
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 04-06078

Bernice Chapman a/k/a Bunny Arbona,
Individually and as the Personal Representative
of The Estate of Clara Bruches
Paul Chapman

Name of the Respondent

Hearing Site: New Orleans, LA

Whitney Securities, Inc.

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Bernice Chapman a/k/a Bunny Arbona, Individually and as the Personal Representative of The Estate of Clara Bruches, and Paul Chapman, hereinafter collectively referred to as "Claimants": Nicholas P. Iavarone, Esq., Bellows & Bellows, P.C., East Alton, Illinois and Christopher N. Messina, Esq. and Tricia L. Legittino, Esq., SimmonsCooper LLC, East Alton, Illinois.

For Whitney Securities, Inc., hereinafter referred to as "Respondent": Christopher G. Lazarini, Esq., Tate, Lazarini & Beall, PLC, Memphis, Tennessee.

CASE INFORMATION

Statement of Claim filed on or about: August 26, 2004.

Claimants signed the Uniform Submission Agreement: August 23, 2004.

Statement of Answer filed by Respondent on or about: November 9, 2004.

Respondent signed the Uniform Submission Agreement: October 11, 2004.

Amended Answer filed by Respondent on or about: November 10, 2004.

Motion to Dismiss filed by Respondent on or about: June 3, 2005.

Motion to Strike Respondent's Motion to Dismiss filed by Claimants on or about: June 8, 2005.

Reply to Claimants' Motion to Strike filed by Respondent on or about: June 16, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; breach of contract; violation of the Securities Exchange Act; Violations of the Mississippi Securities Act; gross incompetence or fraudulent inducement; lack of supervisory intervention; and, unsuitable concentration. The causes of action relate to Claimants' investments in unspecified Class B shares of growth and technology oriented mutual funds.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In addition, Respondent asserted a Motion to Dismiss on the following bases: Respondent is not responsible for the market decline or its impact on Claimants' investments; there exists no private right of action for alleged violations of industry rules; the claims are barred by the doctrines of ratification, waiver, estoppel, laches and assumption of the risk; the Mississippi Securities Act is not applicable; the claims are barred, in whole or in part, by the applicable statutes of limitations, the claims are barred, in whole or in part, by Claimants' comparative negligence, the doctrine of avoidable consequences and/or Claimants' failure to mitigate their losses; and, Claimants' damages were not proximately caused by any action or inaction of Respondent.

In response to Respondent's Motion to Dismiss, Claimants denied the assertions therein and asserted a Motion to Strike Respondent's Motion to Dismiss.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$450,000.00, an unspecified amount of punitive damages, costs, attorneys' fees, and prejudgment interest. In addition, as asserted in their Motion to Strike, Claimants requested that Respondent's Motion to Dismiss be struck.

Respondents requested that the undersigned arbitrators (the "Panel") dismiss the matter in its entirety, and award attorneys' fees and expenses.

OTHER ISSUES CONSIDERED AND DECIDED

On or about July 1, 2005, the Panel issued an Order denying Respondent's Motion to Dismiss.

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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimants' claims are denied in their entirety as the Panel found that Respondent acted properly and that Claimants' claims are without merit.

Any and all relief not specifically addressed herein, including Claimants' request for punitive damages, and the parties' respective requests for attorneys' fees, 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 = \$ 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 events giving rise to the dispute. Accordingly, Respondent Whitney Securities, Inc. is a party and a member firm.

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

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. 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	= \$ 450.00
Pre-hearing conference(s): May 6, 2005 1 session	

Two (2) Pre-hearing sessions with Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-hearing conferences: February 14, 2005 1 session	
July 1, 2005 1 session	

Eight (8) Hearing sessions with Panel @ \$1,125.00/session	= \$ 9,000.00
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Hearing Dates:	August 2, 2005	2 sessions
	August 3, 2005	3 sessions
	August 4, 2005	3 sessions

Total Forum Fees	= \$ 11,700.00
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The Panel has assessed \$5,850.00 of the forum fees jointly and severally to Claimants.

The Panel has assessed \$5,850.00 of the forum fees 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 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 during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 5,850.00
Total Fees	= \$ 6,150.00
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 4,725.00

Respondent is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 5,850.00
Total Fees	= \$11,050.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 5,850.00

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

ARBITRATION PANEL

Kurt D. Steiner, CPA	-	Public Arbitrator, Presiding Chairperson
Cynthia Lee Traina	-	Public Arbitrator
Robert J. Eitel	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/

08/05/05

Kurt D. Steiner, CPA
Public Arbitrator, Presiding Chairperson

Signature Date

/s/

08/08/05

Cynthia Lee Traina
Public Arbitrator

Signature Date

/s/

08/05/05

Robert J. Eitel
Non-Public Arbitrator

Signature Date

08/08/2005

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

NASD Dispute Resolution

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Kurt D. Steiner, CPA

Public Arbitrator, Presiding Chairperson



Signature Date

Cynthia Lee Trains

Public Arbitrator

Signature Date

Robert J. Ethel

Non-Public Arbitrator

Signature Date

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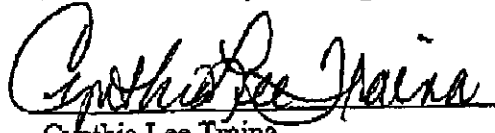
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Concurring Arbitrators' Signatures

Kurt D. Steiner, CPA
Public Arbitrator, Presiding Chairperson



Cynthia Lee Traina
Public Arbitrator

Signature Date



Signature Date

Robert J. Eitel
Non-Public Arbitrator

Signature Date

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FROM :

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Concurring Arbitrators' Signatures

Kurt D. Steiner, CPA
Public Arbitrator, Presiding Chairperson

Signature Date

Cynthia Lee Traina
Public Arbitrator

Signature Date



Robert J. Eitel
Non-Public Arbitrator

8-5-05

Signature Date

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