

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimants

Robert J. Harper and Clara Mae Harper

v.

04-07195
Denver, Colorado

Respondents

D.A. Davidson & Company, Inc.,
David Glen Jones, Nancy Jean Naus
Lori Jo Hubbard and Scott Alan Barstad

Nature of Dispute: Customers v. Member and Associated Persons

REPRESENTATION OF PARTIES

Robert J. Harper and Clara Mae Harper ("**Claimants**") were represented by Thomas D. Parker, Holton, Kansas.

D.A. Davidson & Company, Inc. ("**D.A. Davidson**"), David Glen Jones ("**Jones**"), Nancy Jean Naus ("**Naus**"), Lori Jo Hubbard ("**Hubbard**"), and Scott Alan Barstad ("**Barstad**"), hereinafter collectively referred to as "**Respondents**," were represented by William D. Nelson, Esq., of Rothgerber Johnson & Lyons, LLP, Denver, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about October 4, 2004. The Submission Agreement of Claimants was signed on or about October 4, 2004.

The Statement of Answer was filed jointly by Respondents, D.A. Davidson & Company, Inc., David Glen Jones, Nancy Jean Naus, Lori Jo Hubbard and Scott Alan Barstad, on or about March 25, 2005. The Submission Agreement of Respondent, D.A. Davidson & Company, Inc., was signed on or about February 17, 2005. The Submission Agreement of Respondent, David Glen Jones, was signed on or about February 23, 2005. The Submission Agreement of Respondent, Nancy Jean Naus, was signed on or about February 24, 2005. The Submission Agreement of Respondent, Lori Jo Hubbard, was signed on or about February 24, 2005. The Submission Agreement of Respondent, Scott Alan Barstad, was signed on or about April 15, 2005.

CASE SUMMARY

Claimants asserted causes of action including the following: breach of fiduciary duty, omissions of facts, misrepresentations, negligence, failure to supervise, suitability and unauthorized trading. The causes of action related to Claimants' allegation that Respondents changed Claimants' investment objectives from a strategy based on the safety of principle to another based on high income with risk, quality growth and speculative growth. Claimants asserted that this change was unsuitable given their financial status, age and level of market sophistication. Claimants also asserted that Respondents failed to disclose the inherent risks of investing in mutual funds, trading in long-term investments on a short-term basis and engaged in the unauthorized purchase, sale or exchange of investments in Claimants' account prior to their authorization.

Respondents denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimants' claims are barred, or in the alternative limited, under the doctrines of comparative fault and comparative negligence; Claimants' claims are barred by the doctrines of estoppel and waiver; Claimants' claims are barred by the applicable statute of limitation; Claimants ratified the transactions at issue in the Statement of Claim; Claimants had constructive knowledge of all relevant facts and investment risks and assumed any risks associated with their securities transactions; and Respondents, at all times, acted in good faith, exercised reasonable care in their dealings with Claimants and had reasonable grounds for believing Claimants' securities transactions were suitable and appropriate based upon Claimants' stated investment objectives.

RELIEF REQUESTED

Claimants requested an award of \$127,216.64 in compensatory damages and \$28,038.42 in punitive damages, plus costs, interest, return of commissions, and any other relief the panel deemed just and equitable.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, Respondents asked for an order directing that the CRD records of Respondents, Lori Jo Hubbard and David Glen Jones, be expunged of all references to this case.

OTHER ISSUES CONSIDERED & DECIDED

Claimants were not represented by counsel. At the arbitration hearing, Claimants' representative confirmed that Claimants did not wish to retain counsel to represent them at the hearing.

At the arbitration hearing, Respondents made an oral Motion to Dismiss after Claimants' case-in-chief. After deliberations, the panel granted Respondents' Motion to Dismiss in part and denied it in part. The panel dismissed all claims asserted against Respondent, Lori Jo Hubbard, with prejudice.

The panel also dismissed all remaining claims, with the exception of Claimants' claims for suitability and failure to supervise, which were heard by the panel.

