

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Charles M. Whitt, Linda C. Whitt and Charles M. Whitt, custodian for
Barry J. Whitt

and

04-04899
Kansas City, Missouri

Name of Respondents

Dimensions Investment Management, Inc.
Eric Todd Burns
Robert Scott Richardson
Shawn Duane Sokolosky
Glenn Calvin Rappard
James Ervin Fisher, III

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

REPRESENTATION OF PARTIES

Charles M. Whitt, Linda C. Whitt and Charles M. Whitt, custodian for Barry J. Whitt ("**Claimants**") were represented by Chan P. Townsley, Esq. and Andrew W. Hutton, Esq., Hutton & Hutton, L.L.C., Wichita, Kansas.

Dimensions Investment Management, Inc. ("**Respondent Dimensions**") Eric Todd Burns ("**Respondent Burns**") Robert Scott Richardson ("**Respondent Richardson**") and Shawn Duane Sokolosky ("**Respondent Sokolosky**") hereinafter referred to as ("**Respondents**") were represented by Stephen M. Joseph, Esq., Joseph & Hollander, P.A., Wichita, Kansas.

Glenn Calvin Rappard ("**Respondent Rappard**") and James Ervin Fisher, III ("**Respondent Fisher**") were represented by Martin Q. Ryan, Esq. and David A. Baugh, Esq., Mora, Baugh, Waitzman & Unger, L.L.C., Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on or about July 12, 2004. Submission Agreement of Claimant Charles M. Whitt, Linda C. Whitt was signed on July 7, 2004. Submission Agreement of Charles M. Whitt, custodian for Barry J. Whitt was signed on July 19, 2004. Claimants' Response to Combined

Motion to Dismiss, Answering Statement and Affirmative Defenses of Glenn Rappard and James E. Fisher was filed on or about December 17, 2004. Claimants' Supplemental Response to "Combined Motion to Dismiss, Answering Statement and Affirmative Defenses of Glenn Rappard and James E. Fisher" was filed on or about October 3, 2005. Claimants' Motion to (A) Deem Respondents Fiduciary Agents of Claimants and (B) Shift Burden of Proof to Fiduciary Agents was filed on or about October 3, 2005.

Answering Statement of Respondents Dimensions Investment Management, Inc., Robert Scott Richardson and Eric Todd Burns was filed on or about November 29, 2004. Submission Agreement of Respondent Dimensions Investment Management, Inc. was signed on November 3, 2004 by Eric Todd Burns. Submission Agreement of Respondent Eric Todd Burns was signed on November 3, 2004. Submission Agreement of Respondent Robert Scott Richardson was signed on November 3, 2004.

Answering Statement of Shawn Duane Sokolosky was filed on or about November 29, 2004. Submission Agreement of Respondent Shawn Duane Sokolosky was signed on November 3, 2004.

Combined Motion to Dismiss, Answering Statement and Affirmative Defenses of Glenn Rappard and James E. Fisher was filed on or about November 29, 2004. Reply in Support of Combined Motion to Dismiss, Answering Statement and Affirmative Defenses of Glenn Rappard and James E. Fisher was filed on or about October 3, 2005. Glenn Rappard and James E. Fisher's Combined Response to Claimants' Motion to Deem Respondents Fiduciary Agents of Claimants and (B) Shift Burden of Proof and Response to Combined Motion to Dismiss was filed on or about October 18, 2005. Submission Agreement of Respondent Glenn Rappard was signed on October 28, 2004. Submission Agreement of Respondent James E. Fisher was signed on October 29, 2004.

CASE SUMMARY

In Claimants' Response to Combined Motion to Dismiss, Answering Statement and Affirmative Defenses of Glenn Rappard and James E. Fisher, Claimants summarized their dispute as follows:

Charles and Linda Whitt, Claimants in this action, seek to recover losses they suffered as a result of following investment and other financial advice given negligently and unsuitably by Respondents between 1999 and 2003.

Respondents include the business entity Dimensions Investment Management, Inc., and individuals Robert Richardson, Eric Todd Burns, Glenn Rappard, James E. Fisher, and Shawn D. Sokolosky.

