
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Bonnie E. Loveless

Case Number: 04-05284

Name of the Respondent
First Heartland Capital

Hearing Site: Memphis, Tennessee

Name of the Third-Party Respondent
Ronald Diehl

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

REPRESENTATION OF PARTIES

For Bonnie E. Loveless ("Loveless"), hereinafter referred to as "Claimant": Richard B. Fosher, Esq., Oakes & Fosher, LLC, Saint Louis, Missouri.

For First Heartland Capital ("Heartland"), hereinafter referred to as "Respondent": David A. Baugh, Esq., Mora, Baugh, Waitzman & Unger, L.L.C., Chicago, Illinois.

Ronald Diehl ("Diehl") hereinafter referred to as "Third-Party Respondent," did not appear.

CASE INFORMATION

Statement of Claim filed on or about: July 23, 2004.

Claimant signed but did not date the Uniform Submission Agreement.

Response to Statement of Claim, Affirmative Defenses, and Third-Party Claim Against Ronald Diehl filed by Respondent on or about: November 3, 2004.

Respondent signed the Uniform Submission Agreement: October 14, 2004.

Third-Party Respondent did not file an executed Uniform Submission Agreement or submit an Answer to the Third-Party Claim.

Emergency Motion for Default and to Cancel Hearing filed by Respondent on or about: November 1, 2005.

Motion for Entry of Judgment, with a request for a paper case, filed by Respondent on or about: December 30, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; violation of the Tennessee Securities Act; violation of section 10(b) of the Securities and Exchange Act of 1934; common law fraud; negligence; restitution; conversion; and negligent supervision. The causes of action relate to Claimant's investments in,

including but not limited to, equity mutual funds and investments in a joint brokerage account with Third-Party Respondent.

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

Respondent asserted the following causes of action in its Third-Party Claim: contribution and indemnification for Claimant's causes of action. The causes of action for the Third-Party Claim relate to Third-Party Respondent's management of Claimant's account.

RELIEF REQUESTED

Claimant requested: compensatory damages in the amount of \$700,000.00; an unspecified amount of punitive damages; pre-judgment and post-judgment interest; attorneys' fees; costs, expenses, filing and forum fees; and, for such other and further relief which the undersigned arbitrators (the "Panel") deemed just and proper under the circumstances.

Respondent requested in its Third-Party Claim: indemnification of Claimant's relief requests to the extent that it is found liable to Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

Third-Party Respondent Diehl did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement and did not Answer the Third-Party Claim, but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and is bound by the determination of the Panel on all issues submitted.

On or about October 27, 2005, Claimant filed with NASD Dispute Resolution a notification of settlement of the above referenced matter.

On or about November 1, 2005, by its Motion for Entry of Judgment, Respondent opted to proceed against Third-Party Respondent according to Rule 10314(e) of the Code.

On or about November 3, 2005, the Panel issued an order granting Respondent's Emergency Motion for Default and to cancel evidentiary hearings.

On or about January 30, 2006, the Panel issued an order granting the Motion for Entry of Judgment filed by Respondent and granting the request for a paper case. The Panel determined that Third-Party Respondent Diehl was properly served notice of the Statement of Claim via Federal Express mail, and that Third-Party Respondent Diehl is required to submit to arbitration pursuant to the Code and is bound by the determination of the Arbitrator on all issues submitted.

AWARD

After considering the pleadings and Motion for Entry of Judgment filed by Respondent, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Panel renders a judgment in favor of Respondent and against Third-Party Respondent Diehl in the amount of \$150,000.00. The claims for pre-judgment interest and attorneys' fees are disallowed.

Any and all other claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are 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	= \$ 375.00
Third-Party Claim by Heartland	= \$1,250.00

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. Accordingly, Heartland is a member firm and a party.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$4,000.00</u>
Total Member Fees	= \$7,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournments were requested in this matter.

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.

No three-day cancellation fees were assessed in this matter.

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.

Injunctive relief fees were not assessed in this matter.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. 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 sessions with the Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conferences: February 3, 2005 1 session	
One (1) Decision on discovery-related motions on the papers with one (1) arbitrator @ \$200.00	= \$ 200.00
Respondent submitted (1) discovery-related motion	
<hr/>	
Total Forum Fees	= \$ 1,400.00

The Panel has assessed 100% of the forum fees in the amount of \$1,400.00 to Respondent.

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 incurred in this matter.

Fee Summary

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 375.00
Total Fees	= \$ 375.00
<u>Less Payments</u>	= \$ 375.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$7,000.00
Third-Party Claim Filing Fee	= \$1,250.00
Paper Case Fee	= \$ 300.00
<u>Forum Fees</u>	= \$1,400.00
Total Fees	= \$9,950.00
<u>Less Payments</u>	= \$9,450.00
Balance Due NASD Dispute Resolution	= \$ 500.00

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

ARBITRATION PANEL

Robert J. Warner, Esq.
Barbara Carraway Dogan
Michael Richards, Esq.

-Public Arbitrator, Presiding Chairperson
-Public Arbitrator
-Non-Public Arbitrator

Concurring Arbitrators' Signatures

_____/s/_____
Robert J. Warner, Esq.
Public Arbitrator, Presiding Chairperson

January 31, 2006
Signature Date

_____/s/_____
Barbara Carraway Dogan
Public Arbitrator

January 31, 2006
Signature Date

_____/s/_____
Michael Richards, Esq.
Non-Public Arbitrator

January 31, 2006
Signature Date

January 31, 2006
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
Arbitration No. 04-05284
Award Page 5 of 5


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

ARBITRATION PANEL

Robert J. Warner, Esq.
Barbara Carraway Dogan
Michael Richards, Esq.

-Public Arbitrator, Presiding Chairperson
-Public Arbitrator
-Non-Public Arbitrator

Concurring Arbitrators' Signatures



Robert J. Warner, Esq.
Public Arbitrator, Presiding Chairperson

1/21/06

Signature Date

Barbara Carraway Dogan
Public Arbitrator

Signature Date

Michael Richards, Esq.
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
Arbitration No. 04-05284
Award Page 5 of 5

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

ARBITRATION PANEL

Robert J. Warner, Esq.
Barbara Carraway Dogan
Michael Richards, Esq.

-Public Arbitrator, Presiding Chairperson
-Public Arbitrator
-Non-Public Arbitrator

Concurring Arbitrators' Signatures

Robert J. Warner, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Barbara Carraway Dogan
Barbara Carraway Dogan
Public Arbitrator

January 31, 2006
Signature Date

Michael Richards, Esq.
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
Arbitration No. 04-05284
Award Page 5 of 5

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

ARBITRATION PANEL

Robert J. Warner, Esq.
Barbara Carraway Dogan
Michael Richards, Esq.

-Public Arbitrator, Presiding Chairperson
-Public Arbitrator
-Non-Public Arbitrator

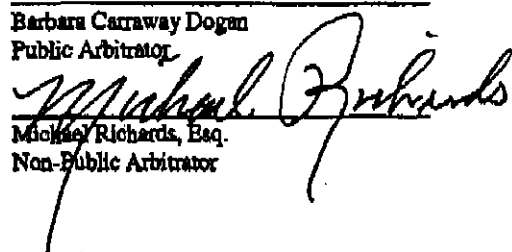
Concurring Arbitrators' Signatures

Robert J. Warner, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Barbara Carraway Dogan
Public Arbitrator

Signature Date



Michael Richards, Esq.
Non-Public Arbitrator

1/31/06

Signature Date

Date of Service (For NASD Dispute Resolution office use only)