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 originals 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. Claimants' claims, each and all, are denied and dismissed with prejudice in their entirety;
2. After presentation of the evidence on behalf of Respondents' request for expungement, the arbitration panel has made the following Finding of Fact.
 - That the notation placed on Respondent, Lori Jo Hubbard's CRD in relation to this arbitration claim is clearly erroneous and should be expunged from her permanent registration record.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent, Lori Jo Hubbard's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent, Lori Jo Hubbard, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents;
4. Respondent, David Glen Jones' request for expungement is denied in its entirety;
5. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief, by any party hereto, are denied with prejudice; and
6. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

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 = \$ 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. In this matter, the member firm is D.A. Davidson & Company, Inc.

Member surcharge = \$ 1,700.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$ 2,750.00

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:

One (1) Pre-hearing session with Panel x \$ 1,125.00 = \$ 1,125.00

Pre-hearing conference: 05/23/2005 1 session

Four (4) Hearing sessions with Panel x \$ 1,125.00 = \$ 4,500.00

Hearing Dates: 07/27/2005 2 sessions
07/28/2005 2 sessions

Total Forum Fees = \$ 5,625.00

The Arbitration Panel has assessed \$ 2,812.50 of the forum fees, jointly and severally, to Robert J. Harper and Clara Mae Harper.

The Arbitration Panel has assessed \$ 2,812.50 of the forum fees, jointly and severally, to D.A. Davidson & Company, Inc., David Glen Jones, Nancy Jean Naus, Lori Jo Hubbard and Scott Alan Barstad.

FEE SUMMARY

Claimants, Robert J. Harper and Clara Mae Harper, are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 2,812.50</u>
Total Fees	= \$ 3,112.50
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,687.50

Respondent, D.A. Davidson & Company, Inc., is liable for:

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

Respondents, D.A. Davidson & Company, Inc., David Glen Jones, Nancy Jean Naus, Lori Jo Hubbard and Scott Alan Barstad, are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$ 2,812.50</u>
Total Fees	= \$ 2,812.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,812.50

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

ARBITRATION PANEL

Gregory D. Thomas, Esq. - Public Arbitrator, Presiding Chair
Thomas L. Dueber - Public Arbitrator
Martha Jeanne Wilcoxson - Non-Public Arbitrator

Concurring Arbitrators:

Gregory D. Thomas, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Thomas L. Dueber
Public Arbitrator

Signature Date

Martha Jeanne Wilcoxson
Non-Public Arbitrator

Signature Date

8/8/05
Date of Service (NASD use only)

ARBITRATION PANEL

Gregory D. Thomas, Esq. - Public Arbitrator, Presiding Chair
Thomas L. Dueber - Public Arbitrator
Martha Jeanne Wilcoxson - Non-Public Arbitrator

Concurring Arbitrators:



Gregory D. Thomas, Esq.
Public Arbitrator, Presiding Chair

8-4-05

Signature Date

Thomas L. Dueber
Public Arbitrator

Signature Date

Martha Jeanne Wilcoxson
Non-Public Arbitrator

Signature Date

8/2/05

Date of Service (NASD use only)

ARBITRATION PANEL

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Thomas L. Dueber - Public Arbitrator
Martha Jeanne Wilcoxson - Non-Public Arbitrator

Concurring Arbitrators:

Gregory D. Thomas, Esq.
Public Arbitrator, Presiding Chair



Thomas L. Dueber
Public Arbitrator

Signature Date

8-5-05

Signature Date

Martha Jeanne Wilcoxson
Non-Public Arbitrator

Signature Date

8/2/05

Date of Service (NASD use only)

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Concurring Arbitrators:

Gregory D. Thomas, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Thomas L. Dueber
Public Arbitrator

Signature Date



Martha Jeanne Wilcoxson
Non-Public Arbitrator

8-4-05

Signature Date

8/8/05

Date of Service (NASD use only)