The business relationship between Claimants and Respondents began in 1999, when Claimants sought financial advice about how to retire on their available assets, which amounted to slightly less than one million dollars. A financial prospectus was prepared, and

Claimants thereafter submitted their assets and resources to the management of Respondents. Although Claimants technically retained final authority regarding specific investments, in fact Claimants relied entirely on the advice and counsel of Respondents. Within three years, Claimants' assets of approximately \$1,000,000 had been reduced to a value of approximately only \$12,000. [citation omitted]

This action was originally filed in state court in Kansas, asserting claims of violation of state securities laws (Count I), negligence, misrepresentation, and omission to state (Count II), breach of contract (Count III), breach of fiduciary duty (Count IV). [citation omitted]

However, as disclosed by the Statement of Claim, and other documents submitted by Claimants, the central tenet of Claimants' allegations and claims is that Respondents are liable on the basis of having made unsuitable recommendations, and negligently advising Claimants (emphasis in original) on investment of their resources.

The claims involve investments in numerous securities and mutual funds.

Respondents Dimensions Investment Management, Inc. ("Management"), Robert Scott Richardson and Eric Todd Burns denied the allegations set forth in the Statement of Claim. Respondents specifically stated:

The losses suffered in the Whitts' six Fidelity Investment Accounts were not caused by any action or inaction by Management, Richardson, or Burns. Those losses were the result of Mr. Whitts' unsolicited and directed transactions which were contrary to the specific recommendations of Management, Richardson, and Burns, and contrary to the two asset allocation models recommended by Management, Richardson, and Burns, both of which were expressly rejected by Mr. Whitt for himself and his wife.

Respondents Glenn Rappard and James E. Fisher denied the allegations of wrongdoing set forth in the Statement of Claim. It was specifically stated that:

All claims attempted to be asserted against Rappard and Fisher purport to arise from transactions which occurred in certain Fidelity Investments investment accounts opened by Claimants in or about May 1999 through Dimensions Investment Management. Eric Burns of Dimensions Investment Management is believed to have been the designated advisor for those accounts, not Rappard or Fisher. Again, despite Claimants' assertions to the contrary, neither Rappard nor Fisher had any obligation to manage those accounts for Claimants as Claimants hired Dimensions Investment Management to provide those services. According [sic] the Statement of Claim, Claimants appear to have then played the market during a period of time when the markets were rocked by acts of war, terrorist attacks, and corporate and accounting scandals and may have lost money. Now, five (5) years after the Financial Profile was prepared for Claimants and after Claimants played the market for five (5) years,

Claimants have caused to be filed a four (4) count generic Statement of Claim with NASD Dispute Resolution which incredibly seeks reimbursement and indemnity from Rappard and Fisher for purported investment losses incurred by Claimants.

Respondent Shawn Duane Sokolosky adopted the allegations and defenses contained in the Combined Motion to Dismiss, Answering Statement and Affirmative Defenses of Glenn Rappard and James E. Fisher.

RELIEF REQUESTED

Claimants requested an award against Respondents jointly and severally as follows:

- A. The trading losses in Claimants' accounts, and damages for the amount that Claimants' invested assets would now have been worth had they been suitably managed in accordance with the claimants' investment objectives in an amount not less than \$1,000,000.
- B. The amount of commissions and transaction costs exceed \$21,925.51.
- C. Interest as provided by statute.
- D. Punitive damages in an amount not less than \$1,500,000 to punish Respondents and deter others from similar misconduct.
- E. Claimants' costs and expenses, including attorneys' fees.
- F. *Such other relief as the panel deems just and proper.*

Respondents Rappard and Fisher requested that all of the relief requested in the Statement of Claim be denied and dismissed in its entirety; that Claimants be assessed with all reasonable attorneys' fees, forum fees and costs incurred herein pursuant to K.S.A. § 60-211, and that an Award be entered recommending an expungement of all references to Claimants and this Arbitration from the permanent registration records of Mr. Rappard and Dr. Fisher.

Respondents Dimensions Investment Management, Inc., Robert Scott Richardson and Eric Todd Burns requested that an Award be entered denying all relief claimed by the Whitts' and recommending that all references to the Whitts' Statement of Claim and this arbitration proceeding be expunged from the permanent registration records of Management, Richardson, and Burns.

Respondent Shawn Duane Sokolosky requested that an Award be entered denying all relief claimed by the Claimants' and recommending that all references to the Whitts' Statement of Claim and this arbitration proceeding be expunged from the permanent registration records of Sokolosky.

