

Award
NASD Dispute Resolution

Patsy R. Barbee vs. Aura Financial Services, Inc.

Case Number: 05-03402

Hearing Site: Charlotte, North Carolina

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

Claimant, Patsy R. Barbee ("Claimant"), was represented by Kalju Nekvasil, Esq., Goodman & Nekvasil, P.A., Clearwater, Florida.

Respondent, Aura Financial Services, Inc ("Respondent"), was represented by Leon B. Borstien, Esq., The Law Firm of Borstein & Sheinbaum, New York, New York.

CASE INFORMATION

Statement of Claim filed on July 1, 2005.

Claimant signed the Uniform Submission Agreement on June 30, 2005.

Statement of Answer filed by Respondent on September 26, 2005.

A representative of Respondent signed the Uniform Submission Agreement on August 15, 2005.

Respondent filed a Motion to Dismiss on October 12, 2005.

Claimant filed an Opposition to the Motion to Dismiss on April 19, 2006.

Respondent filed a Reply Brief to the Motion to Dismiss on May 8, 2006.

Claimant filed a Further Opposition to Respondent's Motion to Dismiss on May 15, 2006.

Respondent filed a Motion to Strike Claimant's Further Response in Opposition to Respondent's Motion to Dismiss on May 17, 2006.

Claimant filed its Opposition to Respondent's Motion to Strike on May 17, 2006.

CASE SUMMARY

Claimant asserted the following causes of action, among others: violations of Federal securities laws; violations of North Carolina Securities Act; violation of North Carolina Trade Practices Act; breach of contract; common law fraud; breach of fiduciary duty; and negligence and gross negligence including negligent supervision. The causes of action relate to the purchase of Waterstones, Ltd. Equipment Leases.

Unless specifically admitted in its Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimant's claims are barred under the applicable statute of limitations; Claimant has already filed suit in California based upon the same set of facts; contributory negligence; the Statement of Claim fails to allege the intent on the part of

Respondent necessary to sustain a fraud claim; and contributory negligence. Respondent's Motion to Dismiss was based in part on the argument that the investment or security involved in Claimant's claims was not sold to Claimant by a registered broker and that the NASD thus had no jurisdiction over Claimant's claims.

RELIEF REQUESTED

Claimant in her Statement of Claim requested compensatory damages in the amount of \$130,000.00, punitive damages, lost opportunity costs, model portfolio damages, interest, attorneys' fees, and costs.

Respondent requested that the Arbitration Panel (the "Panel") dismiss the Statement of Claim with prejudice.

OTHER ISSUES CONSIDERED AND DECIDED

By Order dated May 18, 2006 the Panel denied Respondent's Motion to Dismiss and Motion to Strike. At the hearing on the merits Respondent renewed its Motion to Dismiss. The Panel again denied the motion.

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 is liable to and shall pay to Claimant compensatory damages in the amount of \$185,325.00 plus interest on that amount at the rate of 8%. Interest shall accrue from July 20, 2006 and cease when the Award is paid in full;
2. Respondent shall pay to Claimant attorneys' fees in the amount of \$74,130.00 representing 40% of the compensatory damage award. Authority for the award of attorneys' fees derives from North Carolina General Statute Sec. 75-16.1;
3. Respondents shall pay to Claimant costs in the following amounts:

NASD filing fees	\$ 300.00
Service of Process	\$ 305.00
Hearing Exhibits	\$ 1,287.53
Costs (copies, telephone, etc.)	\$ 3,945.08
Expert Witness fees and expenses	\$ 6,850.00
<u>Kalju Nekvasil, Esq. expenses</u>	<u>\$ 1,519.76</u>
Total	\$14,207.37

4. The parties shall bear their respective costs, except as Fees are specifically addressed below; and
5. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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	= \$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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent is 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

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) Decision on discovery-related motions on the papers with one (1) arbitrator @ \$200.00	= \$ 200.00
Respondent submitted one (1) discovery-related motion	

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$ 900.00
Pre-hearing conferences: March 6, 2006	1 session
March 10, 2006	1 session

Two (2) Pre-hearing sessions with Panel @ \$1,125.00	= \$ 2,250.00
Pre-hearing conferences: December 12, 2005	1 session
May 18, 2006	1 session

Seven (7) Hearing sessions @ \$1,125.00	= \$ 7,875.00
Hearing Dates: July 17, 2006	3 sessions

	July 18, 2006	3 sessions	
	July 19, 2006	1 session	
<hr/> Total Forum Fees			= \$11,225.00

The Panel has assessed \$11,225.00 of the forum fees to Respondent.

FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 1,425.00
Refund Due Claimant	= \$ 1,125.00

2. Respondent is assessed and shall pay the following fees:

Member Fees	= \$ 5,200.00
Forum Fees	= \$11,225.00
Total Fees	= \$16,425.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$11,225.00

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

ARBITRATION PANEL

Thomas W. Steed, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Larry Ray Green, JD, CPA	-	Public Arbitrator, Panelist
Landrum H. Henderson, Jr.	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Thomas W. Steed, Jr.
Thomas W. Steed, Jr., Esq.
Public Arbitrator, Presiding Chairperson

July 31, 2006.
Signature Date

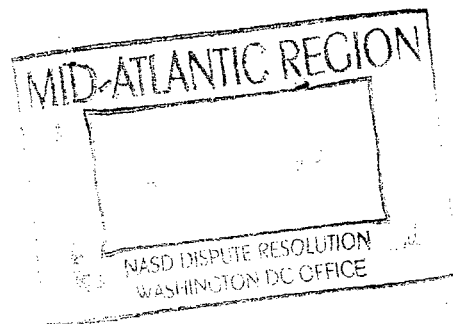
Larry Ray Green, JD, CPA
Public Arbitrator, Panelist

Signature Date

Landrum H. Henderson, Jr.
Non-Public Arbitrator, Panelist

Signature Date


8/4/06
Date of Service (For NASD Dispute Resolution office use only)



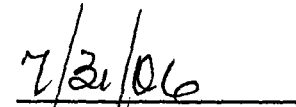
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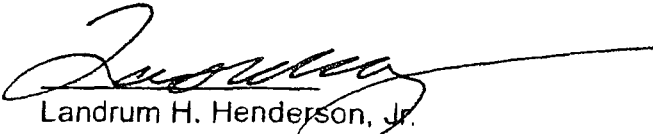
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Landrum H. Henderson, Jr.
Non-Public Arbitrator, Panelist

7/28/06
Signature Date

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