

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Fifth Third Securities, Inc. and Fifth Third Bancorp,
Claimants,

Case Number: 05-04369

v.

Hearing Site: Indianapolis, Indiana

Bradley K. Maikranz and Summit Financial Solutions, LLC
Respondents.

Nature of the Dispute: Member v. Associated Person

REPRESENTATION OF PARTIES

Fifth Third Securities, Inc. ("Fifth Third") and Fifth Third Bancorp. ("Fifth Bancorp"), hereinafter collectively referred to as "Claimants": Jeffrey P. Hinebaugh, Esq. of Dismore & Shohl, LLP, located in Cincinnati, Ohio.

Bradley K. Maikranz ("Maikranz") and Summit Financial Solutions, LLC ("Summit"), hereinafter collectively referred to as "Respondents": David A. Keen, Esq. with offices located in Indianapolis, Indiana.

CASE INFORMATION

Statement of Claim filed on or about: August 22, 2005

Fifth Third signed the Uniform Submission Agreement: August 16, 2005

First Amended Statement of Claim for Permanent Injunctive Relief: October 5, 2005

Claimants' Answer to Respondents' Counterclaims: February 13, 2006

Statement of Answer and Counterclaims filed by Respondents Maikranz and Summit on or about: January 10, 2006

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty, omission of facts, suitability, misrepresentations/non-disclosures, unauthorized trading, indemnification, misappropriation of trade secrets, conversion of proprietary and confidential information and tortious interference and indemnification. Claimants asserted that while employed at Fifth Third, Respondent Maikranz mismanaged an individual brokerage accounts for customer Kyle T. Westlie ("Westlie"), and that Respondents Maikranz and Summit misappropriated Fifth Third's proprietary and confidential customer information for their financial benefit.

Unless specifically admitted in their Answer, Respondents Maikranz and Summit denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

1. The Statement of Claim fails to state claims upon which relief can be granted.
2. Claimants cannot prove a breach of fiduciary duty claim as such claim is without factual or legal support.
3. Customer Westlie failed to object to any transaction upon the receipt of the individual trade confirmation slips and his monthly account statements. Claimants sent Westlie individual trade confirmations and monthly account statements, which listed each trade and transaction that took place in Westlie's accounts.
4. Westlie ratified the activity in his accounts by failing to object to the course of trading in his accounts. Westlie received individual trade confirmations and monthly account statements, which listed each trade and transaction that took place in Westlie's accounts.
5. The claims asserted by the Claimants are barred under the doctrine of estoppel.
6. Claimants' claims are barred by Westlie's assumption of the risks involved with his investing in options trading. Maikranz made full and complete disclosure to Westlie regarding the inherent risks of options trading.
7. The market conditions are responsible for the diminution in the market value of Westlie's holdings, not anything that Maikranz did or didn't do. To the extent that Westlie suffered any losses in his accounts, intervening market conditions caused such losses.
8. To the extent that Claimants allege a violation of the NASD and NYSE Rules, Claimants fail to state a viable claim for relief, as there is not private cause of action for violations of such rules or regulations.
9. Claimants' allegation that Maikranz acted negligently lacks merit. To the extent that Westlie suffered losses, such losses are proximately linked to Claimants' own wrongful, or negligent acts or omissions.
10. Claimants allege that Maikranz usurped proprietary information. However, Claimants admit that Maikranz was involuntarily terminated from his employment with Claimants. Claimants cannot present any documents showing the Maikranz agreed, as a condition of his employment, to forego his contacting certain customers in the event of Maikranz's involuntary termination with Claimants.
11. Claimants allege that Maikranz interfered with Claimants Business Relationships and Contracts. However, there is absolutely no factual and legal basis to support such a claim.
12. Claimants' claim is barred by the economic loss rule, which states that an agent who negligently fails to perform the duties owed to the agent's principal is not liable to a person whose economic interests are thereby harmed.
13. Claimants alleged that Maikranz misrepresented material facts and omitted material facts when Maikranz recommended certain securities transactions, and that these actions constitute common law fraud.
14. Claimants are barred from seeing indemnification from Maikranz.
15. Claimants are barred from seeking contribution from Maikranz for any of Claimants' losses.
16. Claimants' Statement of Claim is barred by the equitable doctrine of unclean hands.
17. Claimants are barred from recovery because they failed to mitigate their damages.

RELIEF REQUESTED

Claimants requested that this Panel:

- (a) permanently enjoin Respondents from possessing, using or distributing Fifth Third's confidential and proprietary customer information, including customer lists, account information, drivers license information and social security information;
- (b) permanently enjoin Maikranz from soliciting or contacting, directly or indirectly, any current or past (within the last two years) customers or clients of Fifth Third for a period of one year and from contacting any employees of Fifth Third during business hours;
- (c) compensatory and punitive damages in the amount of \$188,000.00, including interest;
- (d) for costs and attorney's fees; and
- (e) for such other and further relief as this Panel deems just and proper.

Respondents Maikranz and Summit requested for dismissal of all claims against them. In their counterclaim, Maikranz and Summit further requested for unspecified compensatory damages, punitive damages, costs and expenses.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Maikranz did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement 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.

By agreement of the parties, and pursuant to Claimants' request for permanent injunction, an Agreed Order was issued and executed by the parties and the Panel on or about January 4, 2006.

During the hearing, the Panel addressed Respondents' motion to disqualify Claimants' counsel because he is not licensed to practice in Indiana. The Panel heard arguments and reviewed the pleadings filed by both parties, and denied Respondents' motion.

