

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimants

Michael J. McCafferty, Roger A. McCafferty,
Barbara L. Berndt and Keri A. Boldan

v.

04-05045
Minneapolis, Minnesota

Respondents

Cap Pro Brokerage Services, Inc.,
and Legacy Builders Resource Group

Nature of Dispute: Customers v. Member and Non-Member with a Contract to Arbitrate

REPRESENTATION OF PARTIES

Michael J. McCafferty, Roger A. McCafferty, Barbara L. Berndt and Keri A. Boldan, hereinafter collectively referred to as "Claimants," were represented by Dennis Maloney, Esq., of Maloney & Maloney, Aberdeen, South Dakota.

Cap Pro Brokerage Services, Inc. ("Cap Pro"), Legacy Builders Resource Group ("Legacy"), hereinafter collectively referred to as "Respondents," were represented by Thomas K. Wilka, Esq., of Hagen, Wilka & Archer, P.C., Sioux Falls, South Dakota.

CASE INFORMATION

The Statement of Claim was filed on or about July 8, 2004. The Submission Agreement of Claimants were signed on or about July 15, 2004.

The Statement of Answer was filed jointly by Respondents, Cap Pro Brokerage Services, Inc., and Legacy Builders Resource Group, on or about March 6, 2005. The Submission Agreement of Respondent, Cap Pro Brokerage Services, Inc., was signed on or about December 20, 2004 by Paul V. Bruce VP/COO, Cap Pro Brokerage Services, Inc., and Legacy Builders Group. The Submission Agreement of Respondent, Legacy Builders Resource Group, was signed on or about December 20, 2004 by Paul V. Bruce VP/COO, Cap Pro Brokerage Services, Inc., and Legacy Builders Group.

CASE SUMMARY

Claimants asserted causes of action including the following: failure to supervise; breach of fiduciary duty; breach of contract; misrepresentations; and unauthorized trading. The causes of action related to Claimants' allegation that the after death of James E. McCafferty, his survivors, directed Legacy

Builders Resource Group to liquidate his IRA and to divide it into equal shares consistent with the beneficiary designation of James E. McCafferty. Claimants alleged that Respondents failed to comply with Claimants' instructions and continued to hold the IRA investments. Claimants asserted that as a result, when the funds were ultimately released, the IRA investment suffered a loss

Respondents denied the allegations set forth in the Statement of Claim and asserted defenses including the following: the Statement of Claim failed to state a claim upon which relief can be granted; Claimants' claims are barred by waiver because they were given an opportunity to reposition their accounts, and any losses in those accounts were the direct and proximate result of the Claimants to take said actions; and Claimants' claims are barred by the failure to mitigate their damages.

RELIEF REQUESTED

Claimants requested an award of \$40,000 in compensatory damages, plus \$500,000 in punitive damages, attorneys' fees, interest, costs and any other relief the panel deemed just and equitable.

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

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 originals 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. Respondents, Cap Pro Brokerage Services, Inc., and Legacy Builders Resource Group, are jointly and severally liable for and shall pay to Claimants, Michael J. McCafferty, Roger A. McCafferty, Barbara L. Berndt and Keri A. Boldan, the sum of Fourteen Thousand Dollars and No Cents (\$14,000.00) in compensatory damages
2. 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; and

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.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 375

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 Cap Pro Brokerage Services, Inc.

Member surcharge = \$ 2,250
Pre-hearing process fee = \$ 750
Hearing process fee = \$ 4,000

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:

One (1) Pre-hearing session with Panel x \$ 1,200 = \$ 1,200

Pre-hearing conference: 04/12/2005 1 session

Four (4) Hearing sessions with Panel x \$ 1,200 = \$ 4,800

Hearing Dates: 06/29/2005 2 sessions
06/30/2005 2 sessions

Total Forum Fees = \$ 6,000

The Arbitration Panel has assessed \$ 3,000 of the forum fees jointly and severally to Michael J. McCafferty, Roger A. McCafferty, Barbara L. Berndt and Keri A. Boldan

The Arbitration Panel has assessed \$ 3,000 of the forum fees jointly and severally to Cap Pro Brokerage Services, Inc. and Legacy Builders Resource Group.

FEE SUMMARY

Claimants, Michael J. McCafferty, Roger A. McCafferty, Barbara L. Berndt and Keri A. Boldan, are jointly and severally liable for:

Initial Filing Fee	= \$ 375
<u>Forum Fees</u>	<u>= \$ 3,000</u>
Total Fees	= \$ 3,375
<u>Less payments</u>	<u>= \$ 1,575</u>
Balance Due NASD Dispute Resolution	= \$ 1,800

Respondent, Cap Pro Brokerage Services, Inc., is liable for:

<u>Member Fees</u>	<u>= \$ 7,000</u>
Total Fees	= \$ 7,000
<u>Less payments</u>	<u>= \$ 3,000</u>
Balance Due NASD Dispute Resolution	= \$ 4,000

Respondents, Cap Pro Brokerage Services, Inc., and Legacy Builders Resource Group, are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$ 3,000</u>
Total Fees	= \$ 3,000
<u>Less payments</u>	<u>= \$ 0</u>
Balance Due NASD Dispute Resolution	= \$ 3,000

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

ARBITRATION PANEL

Fredrick C. Brown, Jr., Esq. - Public Arbitrator, Presiding Chair
D. Randall Blohm, Esq. - Public Arbitrator
John E. Sundeen - Non-Public Arbitrator

Concurring Arbitrators:

Fredrick C. Brown, Jr.
Fredrick C. Brown, Jr., Esq.
Public Arbitrator, Presiding Chair

7/13/05
Signature Date

D. Randall Blohm, Esq.
Public Arbitrator

Signature Date

John E. Sundeen
Non-Public Arbitrator

Signature Date

7/15/05
Date of Service (NASD use only)

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