

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Arnold A. Farris

and

Case Number: 04-05125
Hearing Site: Houston, Texas

Names of Respondents

Multi-Financial Securities Corporation,
Sanders Morris Harris, Inc., and
Bert Earl Miller, Jr.

NATURE OF DISPUTE

Customer v. Member Firms and Associated Person

REPRESENTATION OF PARTIES

Arnold A. Farris ("**Claimant**") was represented by Brian E. Bro, Esq., Houston, Texas.

Multi-Financial Securities Corporation ("**Multi-Financial**") was represented by Wesley R. Ward, Esq., Fulbright & Jaworski, LLP, Houston, Texas.

Sanders Morris Harris, Inc. ("**Sanders Morris Harris**") was represented by Steve Sonsik Hwang, Esq., Wilson, Elser, Moskowitz, Edelman and Dicker, LLP, Houston, Texas.

Bert Earl Miller, Jr. ("**Miller**") was represented by Edwin J. Tomko, Esq., McManemin & Smith, Dallas, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about July 10, 2004. The Submission Agreement of Claimant, Arnold A. Farris, was signed on or about July 7, 2004. Claimant filed a Motion for Leave to Amend the Statement of Claim on or about January 10, 2005. Claimant filed a Response to Respondent Miller's Motion to Dismiss on or about January 17, 2005. Claimant filed a Response to the Reply filed by Respondent Miller in Support of his Motion to Dismiss on or about February 10, 2005.

A Statement of Answer was filed by Respondent, Multi-Financial Securities Corporation, on or about September 24, 2004.

A Statement of Answer was filed by Respondent, Sanders Morris Harris, Inc., on or about September 27, 2004. The Submission Agreement of Respondent, Sanders Morris Harris, Inc., was signed on or about August 19, 2004.

A Statement of Answer was filed by Respondent, Bert Earl Miller, Jr., on or about September 23, 2004. The Submission Agreement of Respondent, Bert Earl Miller, Jr., was signed on or about September 20, 2004. Respondent Miller filed a Motion to Dismiss on or about January 12, 2005. Respondent Miller filed a Reply in Support of his Motion to Dismiss on or about January 28, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: failure to supervise, breach of fiduciary duty, misrepresentation, omission of facts, and suitability. The causes of action related to the recommendation and purchase of various unspecified securities. Claimant alleged that Respondent Miller invested approximately 90% of Claimant's IRA retirement account fund into unsuitable equity mutual funds, mostly B-share mutual funds. Claimant also alleged that Respondents not only failed to disclose material information about the differences of A-share, B-share and C-share mutual funds but also failed to properly interview Claimant in determining his assets and liabilities as well as his income and expenses. Finally, Claimant alleged that the investments were unsuitable given his age, medical condition, and employment status.

Unless specifically admitted in its Answer, Respondent, Multi Financial, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant had a duty to minimize any alleged losses before he can impose liability on a third party; Claimant failed to state a claim upon which relief can be granted with regard to the cause of action for breach of fiduciary duty; Claimant ratified each and every transaction; Claimant's claims are barred in whole or in part by the doctrine of equitable estoppel; Claimant voluntarily and knowingly accepted and assumed the risk that such securities would decrease in value; and Claimant's causes of action for negligence are barred in whole or in part by the doctrine of contributory or comparative negligence.

Unless specifically admitted in its Answer, Respondent, Sanders Morris Harris, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted with regard to the cause of action for breach of fiduciary duty; Claimant ratified each and every transaction; Claimant has failed to accurately specify and support the amount of damages sought; and Claimant's claims based on negligence are barred by the applicable two year statute of limitations.

Unless specifically admitted in his Answer, Respondent Miller denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant had a duty to minimize any alleged losses before he can attempt to impose liability on a third party; Claimant ratified each and every transaction; Claimant's claims are barred in whole or in part by the doctrine of equitable estoppel; Claimant waived any right to object to transactions in his accounts; Claimant failed to state a claim under federal or state securities statutes, the Texas Unlawful Trade Practices Act, or the theory of negligence upon which relief can be granted; and some or all of Claimant's causes of action are time barred by applicable statutes of limitations.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$388,967.00
Punitive/Exemplary Damages	\$200,000.00
Attorneys' Fees	Unspecified
Interest	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondent, Multi-Financial, requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

Respondent, Sanders Morris Harris, requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

Respondent Miller requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent, Multi-Financial Securities Corporation, did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, and appeared is bound by the determination of the arbitration panel on all issues submitted.

