

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Darlene Darata, Claimant v. McClurg Capital Corporation, David G. McClurg, Raymond L. Lent and Joseph S. Niederkorn, Respondents

Case Number: 05-03783

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimant:

John W. Barnes
Attorney at Law
San Rafael, California

For Respondents McClurg Capital Corporation
and David G. McClurg:

Jonathan Polland
Barg Coffin Lewis & Trapp, LLP
San Francisco, California

For Respondents Raymond L. Lent
and Joseph S. Niederkorn:

Edward S. Zusman
Markun Zusman & Compton LLP
San Francisco, California

CASE INFORMATION

Statement of Claim filed: July 21, 2005

Claimant's Arbitration Brief filed: June 6, 2006

Claimant's Uniform Submission Agreements signed: July 19, 2005 and June 6, 2006

Joint Statement of Answer filed by Respondents McClurg Capital Corporation and David G. McClurg: October 4, 2005

Pre-Hearing Brief of Respondents McClurg Capital Corporation and David G. McClurg filed: June 6, 2006

Respondent McClurg Capital Corporation's Uniform Submission Agreement signed: September 27, 2005

Respondent David G. McClurg's Uniform Submission Agreement signed: September 27, 2005

Joint Statement of Answer filed by Respondents Raymond L. Lent and Joseph S. Niederkorn: October 5, 2005

Respondents Raymond L. Lent and Joseph S. Niederkorn's Arbitration Brief filed: June 6, 2006

Respondent Raymond L. Lent's Uniform Submission Agreement signed: October 5, 2005

Respondent Joseph S. Niederkorn's Uniform Submission Agreement signed: October 5, 2005

CASE SUMMARY

Claimant alleged the following claims with respect to the handling of her accounts: 1) Breach of Fiduciary Duty/Constructive Fraud; 2) Fraud and Misrepresentation; 3) Negligence; 4) Breach of Contract; and 5) Control Persons Liability - Constructive Fraud. Claimant's dispute involved investments in various securities, including but not limited to, investments in various mutual funds and investments in variable annuity policies, i.e., the Pacific Life policy, and the Golden American Life Insurance variable annuity.

Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents also asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages in the amount of \$663,301.00;
2. Such other damages as may be proven at the hearing to decide this matter;
3. Costs; and
4. Such other relief as the Panel may deem just and proper.

Respondents McClurg Capital Corporation and David G. McClurg requested:

1. That Claimant take nothing from McClurg Capital Corporation and Mr. McClurg by the Claim;
2. That McClurg Capital Corporation and Mr. McClurg receive their costs of participating in this arbitration including expert witness fees;
3. That the Panel order the expungement of this case from the CRD records of the individually named respondents; and
4. Such other and further relief as the Panel deems just and proper.

Respondents Raymond L. Lent and Joseph S. Niederkorn requested:

1. That the Claim be dismissed in its entirety;
2. That Respondents be awarded costs and attorneys' fees; and
3. That the Panel order the expungement of this case from the CRD records of the individually named respondents.

OTHER ISSUES CONSIDERED AND DECIDED

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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. All claims by Claimant are dismissed.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents David G. McClurg, Raymond L. Lent and Joseph S. Niederkorn's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondents David G. McClurg, Raymond L. Lent and Joseph S. Niederkorn 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.

Pursuant to Rule 2130 of the NASD Code of Arbitration Procedure, the Arbitration Panel has made the following affirmative findings of fact:

The claims and allegations are false.

3. Each party shall bear its own costs, including attorneys' fees.
4. All other relief not expressly granted 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, McClurg Capital Corporation 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 session conducted or each decision rendered on a discovery-related motion on the papers. 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:

(1) Pre-hearing conference session with a single arbitrator		
@ \$450.00/session		= \$450.00
Pre-hearing conference: April 21, 2006	1 session	
(1) Pre-hearing conference session with the Panel		
@ \$1,200.00/session		= \$1,200.00
Pre-hearing conference: November 30, 2005	1 session	

(14) Hearing sessions @ \$1,200.00/session = \$16,800.00

Hearing Dates:	June 12, 2006	2 sessions
	June 13, 2006	2 sessions
	June 14, 2006	2 sessions
	June 15, 2006	2 sessions
	September 6, 2006	2 sessions
	September 7, 2006	2 sessions
	September 8, 2006	2 sessions

Total Forum Fees = **\$18,450.00**

The Panel assessed \$9,225.00 in forum fees to Claimant.

The Panel assessed \$9,225.00 in forum fees jointly and severally to Respondents McClurg Capital Corporation, David G. McClurg, Raymond L. Lent and Joseph S. Niederkorn.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

Claimant requested additional copies of audio transcripts: = \$ 255.00

Respondent McClurg Capital Corporation requested additional copies of audio transcripts: = \$ 255.00

Fee Summary

1. Claimant Darlene Darata is charged with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 9,225.00
Administrative Costs	= \$ 255.00
<hr/> Total Fees	<hr/> = \$ 9,855.00
Less Payments	= \$(1,830.00)
<hr/> Balance Due NASD Dispute Resolution	<hr/> = \$ 8,025.00

2. Respondent McClurg Capital Corporation is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
Administrative Costs	= \$ 255.00
<u>Total Fees</u>	<u>= \$ 7,255.00</u>
<u>Less Payments</u>	<u>= \$(7,255.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents McClurg Capital Corporation, David G. McClurg, Raymond L. Lent and Joseph S. Niederkorn are charged jointly and severally with the following fees and costs:

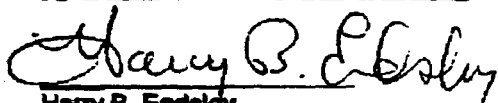
Forum Fees	= \$ 9,225.00
<u>Less Payments</u>	<u>= \$(0.00)</u>
Balance Due NASD Dispute Resolution	= \$ 9,225.00

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

ARBITRATION PANEL

Harry B. Endsley	-	Public Arbitrator, Presiding Chair
Paul F. Faberman	-	Public Arbitrator
Herbert L. Brown	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Harry B. Endsley
Chair, Public Arbitrator

Sept. 14, 2006

Signature Date

Paul F. Faberman
Public Arbitrator

Signature Date

Herbert L. Brown
Non-Public Arbitrator

Signature Date

9/15/06
Date of Service

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Paul F. Faberman	-	Public Arbitrator
Herbert L. Brown	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Harry B. Endsley
Chair, Public Arbitrator

Signature Date

Paul F. Faberman
Public Arbitrator

9/13/06
Signature Date

Herbert L. Brown
Non-Public Arbitrator

Signature Date

9/15/06
Date of Service

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Harry B. Endsley
Chair, Public Arbitrator

Signature Date

Paul F. Faberman
Public Arbitrator

Signature Date


Herbert L. Brown
Non-Public Arbitrator

9-15-06
Signature Date

9/15/06
Date of Service