

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Randall K. and Katherine Dinwiddie, Claimants v. McDonald Investments Inc., Respondent

Case Number: 05-01954

Hearing Site: Seattle, Washington

Nature of the Dispute: Customers v. Member

REPRESENTATION OF PARTIES

For Claimants Randall K. and Katherine Dinwiddie:

Nicholas P. Iavarone, Esq.
Simmons Cooper LLC
East Alton, Illinois

For Respondent McDonald Investments Inc.:

Joseph S. Simms, Esq.
Ulmer Berne, LLP
Cleveland, Ohio

CASE INFORMATION

Statement of Claim filed: April 14, 2005

Claimants Randall K. and Katherine Dinwiddie's Joint Uniform Submission Agreement signed:
March 25, 2005

Statement of Answer filed by Respondent McDonald Investments Inc.: August 5, 2005

Respondent McDonald Investments Inc.'s Uniform Submission Agreement signed: April 21,
2005

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty, breach of contract, violation of the Securities Exchange Act of 1934, negligence, violation of the Washington Securities Act, violation of the Washington Consumer Protection Act, and failure to supervise. Claimants' allegations involved the purchase of shares of technology and telecommunication stocks for their accounts.

Unless specifically admitted in its Answer, Respondent denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested \$184,000.00 in compensatory damages, unspecified punitive damages, treble damages, pre-judgment interest at the rate of 8%, and costs, including attorney's fees.

Respondent requested dismissal of Claimants' Statement of Claim in its entirety, assessment of forum fees to Claimants, and costs.

OTHER ISSUES CONSIDERED AND DECIDED

On March 27, 2006, Respondent filed a Motion to Dismiss. As Claimants' response to this motion had been due twenty days after service of this motion upon them, Claimants filed a Motion for Leave to File a Response to Respondent's Motion to Dismiss and Response to Respondent's Motion to Dismiss on April 26, 2006. On April 27, 2006, Respondent filed an opposition to Claimant's motion and a request that Claimants' response be stricken from the record. The parties and the Panel participated in a pre-hearing conference on May 1, 2006, during which the Panel informed the parties that it would consider and deem as filed Claimants' Response to Respondent's Motion to Dismiss and would permit Respondent to reply verbally to Claimants' Response to Respondent's Motion to Dismiss. After due deliberation, the Panel granted Respondent's Motion to Dismiss on the grounds that Claimants' claims are barred by applicable statutes of limitations.

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, Respondent's Motion to Dismiss, Claimants' Response to Respondent's Motion to Dismiss, and the parties arguments during the May 1, 2006 pre-hearing conference, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are dismissed with prejudice.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) Any and all relief not specifically addressed herein, including punitive and treble damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 375.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm McDonald Investments Inc. is a party, and the following fees are assessed:

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

Forum Fees and Assessments

The Panel assessed forum fees for each hearing session conducted or each decision rendered on a discovery-related dispute on the papers. A hearing 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) decisions on discovery-related disputes on the papers with (1) one arbitrator @ \$200.00	= \$ 400.00
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Claimants submitted two requests for subpoenas to be signed by the Chair. These requests were opposed by Respondent and were ultimately granted by the Chair.

Two (2) pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences: October 18, 2005 1 session	
May 1, 2006 1 session	
Total Forum Fees	= \$ 2,800.00

1. The Panel assessed \$1,400.00 of the forum fees jointly and severally to Claimants Randall K. and Katherine Dinwiddie.
2. The Panel assessed \$1,400.00 of the forum fees to Respondent McDonald Investments Inc.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 1,400.00
Total Fees	= \$ 1,775.00
Less payments	= \$(1,575.00)
Balance Due NASD Dispute Resolution	= \$ 200.00

2. Respondent McDonald Investments Inc. is charged with the following fees and costs:


Member Fees	= \$ 7,000.00
Forum Fees	= \$ 1,400.00
Total Fees	= \$ 8,400.00
Less payments	= \$(11,000.00)
Refund Due Respondent McDonald Investments Inc.	= \$ (2,600.00)

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

ARBITRATION PANEL

<i>Peter L. Sill</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>James B. Parsons</i>	-	<i>Public Arbitrator</i>
<i>Ronald E. Lorentsen</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures



Peter L. Sill
Chair, Public Arbitrator

May 1, 2006
Signature Date

James B. Parsons
Public Arbitrator

Signature Date

Ronald E. Lorentsen
Non-Public Arbitrator

Signature Date

5/2/06
Date of Service

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