Respondents did not file a response objecting to the Motion for Leave. The Panel granted Claimant's Motion for Leave to Amend the Statement of Claim on or about May 19, 2005.

On or about February 18, 2005, the Panel issued an Order that it would not take present action on Respondent Miller's Motion to Dismiss, but would hold it open and in abeyance until such future time as Respondent Miller may deem it appropriate to re-urge it.

On or about July 19, 2005, Claimant settled all claims against Respondent, Sanders Morris Harris.

On or about July 28, 2005, Claimant settled all claims against Respondent, Multi-Financial Securities Corporation.

At the conclusion of the evidence on August 11, 2005, Respondent Miller re-urged his Motion to Dismiss. The Panel then heard further arguments on the Motion by both parties. During its deliberations, the Panel reconsidered the Motion to Dismiss and the arguments and authorities submitted by each side. After such consideration, the Panel concluded that all of Claimant's claims from the date Claimant first opened his accounts with Respondent, in July 1998 through and including July 16, 2002, are barred by the Statutes of Limitations.

Accordingly, it is the ruling of the Panel that, with respect to any and all claims against Respondent Miller that arose on or before July 16, 2002, Claimant take nothing, by reason of the operation of the Statutes of Limitations.

It is the further ruling of the Panel that Claimant take nothing with respect to any other claims alleged against Respondent Miller that arose on or after July 17, 2002.

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 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.) Claimant's claims, each and all, are denied and dismissed with prejudice;
- 2.) Respondent, Bert Earl Miller, Jr., is liable for and shall pay to Claimant, Arnold A. Farris, the sum of \$375.00 in costs;
- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any relief not specifically enumerated, including punitive damages and

attorney fees, is hereby denied with prejudice.

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 = \$ 375.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firms are Multi-Financial Securities Corporation and Sanders Morris Harris, Inc.

Member surcharge = \$ 2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 4,000.00

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:

Two (2) Pre-hearing sessions with Panel x \$1,200.00 = \$ 2,400.00

Pre-hearing conferences: December 20, 2004 1 session
February 18, 2005 1 session

Eight (8) Hearing sessions x \$1,200.00 = \$ 9,600.00

Hearing Dates: August 8, 2005 2 sessions
August 9, 2005 2 sessions
August 10, 2005 2 sessions
August 11, 2005 2 sessions

Total Forum Fees = \$12,000.00

The Arbitration Panel has assessed \$12,000.00 of the forum fees to Bert Earl Miller, Jr.

Fee Summary

Claimant, Arnold A. Farris, is liable for:

<u>Initial Filing Fee</u>	= \$ 375.00
<u>Total Fees</u>	= \$ 375.00
<u>Less payments</u>	= \$ 1,575.00
<u>Refund Due to Claimant</u>	= \$ 1,200.00

Respondent, Multi-Financial Securities Corporation, is liable for:

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

Respondent, Sanders Morris Harris, Inc., is liable for:

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

Respondent, Bert Earl Miller, Jr., is liable for:

<u>Forum Fees</u>	= \$ 12,000.00
<u>Total Fees</u>	= \$ 12,000.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 12,000.00

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

ARBITRATION PANEL

Philip I. McConnell, Esq. - Public Arbitrator, Presiding Chair
David G. Beerbower, Esq. - Public Arbitrator
Martin Samuel Altimore - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Philip I. McConnell, Esq.
Philip I. McConnell, Esq.
Public Arbitrator, Presiding Chair

August 17, 2005
Signature Date

/s/ David G. Beerbower, Esq.
David G. Beerbower, Esq.
Public Arbitrator

August 17, 2005
Signature Date

/s/ Martin Samuel Altimore
Martin Samuel Altimore
Non-Public Arbitrator

August 17, 2005
Signature Date

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

ARBITRATION PANEL

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David G. Beerbower, Esq. - Public Arbitrator
Martin Samuel Altimore - Non-Public Arbitrator

Concurring Arbitrators:

Philip I. McConnell

Philip I. McConnell, Esq.
Public Arbitrator, Presiding Chair

8/17/05

Signature Date

David G. Beerbower, Esq.
Public Arbitrator

Signature Date

Martin Samuel Altimore
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David G. Beerbower, Esq.
Public Arbitrator

Signature Date

8-17-05

Signature Date

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Public Arbitrator

Signature Date



Martin Samuel Altmore
Non-Public Arbitrator

8/17/05

Signature Date

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