OTHER ISSUES CONSIDERED & DECIDED

On April 26, 2006, NASD was advised that the claims asserted against Respondents Shawn Duane Sokolosky and James E. Fisher were dismissed with prejudice.

At the hearing, following voir dire of the witness, the panel declined to admit the testimony of Claimant's witness, Richard LeCompte, as an expert in the field of securities.

At the conclusion of Claimants' presentation of evidence, the remaining Respondents asserted a Motion for Directed Verdict. After considering the evidence, pleadings and arguments of the parties, the Arbitration Panel granted the Motion for Directed Verdict. After the Motion for Directed Verdict was granted, Respondents affirmed that they had a full and fair opportunity to be heard. Claimants affirmed that they had a full and fair opportunity to be heard with respect to all aspects of the proceedings except for the testimony of their designated expert, Dr. LeCompte.

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' Motion for Directed Verdict is granted.
2. 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.
3. 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 = \$500.00

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 The O.N. Equity Sales Company.

Member surcharge		\$	2,800.00
Pre-hearing process fee		\$	750.00
Hearing process fee		\$	5,000.00
Total Member Fees		\$	<u>8,550.00</u>

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:

3	Pre-hearing session(s) with Panel	x	1,200.00	\$	3,600.00
	March 8, 2005	1	session		
	November 7, 2005	1	session		
	November 15, 2005	1	session		
8	Hearing sessions	x	1,200.00	\$	9,600.00
	January 24, 2006	2	sessions		
	January 25, 2006	2	sessions		
	May 2, 2006	2	sessions		
	May 3, 2006	2	sessions		
Total Forum Fees				\$	<u>13,200.00</u>

The Arbitration Panel has assessed \$6,600.00 of the forum fees to Charles M. Whitt, Linda C. Whitt and Charles M. Whitt, custodian for Barry J. Whitt.

The Arbitration Panel has assessed \$6,600.00 of the forum fees jointly and severally to Dimensions Investment Management, Inc., Eric Todd Burns, Robert Scott Richardson, and Glenn Calvin Rappard.

Fee Summary

Claimants, Charles M. Whitt, Linda C. Whitt and Charles M. Whitt, custodian for Barry J. Whitt are jointly and severally liable for:

Initial Filing Fee	= \$	500.00
<u>Forum Fees</u>	= \$	6,600.00
Total Fees	= \$	7,100.00
<u>Less payments</u>	= \$	-1,700.00
Balance Due NASD Dispute Resolution	= \$	5,400.00

The O.N. Equity Sales Company, is liable for:

Member Fees	= \$	8,550.00
Total Fees	= \$	8,550.00
<u>Less payments</u>	= \$	-7,550.00
Balance Due NASD Dispute Resolution	= \$	1,000.00

Respondents, Dimensions Investment Management, Inc., Eric Todd Burns, Robert Scott Richardson, and Glenn Calvin Rappard, are jointly and severally liable for:

<u>Forum Fees</u>	= \$	6,600.00
Total Fees	= \$	6,600.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	6,600.00

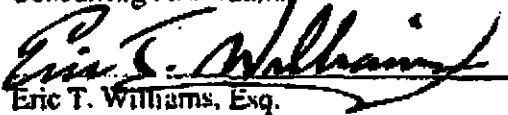
All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Eric T. Williams, Esq. - Public Arbitrator, Presiding Chair
James A. Hayes - Public Arbitrator
Frank A. Toplikar - Non-Public Arbitrator

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Concurring Arbitrators:


Eric T. Williams, Esq.
Public Arbitrator, Presiding Chair

9 May 2006
Signature Date

James A. Hayes
Public Arbitrator

Signature Date

Frank A. Toplikar
Non-Public Arbitrator

Signature Date

May 10, 2006
Date of Service (For NASD office use only)

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Arbitration No. 04-04899
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Concurring Arbitrators:

Eric T. Williams, Esq.
Public Arbitrator, Presiding Chair

Signature Date

James A. Hayes
James A. Hayes
Public Arbitrator

5-10-06
Signature Date

Frank A. Toplikar
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Concurring Arbitrators:

Eric T. Williams, Esq.

Public Arbitrator, Presiding Chair

Signature Date

James A. Hayes

Public Arbitrator

Signature Date



Frank A. Toplikar

Non-Public Arbitrator



Signature Date

Date of Service (For NASD office use only)