
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Jean P. Jenks

Case Number: 05-00373

Name of the Respondent
SII Investments, Inc.

Hearing Site: Tampa, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Jean P. Jenks, hereinafter referred to as "Claimant": Kalju Nekvasil, Esq., Goodman & Nekvasil, P.A., Clearwater, Florida.

For SII Investments, Inc., hereinafter referred to as "Respondent": Dale T. Golden, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, P.C., Tampa, Florida.

CASE INFORMATION

Statement of Claim filed on or about: January 20, 2005.

Claimant signed the Uniform Submission Agreement: January 21, 2005.

Statement of Answer filed by Respondent on or about: April 11, 2005.

Respondent signed the Uniform Submission Agreement: February 3, 2005.

Motion for Preliminary Injunction to Stay Arbitration Proceedings filed by Respondent on or about: May 2, 2005.

Response in Opposition to Motion to Stay Arbitration Proceedings filed by Claimant on or about: May 19, 2005.

Motion for Leave to File Third-Party Claim filed by Respondent on or about: June 3, 2005.

Response in Opposition to Motion for Leave to File Third-Party Claim filed by Claimant on or about: June 10, 2005.

Motion for Sanctions for Respondent's Failure to Comply with Discovery Order filed by Claimant on or about: September 9, 2005.

Response to Motion for Sanctions filed by Respondent on or about: September 14, 2005.

Motion to Limit Claimant to One Expert filed by Respondent on or about: October 4, 2005.

Response in Opposition to Motion to Limit Claimant to One Expert filed by Claimant on or about: October 6, 2005.

Motion to Preclude Claimant from Offering Affidavits as Evidence at Final Hearing filed by Respondent on or about: September 29, 2005.

Response in Opposition to Motion to Preclude Claimant from Offering Affidavits as Evidence at Final Hearing filed by Claimant on or about October 5, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; common law fraud; constructive fraud through breach of fiduciary duty; negligence and gross negligence; and, violations of federal securities laws. The causes of action relate to the purchase in Claimant's account of shares of ESAT Corporation.

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

RELIEF REQUESTED

Claimant requested actual and rescissionary damages in the amount of \$318,000.00, inclusive of surrender charges, benefit of the bargain damages, lost opportunity costs, model portfolio damages, plus pre-judgment interest, costs, attorneys' fees, non-economic damages, an unspecified amount of punitive damages, and such other relief as deemed proper and necessary by the Panel.

Respondent requested that the Panel dismiss/deny Claimant's claims, determine that Claimant and her counsel are in violation of Florida Statutes, Section 57.105, and award Respondent its costs associated with defending this matter.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent filed a complaint in the Federal District Court for the Middle District of Florida, Tampa Division (the "Court"), seeking a judicial determination on the issue of Claimant's right to mandate arbitration of this claim. Prior to a ruling by the Court, Respondent filed, for the Panel's consideration, a Motion for Preliminary Injunction to Stay Arbitration Proceedings, to which Claimant objected. On or about May 26, 2005, the Panel issued an Order denying Respondent's Motion for Preliminary Injunction to Stay Arbitration Proceedings. On or about May 26, 2005, Claimant filed a notice of the Court's Order dated May 26, 2005, which denied Respondent's Motion for Preliminary Injunction to Stay Arbitration Proceedings.

On or about July 5, 2005, the Panel issued an Order denying Respondent's Motion for Leave to Assert a Third-Party Claim.

Claimant filed a Motion for Sanctions in which Claimant asserted that Respondent failed to produce documents in accordance with the Panel's July 28, 2005 Order on discovery. In its response, Respondent stated that it complied with the Panel's Order as well as all obligations under NTM 99-90. On or about September 21, 2005, the Panel issued an Order that, among other things, deferred ruling on Claimant's Motion for Sanctions until the evidentiary hearing. At the conclusion of the evidentiary hearing, the Panel granted Claimant's Motion for Sanctions.

At the evidentiary hearing, the Panel denied as moot, Respondent's Motion to Limit Claimant to One Expert Witness, and Respondent's Motion to Preclude Claimant from Offering Affidavits as Evidence at Final Hearing.

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 and 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:

Respondent is liable on the claims of breach of fiduciary duty, negligence and gross negligence. Accordingly, Respondent shall pay to Claimant compensatory damages in the amount of \$406,940.65, inclusive of pre-judgment interest.

Respondent is liable and shall pay to Claimant costs in the amount of \$15,177.65, inclusive of the \$300.00 non-refundable claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Respondent is liable and shall pay to Claimant the amount of \$ 25,000.00 representing sanctions assessed by the Panel for Respondent's discovery violations.

All remaining claims are denied as moot.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages and attorneys' fees and Respondent's requests for attorneys' fees and costs, 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
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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 person at the time of the events giving rise to the dispute.

Accordingly, Respondent is a member firm and a party.

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:

Two (2) Pre-hearing sessions with the Panel at \$1,125.00/session	= \$2,250.00
Pre-hearing conferences: May 27, 2005	1 session
September 16, 2005	1 session
Eight (8) Hearing sessions @ \$1,125.00/session	= \$9,000.00
Hearing Dates: October 11, 2005	3 sessions
October 12, 2005	2 sessions
October 13, 2005	3 sessions
Total Forum Fees	= \$11,250.00

The Panel assessed the total forum fees of \$11,250.00 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 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 assessed during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	<u>= \$ 300.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$11,250.00
Total Fees	= \$16,450.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$11,250.00

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
William Hugh Nenninger	-	Public Arbitrator
Willis E. Adams, II	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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

October 20, 2005
Signature Date

/s/
William Hugh Nenninger
Public Arbitrator

October 19, 2005
Signature Date

/s/
Willis E. Adams, II
Non-Public Arbitrator

October 19, 2005
Signature Date

October 21, 2005
Date of Service (For NASD Dispute Resolution office use only)

Respondent is solely liable for:

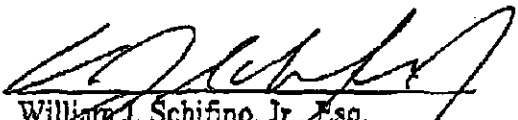
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Public Arbitrator, Presiding Chairperson

10-20-05
Signature Date

William Hugh Nenninger
Public Arbitrator

Signature Date

Willis E. Adams, II
Non-Public Arbitrator

Signature Date

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Public Arbitrator, Presiding Chairperson

Signature Date

William Hugh Nenninger
William Hugh Nenninger
Public Arbitrator

10/19/2005
Signature Date

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Non-Public Arbitrator

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Arbitration No. 05-00373
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Public Arbitrator, Presiding Chairperson

Signature Date

William Hugh Nenninger
Public Arbitrator

Signature Date



Willis E. Adams, II
Non-Public Arbitrator

10-19-05

Signature Date

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