

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Kimberly Cavanaugh (Claimant) v. Moors & Cabot, Inc. and Charles White (Respondents)

Case Number: 04-05167

Hearing Site: Cleveland, Ohio

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

REPRESENTATION OF PARTIES

Claimant Kimberly Cavanaugh ("Cavanaugh") hereinafter to as "Claimant": James S. Jones, Esq., Poland, Ohio.

Respondents, Moors & Cabot, Inc. ("Moors & Cabot") and Charles White ("White"), hereinafter collectively referred to as "Respondents": Robert N. Rapp, Esq., Calfee, Halter & Griswold LLP, Cleveland, Ohio.

CASE INFORMATION

Statement of Claim filed by Claimant on or about: July 14, 2004.
Claimant signed the Uniform Submission Agreement: July 7, 2004.

Joint Statement of Answer filed by Respondents on or about: September 7, 2004.
Respondents did not submit a signed Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; breach of fiduciary duty; intentional misrepresentation and failure to supervise. The causes of action relate to B shares of four different fund families.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$95,000.00; an award of the costs of this arbitration, including reasonable attorneys' fees; punitive damages in the amount of \$300,000.00; and any other relief the arbitrators deem just and proper.

Respondents requested that the Panel dismiss the Statement of Claim in its entirety and assess all forum fees and costs against the Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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.

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 case is dismissed in its entirety.
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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 = \$ 300.00

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 event giving rise to the dispute. Accordingly, Moors and Cabot is a party.

| | |
|--------------------------|----------------------|
| Member surcharge | = \$ 1,700.00 |
| Pre-hearing process fee | = \$ 750.00 |
| Hearing process fee | = \$ 2,750.00 |
| Total Member Fees | = \$ 5,200.00 |

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the 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 @ \$1,125.00 | = \$ 1,125.00 |
| Pre-hearing conference: November 29, 2004 1 session | |

Six (6) Hearing sessions @ \$1,125.00 = \$ 6,750.00

Hearing Dates: June 8, 2005 2 sessions
June 9, 2005 2 sessions
June 10, 2005 2 sessions

Total Forum Fees = \$ 7,875.00

1. The Panel has assessed \$3,937.50 of the forum fees to Claimant Cavanaugh.
2. The Panel has assessed \$3,937.50 of the forum fees jointly and severally to Respondents Moors & Cabot and White.

Fee Summary

1. Claimant Cavanaugh is solely liable for:

| | |
|-------------------------------------|---------------|
| Initial Filing Fee | = \$ 300.00 |
| <u>Forum Fees</u> | = \$ 3,937.50 |
| Total Fees | = \$ 4,237.50 |
| <u>Less payments</u> | = \$ 1,425.00 |
| Balance Due NASD Dispute Resolution | = \$ 2,812.50 |

2. Respondent Moors & Cabot is solely liable for:

| | |
|-------------------------------------|---------------|
| <u>Member Fees</u> | = \$ 5,200.00 |
| Total Fees | = \$ 5,200.00 |
| <u>Less payments</u> | = \$ 5,200.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

4. Respondents Moors & Cabot and White are jointly and severally liable for:

| | |
|-------------------------------------|---------------|
| <u>Forum Fees</u> | = \$ 3,937.50 |
| Balance Due NASD Dispute Resolution | = \$ 3,937.50 |

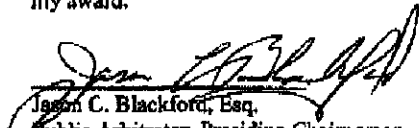
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

| | | |
|--------------------------|---|--|
| Jason C. Blackford, Esq. | - | Public Arbitrator, Presiding Chairperson |
| Elmer G. Cowan, Esq. | - | Public Arbitrator |
| Robert Shiffra, Esq. | - | Non-Public Arbitrator |

Concurring Arbitrators' Signature(s)

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Jason C. Blackford, Esq.
Public Arbitrator, Presiding Chairperson

June 24, 2005
Signature Date

Elmer G. Cowan, Esq.
Public Arbitrator

Signature Date

Robert Shiffra, Esq.
Non-Public Arbitrator

Signature Date

June 23, 2005
Date of Service (For NASD Dispute Resolution use only)

| | | |
|--------------------------|---|--|
| Jason C. Blackford, Esq. | - | Public Arbitrator, Presiding Chairperson |
| Elmer G. Cowan, Esq. | - | Public Arbitrator |
| Robert Shiffra, Esq. | - | Non-Public Arbitrator |

Concurring Arbitrators' Signature(s)

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Jason C. Blackford, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Elmer G. Cowan, Esq.
Public Arbitrator

Signature Date


Robert Shiffra, Esq.
Non-Public Arbitrator

6.23.05
Signature Date

June 23, 2005
Date of Service (For NASD Dispute Resolution use only)

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ARBITRATION PANEL

| | | |
|--------------------------|---|--|
| Jason C. Blackford, Esq. | - | Public Arbitrator, Presiding Chairperson |
| Elmer G. Cowan, Esq. | - | Public Arbitrator |
| Robert Shiffra, Esq. | - | Non-Public Arbitrator |

Concurring Arbitrators' Signature(s)

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Jason C. Blackford, Esq.
Public Arbitrator, Presiding Chairperson



Elmer G. Cowan, Esq.
Public Arbitrator

Signature Date

7/28/05

Signature Date

Robert Shiffra, Esq.
Non-Public Arbitrator

Signature Date

June 23, 2005
Date of Service (For NASD Dispute Resolution use only)