signature Date

Michael Quarto
Non-Public Arbitrator, Panelist

Signature Date



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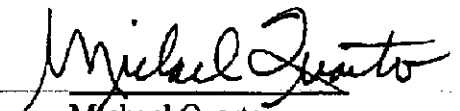
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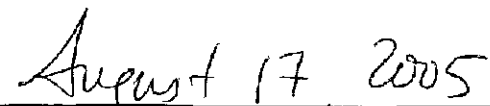
Signature Date

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Public Arbitrator, Panelist

Signature Date


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Non-Public Arbitrator, Panelist


Signature Date


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