

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Howard L. Dinsmore
Carolyn G. Dinsmore

Case Number: 04-05119

Name of the Respondent

McDonald Investments, Inc.

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Howard L. Dinsmore and Carolyn G. Dinsmore, hereinafter collectively referred to as "Claimants": David P. Meyer, Esq., Meyer & Associates Co., L.P.A., Columbus, Ohio.

For McDonald Investments, Inc. ("McDonald"), hereinafter referred to as "Respondent": Michael N. Ungar, Esq., Ulmer & Berne, LLP, Cleveland, Ohio.

CASE INFORMATION

Statement of Claim filed on or about: July 16, 2004.

Claimants signed the Uniform Submission Agreement: July 8, 2004.

Statement of Answer and Partial Motion to Strike filed on or about: October 18, 2004.

Respondent McDonald signed the Uniform Submission Agreement: November 17, 2004.

CASE SUMMARY

Claimants asserted the following causes of action in the Statement of Claim: 1) breach of fiduciary duty; 2) negligence; 3) breach of contract; 4) failure to supervise; 5) violations of Sections 517.301, 517.07 and 517.211, Fla. Stat.; 6) breach of covenant of good faith and fair dealing; 7) unsuitability; and 8) *respondeat superior*. The causes of action relate to Claimants' investments in shares of stock, including but not limited to, Vitesse Semiconductor Corp, Uniphase and Exodus.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim, and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested: 1) statutory rescission damages in an amount in excess of \$2,800,000.00; 2) other compensatory damages in excess of \$25,000.00, plus interest at the legal rate; 3) costs, expenses and disbursements in pursuing this proceeding; 4) reimbursement of filing and forum fees; 5) attorneys' fees in an amount to be determined by a court of competent jurisdiction in a confirmation proceeding following rendition of an Award by the undersigned arbitrators (the "Panel") in this matter, pursuant to the Florida Arbitration Code, § 682.01 *et seq.*, Fla. Stat.; and

6) such other and further relief, including, but not limited to, punitive damages, as the Panel deems just and equitable.

Respondent McDonald requested: 1) that the first eight (8) pages of the Statement of Claim be stricken; and 2) that which remains of the Statement of Claim be dismissed, permitting Respondent to go hence without cost.

OTHER ISSUES CONSIDERED AND DECIDED

On or about January 28, 2005, the Panel deferred ruling on Respondent McDonald's Partial Motion to Strike until the evidentiary hearing. During the evidentiary hearing, Respondent's Partial Motion to Strike was denied.

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

Respondent McDonald is found liable on the claim of breach of fiduciary duty and shall pay to Claimants, jointly and severally, compensatory damages in the amount of \$275,000.00.

All other claims for relief, including Claimants' requests for interest, costs, attorneys' fees, punitive damages and any claims for relief under Chapter 517 of the Florida Statutes, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 600.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent McDonald is a party and a member firm.

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during these proceedings.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session.

There were no three-day cancellation fees assessed during these proceedings.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

There were no injunctive relief fees assessed during these proceedings.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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 per session	= \$ 450.00
Pre-hearing conference: September 15, 2005 1 session	
Two (2) Pre-hearing sessions with Panel @ \$1,200.00 per session	= \$2,400.00
Pre-hearing conferences: January 28, 2005 1 session	
October 17, 2005 1 session	
Ten (10) Hearing sessions @ \$1,200.00 per session	= \$12,000.00
Hearing Dates: April 3, 2006 2 sessions	
April 4, 2006 2 sessions	
April 5, 2006 2 sessions	
April 6, 2006 2 sessions	
April 7, 2006 2 sessions	
Total Forum Fees	= \$14,850.00

The Panel has assessed forum fees in the amount of \$7,425.00 to Claimants, jointly and severally.

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Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs assessed during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 7,425.00
Total Fees	= \$ 8,025.00
<u>Less payments</u>	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 6,225.00

Respondent McDonald is solely liable for:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 7,425.00
Total Fees	= \$ 15,975.00
<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 7,425.00

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

ARBITRATION PANEL

Martin Weinstein, Esq.	-	Public Arbitrator, Presiding Chairperson
J. Porter McClean	-	Public Arbitrator
Bart Samuel Cohodas	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

_____/s/
Martin Weinstein, Esq.
Public Arbitrator, Presiding Chairperson

April 10, 2006
Signature Date

_____/s/
J. Porter McClean
Public Arbitrator

April 10, 2006
Signature Date

_____/s/
Bart Samuel Cohodas
Non-Public Arbitrator

April 11, 2006
Signature Date

April 12, 2006
Date of Service (For NASD Dispute Resolution office use only)

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NASD Dispute Resolution

Arbitration No. 04-05119

Award Page 4 of 4Fee Summary

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 Public Arbitrator, Presiding Chairperson

4/10/06
 Signature Date

 J. Porter McClean
 Public Arbitrator

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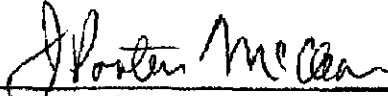
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Public Arbitrator, Presiding Chairperson

Signature Date



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Public Arbitrator

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Public Arbitrator, Presiding Chairperson

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Public Arbitrator

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Bart Samuel Cohodas
Non-Public Arbitrator

4/11/06

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