

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Names of Claimants
Mary Torres
Virginia Klinko

Case Number: 05-00347

Names of Respondents
Vestpoint Securities, Inc.
First Liberty Group, LLC
Charles Keith Byington
John F. Fahey
Clifford F. Bagnall

Hearing Site: Tampa, Florida

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

REPRESENTATION OF PARTIES

For Mary Torres ("Torres") and Virginia Klinko ("Klinko"), hereinafter collectively referred to as "Claimants": Nicholas J. Taldone, Esq., Law Offices of Nicholas J. Taldone, Clearwater, Florida.

For Clifford F. Bagnall ("Bagnall") and John F. Fahey ("Fahey"): Francis M. Curran, Esq., Akerman Senterfitt, Tampa, Florida.

For First Liberty Group, LLC, hereinafter referred to as "Respondent First Liberty": Guillermo A. Ruiz, Esq., Guillermo A. Ruiz, P.A., St. Petersburg, Florida.

For Charles Keith Byington, hereinafter referred to as "Respondent Byington": Francis M. Curran, Esq., Akerman Senterfitt, Tampa, Florida until May 11, 2006. Thereafter, Respondent Byington appeared *pro se*.

For Vestpoint Securities, hereinafter referred to as "Respondent Vestpoint": Francis M. Curran, Esq., Akerman Senterfitt, Tampa, Florida, until May 11, 2006. Thereafter, Respondent Vestpoint was represented by Charles Keith Byington, West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed on or about: January 15, 2005.

Claimants signed but did not date the Uniform Submission Agreements.

Amended Statement of Claim filed on or about: April 28, 2005.

Respondents Vestpoint and Byington's Answer and Affirmative Defenses to the Claimants' Amended Statement of Claim filed on or about: May 31, 2005.

Second Amended Statement of Claim filed on or about: July 11, 2005.

Respondents Vestpoint, Byington, Bagnall and Fahey's Answer and Affirmative

Defenses to Claimants' Second Amended Statement of Claim filed on or about: September 26, 2005.

Respondent First Liberty did not file a Statement of Answer.

Respondent Bagnall's Notice of Refusal to Agree to Arbitrate filed on or about: March 20, 2006.

Claimants' Response to Respondent Bagnall's Notice of Refusal to Agree to Arbitrate filed on or about: April 21, 2006.

Respondents Vestpoint, Byington, First Liberty, Bagnall and Fahey did not file executed Uniform Submission Agreements.

CASE SUMMARY

Claimants asserted the following causes of action: 1) breach of fiduciary duty; 2) unsuitability; 3) failure to supervise; 4) *respondeat superior*; 5) omission of facts; and, 6) violation of Florida Statute, Section 517.301 and NASD Rule 2210(d)(1). The causes of action relate to Claimants' investments in, including, but not limited to, Mutual Benefits Corporation viatical products.

Unless specifically admitted in their Answers, as amended, Respondents Vestpoint, Bagnall and Fahey denied the allegations made in the Statement of Claim, as amended, and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested: 1) compensatory damages in the amount of \$60,000.00; 2) rescission; 3) statutory interest at the prevailing rate; 4) costs, expenses, disbursements and expert witness fees; 5) reasonable attorneys' fees; 6) unspecified punitive damages; and, 7) such other relief as the undersigned arbitrators (the "Panel") deem just and proper.

Respondents Vestpoint, Bagnall and Fahey requested that the Panel dismiss the Statement of Claim, as amended, in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of the Claimants, the Panel determined that Respondent Vestpoint has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents Vestpoint, Bagnall, and Fahey did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code, and having answered the claim, are bound by the determination of the Panel on all issues submitted.

On or about October 31, 2005, NASD Dispute Resolution received Respondent First Liberty's Notice of Automatic Stay and Notice of Case under Chapter 11 of the United States Bankruptcy Code. Pursuant to the automatic stay, Claimants' claims asserted

against Respondent First Liberty are stayed. The Panel made no determination with respect to the claims asserted against Respondent First Liberty.

On or about May 17, 2006, the Panel issued an order stating that Respondent Bagnall is an officer of an NASD member firm and, as such, is subject to this arbitration proceeding.