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, Bradley K. Maikranz and Summit Financial Solutions, LLC are jointly and severally liable for and shall pay to Claimants, Fifth Third Securities, Inc. and Fifth Third Bancorp, the sum of \$88,001.00 as compensatory damages.
2. Respondents, Bradley K. Maikranz and Summit Financial Solutions, LLC, are jointly and severally liable for and shall pay to Claimants, Fifth Third Securities, Inc. and Fifth Third Bancorp, the sum of \$51,000.00 as attorney's fees. In deciding to award attorney's fees, the Panel considered §23-2-1-19 of the Indiana Code, and the pleadings filed by counsel, as well as arguments presented on behalf of the parties, and determined that authority existed for an award of attorney's fees to the Claimants.
3. The request for damages in the counterclaim filed by Respondents, Bradley K. Maikranz and Summit Financial Solutions, is denied.

4. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
5. Any and all relief not specifically addressed herein, including punitive damages, are 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	= \$1,000.00
Counter claim/Cross claim/Third Party Claim filing fee	= \$ 250.00

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, Fifth Third Securities, Inc. is a party and is assessed the following fees:

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

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.

1. Fifth Third Securities, Inc. and Fifth Third Bancorp are jointly assessed:

Injunctive relief surcharge	= \$2,500.00
Additional arbitrator honoraria	= \$ 100.00
2. Bradley K. Maikranz is assessed:

Additional arbitrator honoraria	= \$ 100.00
---------------------------------	-------------
3. Summit Financial Solutions, LLC:

	= \$ 100.00
--	-------------

Forum Fees and Assessments

The Panel has 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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Decision on discovery-related motion on the papers with one (1) arbitrator @ \$200.00	= \$ 200.00
Respondent submitted one (1) discovery-related motion	
One (1) Pre-hearing session with Panel @ \$1,125.00	= \$1,125.00

Pre-hearing conference:	January 6, 2006	1 session	
Five (5) Hearing sessions @ \$1,125.00			= \$5,625.00
Hearing Dates:	November 18, 2005	1 session	
	May 4, 2006	2 sessions	
	May 5, 2006	2 sessions	
<hr/> Total Forum Fees			= \$6,950.00

The Panel has assessed 100% of the total forum fees in the amount of \$6,950.00 jointly and severally to Respondents Bradley K. Maikranz and Summit Financial Solutions, Inc.

Fee Summary

- Claimants, Fifth Third Securities, Inc. and Fifth Third Bancorp, are jointly liable for:

Initial Filing Fee	= \$1,000.00
<u>Injunctive Relief Fees</u>	= \$2,600.00
Total Fees	= \$3,600.00
<u>Less payments</u>	= \$4,625.00
Refund Due from NASD Dispute Resolution	= \$1,025.00
- Claimant Fifth Third Securities, Inc. is solely liable for:

Member Fees	= \$5,200.00
<u>Less payments</u>	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00
- Respondents, Bradley K. Maikranz and Summit Financial Solutions, LLC, are jointly and severally liable for:

Counterclaim Filing Fee	= \$ 250.00
<u>Forum Fees</u>	= \$6,950.00
Total Fees	= \$7,200.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$7,200.00
- Respondent, Bradley K. Maikranz, is solely liable for:

Injunctive Relief Fees	= \$ 100.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 100.00
- Respondent, Summit Financial Solutions, LLC, is solely liable for:

Injunctive Relief Fees	= \$ 100.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 100.00

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

ARBITRATION PANEL

William H. Tobin, Esq.	-	Public Arbitrator, Presiding Chairperson
Joseph H. Claypool, Esq.	-	Public Arbitrator
Jeffrey Richard Chiappetta	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ William H. Tobin, Esq.
William H. Tobin, Esq.
Public Arbitrator, Presiding Chairperson

5/15/06
Signature Date

/s/ Joseph L. Claypool, Esq.
Joseph J. Claypool, Esq.
Public Arbitrator

5/15/06
Signature Date

/s/ Jeffrey Richard Chiappetta
Jeffrey Richard Chiappetta
Non-Public Arbitrator

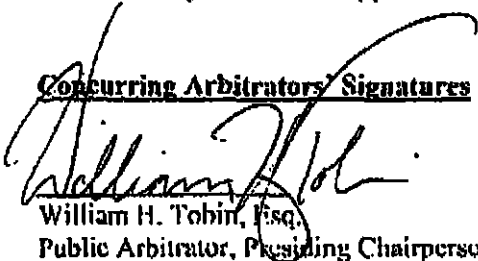
5/15/06
Signature Date

5/15/06
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

William H. Tobin, Esq.	-	Public Arbitrator, Presiding Chairperson
Joseph H. Claypool, Esq.	-	Public Arbitrator
Jeffrey Richard Chiappetta	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


William H. Tobin, Esq.
Public Arbitrator, Presiding Chairperson

5-15-2006
Signature Date

Joseph J. Claypool, Esq.
Public Arbitrator

Signature Date

Jeffrey Richard Chiappetta
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution use only)

ARBITRATORS

William H. Tobin, Esq.	-	Public Arbitrator, Presiding Chairperson
Joseph H. Claypool, Esq.	-	Public Arbitrator
Jeffrey Richard Chiappetta	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

William H. Tobin, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Joseph J. Claypool, Esq.
Public Arbitrator

5/15/06

Signature Date

Jeffrey Richard Chiappetta
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

William H. Tobin, Esq.	-	Public Arbitrator, Presiding Chairperson
Joseph H. Claypool, Esq.	-	Public Arbitrator
Jeffrey Richard Chiappetta	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

William H. Tobin, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Joseph J. Claypool, Esq.
Public Arbitrator

Signature Date


Jeffrey Richard Chiappetta
Non-Public Arbitrator

5-15-06
Signature Date

Date of Service (For NASD Dispute Resolution use only)