

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimants

Thomas W. Derby and Brenda K. Derby

Case Number: 05-03949

Name of the Respondents

Linsco/Private Ledger Corp. and  
Ricky Eugene Johnson

Hearing Site: St. Louis, Missouri

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**NATURE OF THE DISPUTE**

Public Customers vs. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Claimants Thomas W. Derby and Brenda K. Derby, hereinafter collectively referred to as "Claimants": Steven W. Koslovsky, Esq., located in St. Louis, Missouri.

Respondents Linsco/Private Ledger Corp. ("LPL") and Ricky Eugene Johnson ("Johnson"), hereinafter collectively referred to as "Respondents": David J. Freniere, Esq., of Linsco/Private Ledger Corp., located in Boston, Massachusetts.

**CASE INFORMATION**

Statement of Claim filed: August 1, 2005.

Claimants signed the Uniform Submission Agreement: June 20, 2005.

Statement of Answer filed by Respondents on: September 22, 2005.

Respondent Johnson signed the Uniform Submission Agreement: September 24, 2005.

Respondent LPL did not file a signed Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action:

1. Intentional or negligent misrepresentation of material facts which induced the purchase of the securities at issue;
2. Omission to disclose material facts in order to make their representations not misleading; and
3. Failure to supervise Johnson on the part of LPL so as to avoid violation of

the rules, regulations and Notices of Members of the NASD and other regulatory bodies.

*These cause of action related to Respondents recommendation and Claimants' purchase of variable annuities.*

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. *The Claim fails to state a claim upon which relief can be granted;*
2. *The Claim is barred by the applicable statute(s) of limitations and the NASD six-year eligibility rule;*
3. *The Claim is barred by equity, including, but not limited to, the doctrines of laches, waiver, estoppel, and ratification;*
4. *The Claim is barred because of Claimants' acquiescence in the purported acts and/or omissions upon which their Claim is predicated;*
5. *The Claimants were aware of and assumed the risks associated with their investments;*
6. *At all times relevant hereto, the Respondents acted in good faith and at no time acted either intentionally, negligently, or recklessly with respect to any matter alleged in the Claim;*
7. *At all times relevant hereto, a reasonable basis existed for the investment recommendations made to Claimants, and all investments were suitable and consistent with the Claimants' objectives;*
8. *The Claimants had full knowledge of all material facts and did not rely on any act or omission alleged to have been made by the Respondent;*
9. *The Claimants are barred from recovering any damages which were caused by Claimants' own negligence or the negligence of other third parties;*
10. *The Claimants failed to mitigate their damages;*
11. *The Claimants' losses, if any, have resulted solely from economic and market forces, and not from any act or omission of Respondent;*
12. *LPL did not violate any state or federal rules of regulations, NASD Conduct Rules, or industry conduct standards;*
13. *The Respondents acted in good faith and did not directly or indirectly perform any acts whatsoever which could constitute a breach of any duty owed to Claimant;*
14. *The Claimants are barred from maintaining their Claim because they failed to plead fraud with the requisite level of particularity or specificity as required by law;*
15. *The Claimants are not entitled to attorneys' fees pursuant to statute of contract; and,*
16. *LPL did not fail to supervise Johnson.*

### **RELIEF REQUESTED**

Claimants Thomas W. Derby and Brenda K. Derby requested:

1. Rescission and tender to Respondents the variable annuities in return for the purchase price of \$210,000.00 plus interest at 9%;
2. If not rescission, damages constituting the difference between the value of the annuities as represented and their actual value;
3. Attorneys' fees, and,
4. Filing fees and the costs of arbitration.

Respondents Linsco/Private Ledger Corp. and Ricky Eugene Johnson requested:

1. The Panel dismiss or deny the Claimants' Statement of Claim in its entirety, including all requests for relief;
2. Expungement of Johnson's CRD record;
3. Reasonable attorneys' fees; and,
4. Arbitration costs and expenses.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent LPL did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, ~~having answered the claim, appeared and testified at the hearing, is bound by the~~ determination of the Panel on all issues submitted.

### **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. Respondents Linsco/Private Ledger Corp. and Ricky Eugene Johnson are jointly and severally liable for and shall pay to the Claimants, Thomas W. Derby and Brenda K. Derby, the sum \$45,000.00 as compensatory damages, plus interest at the rate of 9% per annum accruing from the thirty-first day after the award is served through the day the award is paid in full;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated in this decision; and,
3. Any and all relief not specifically addressed herein, including punitive damages, is 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 = \$ 300.00

### **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, Linsco/Private Ledger Corp. is a party and the following member fees are assessed:

Member surcharge = \$ 1,700.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 2,750.00

### **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) Pre-hearing session with a single arbitrator @ \$450.00 = \$ 450.00  
Pre-hearing conference: May 1, 2006 1 session

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One (1) Pre-hearing session with Panel @ \$1,200.00 = \$ 1,200.00  
Pre-hearing conference: December 16, 2005 1 session

Three (3) Hearing sessions @ \$1,200.00 = \$ 3,375.00  
Hearing Dates: June 19, 2006 2 sessions  
June 20, 2006 1 session

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Total Forum Fees = \$ 4,950.00

The Panel has assessed \$2,475.00 of the forum fees, jointly and severally, the Claimants, Thomas W. Derby and Brenda K. Derby. The remaining forum fees in the sum of \$2,475.00 are assessed, jointly and severally, to the Respondents, Linsco/Private Ledger Corp. and Ricky Eugene Johnson.

### **FEE SUMMARY**

Claimants, Thomas W. Derby and Brenda K. Derby, are jointly and severally liable for:

Initial Filing Fee = \$ 300.00  
Forum Fees = \$ 2,475.00  
Total Fees = \$ 2,775.00  
Less payments = \$ 1,425.00

Balance Due NASD Dispute Resolution = \$ 1,350.00

Respondent Linsco/Private Ledger Corp. is liable for:

Member Fees	= \$ 5,200.00
<u>Less Payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Linsco/Private Ledger Corp. and Ricky Eugene Johnson, are jointly and severally liable for:

Forum Fees	= \$ 2,475.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,475.00

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

**ARBITRATION PANEL**

Keith E. Mattern, Esq. - Public Arbitrator, Presiding Chairperson  
Robert W. Dempsey - Public Arbitrator  
Edward John Moloney - Non-Public Arbitrator

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**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Keith E. Mattern, Esq.  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Robert W. Dempsey  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Edward John Moloney  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

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

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Arbitration No. 05-03949  
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Balance Due NASD Dispute Resolution = \$ 1,350.00

Respondent Linsco/Private Ledger Corp. is liable for:

Member Fees = \$ 5,200.00  
Less Payments = \$ 5,200.00  
Balance Due NASD Dispute Resolution = \$ 0.00

Respondents, Linsco/Private Ledger Corp. and Ricky Eugene Johnson, are jointly and severally liable for:

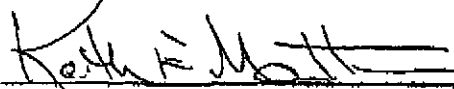
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Keith E. Mattern, Esq.  
Public Arbitrator, Presiding Chairperson

6-27-06  
Signature Date

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Robert W. Dempsey  
Public Arbitrator

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Signature Date

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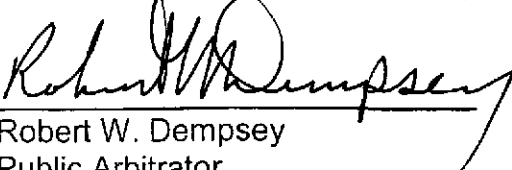
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