On or about June 23, 2006, NASD Dispute Resolution received Respondent Byington's Notice of Bankruptcy and Suggestion of Stay. Pursuant to the automatic stay, Claimants' claims asserted against Respondent Byington are stayed. The Panel made no determination with respect to the claims asserted against Respondent Byington.

On or about July 11, 2006, NASD Dispute Resolution received Claimants' notice of settlement of all claims by and between Claimants and Respondents Fahey and Bagnall.

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. Respondent Vestpoint is liable for violation of Florida Statute, Section 517.301, and shall pay compensatory damages in the amount of \$43,747.82 to Claimant Torres and compensatory damages in the amount of \$20,522.38 to Claimant Klinko.
2. The issue of attorneys' fee is left to a court of competent jurisdiction.
3. Any and all claims for relief not specifically addressed herein, including Claimants' requests for interest, punitive damages and costs, 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	= \$ 225.00
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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 persons at the time of the events giving rise to the dispute. Accordingly, Respondent Vestpoint is a party and was a member firm at the time that the fees accrued.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00
Total Member Fees	= \$3,550.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

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 or each decision rendered on a discovery-related motion on the papers. 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) Decision on a discovery-related motion on the papers with One (1) arbitrator @ \$200.00	= \$200.00
Claimant submitted one (1) discovery-related motion	
One (1) Pre-hearing session with a single arbitrator @ \$450.00/session	= \$450.00
Pre-hearing conference: July 5, 2006 1 session	
One (1) Pre-hearing session with Panel @ \$750.00/session	= \$750.00
Pre-hearing conference: October 17, 2005 1 session	

One (1) Hearing session @ \$750.00/session = \$750.00
Hearing Date: July 12, 2006 1 session

Total Forum Fees = \$2,150.00

The Panel has assessed the total forum fees in the amount of \$2,150.00 to Respondents Vestpoint, Fahey and Bagnall, jointly and severally.

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 during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

Filing Fee	= \$ 225.00
Total Fees	= \$ 225.00
Less payments	= \$ 225.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Vestpoint is solely liable for:

Member Fees	= \$3,550.00
Total Fees	= \$3,550.00
Less payments	= \$2,950.00
Balance Due NASD Dispute Resolution	= \$ 600.00

Respondents Vestpoint, Fahey and Bagnall are jointly and severally liable for:

Forum Fees	= \$2,150.00
Total Fees	= \$2,150.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$2,150.00

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

ARBITRATION PANEL

William J. Schifino, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Richard Howard Gregory	-	Public Arbitrator
Terry G. Cleaves	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
William J. Schifino, Jr., Esq.
Public Arbitrator, Presiding Chairperson

July 18, 2006
Signature Date

/s/
Richard Howard Gregory
Public Arbitrator

July 18, 2006
Signature Date

/s/
Terry G. Cleaves
Non-Public Arbitrator

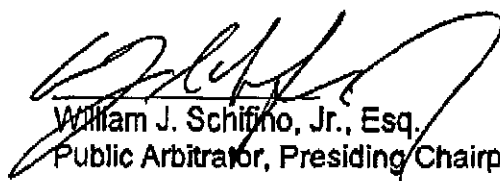
July 18, 2006
Signature Date

July 18, 2006
Date of Service (For NASD Dispute Resolution office use only)

Arbitration No. 05-00347

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Concurring Arbitrators' Signatures


William J. Schifano, Jr., Esq.
Public Arbitrator, Presiding Chairperson

7/18/06
Signature Date

Richard Howard Gregory
Public Arbitrator

Signature Date

Terry G. Cleaves
Non-Public Arbitrator

Signature Date

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

Concurring Arbitrators' Signatures

William J. Schifano, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


Richard Howard Gregory
Public Arbitrator

07/18/06
Signature Date

Terry G. Cleaves
Non-Public Arbitrator

Signature Date

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

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Concurring Arbitrators' Signatures

William J. Schifino, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Richard Howard Gregory
Public Arbitrator

Signature Date


Terry G. Cleaves
Non-Public Arbitrator


Signature Date

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