

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Jeffrey L. Buller and Jeffrey L. Buller Revocable Trust dtd 11/23/99, Claimants v. Smith
Hayes Financial Services Corporation, Respondent

Case Number: 05-06524

Hearing Site: Phoenix, Arizona

Nature of the Dispute: Customers v. Member

REPRESENTATION OF PARTIES

For Claimants:

Lawrence L. Klayman,
Esq.
Klayman & Toskes, P.A.
Boca Raton, Florida

For Respondent:

James M. Bausch, Esq.
Cline, Williams, Wright,
Johnson & Oldfather,
L.L.P.
Lincoln, Nebraska

CASE INFORMATION

Statement of Claim filed: December 20, 2005

Claimants' Joint Uniform Submission Agreement signed: December 16, 2005

Statement of Answer filed by Respondent: March 22, 2006

Respondent's Uniform Submission Agreement signed: March 13, 2006

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary and contractual duties, constructive fraud, failure to supervise and control, negligence, gross negligence, and violation of federal securities laws and NASD Conduct Rules. The causes of action relate to Respondent's alleged failure to advise Claimants of risk management strategies to protect Claimants' concentrated stock position in Level 3 Communications.

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

RELIEF REQUESTED

Claimants requested compensatory damages in excess of \$2,500,000.00, unspecified punitive damages, interest, and costs, including attorney's fees and forum fees.

Respondent requested dismissal of Claimant's Statement of Claim in its entirety, and costs, including attorney's fees and forum fees.

OTHER ISSUES CONSIDERED AND DECIDED

On March 22, 2006, Respondent filed a Motion to Dismiss and Request for Prompt Hearing. On June 27, 2006, Respondent also filed a Brief in Support of Motion to Dismiss. On July 25, 2006, Claimants filed an Opposition and Motion to Strike Respondent's Motion to Dismiss. On August 9, 2006, Respondent filed a Reply Brief in Support of Motion to Dismiss and in Opposition to Claimants' Motion to Strike.

On or about September 6, 2006, a pre-hearing conference was held attended by the panel and the parties to discuss the Motion to Dismiss. After due deliberation in an executive session, the Panel granted the motion on the ground that the claims asserted in the Statement of Claim are barred by the applicable statutes of limitations. During the telephone conference, Respondent requested an award of attorney's fees and costs. The Panel requested that parties brief the panel in writing on Respondent's claim for Attorney's Fees and costs

On September 12, 2006, Respondent filed a Brief in Support of Respondent's Entitlement to Attorneys' Fees and Itemization of Costs. On that date, Claimants filed their Opposition to Respondent's Request for Attorney's Fees.

On October 3, 2006, in an executive session, the Panel considered Respondent's itemization of expenses and the Respondent's brief in support of Respondent's Request

for Attorney's Fees and Claimants' opposing memoranda. After due deliberation, the Panel granted Respondent's Request for attorney's fees and costs. The Panel based its decision to award attorney's fees and costs to Respondent on Arizona Rev. Statute Sec. 12-341.01 and Sec. 12-349 and on the following Arizona cases: Sanborn v. Brooker & Wake Property Management, Inc. 178 Ariz. 425, 430, 874 P2D 982, 987 (1994); Harris Reserve Life Ins. Co. 158 Ariz 380, 762 P2D 1334(1988) and, Altfillisch Constr. Co. v. Togerson Construction Corp. 120 Ariz 438, 440, 586 P2D 999,1001(1978).

The Panel 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 and Request for Costs including Attorneys Fees, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are denied in their entirety.
- 2) Claimants are jointly and severally liable to and shall pay Respondent the sum of \$4,000.00 as reimbursement for costs incurred in defending this arbitration claim.
- 3) Claimants are jointly and severally liable to and shall pay Respondent the sum of \$18,847.00 in attorney's fees, pursuant to Arizona Rev. Statute Sec. 12-341.01 and Sec 12-349.
- 4) Except as noted above, the parties shall bear their respective costs, including attorney's fees.
- 5) Any and all relief not specifically addressed herein, 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	= \$ 500.00
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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 Smith Hayes Financial Services Corp. is a party and the following fees are assessed:

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$5,000.00</u>
Total Member Fees	= \$8,550.00

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 last four (4) hours or less. Fees associated with these proceedings are:

(2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$2,400.00
Pre-hearing conferences:	
May 31, 2006	1 session
September 6, 2006	1 session

Total Forum Fees	\$2,400.00
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1. The Panel assessed \$2,400.00 of the forum fees jointly and severally to Claimants.

Fee Summary

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

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 2,400.00
Total Fees	= \$ 2,900.00
Less payments	= \$(1,700.00)
Balance Due NASD Dispute Resolution	= \$ 1,200.00

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


Member Fees	= \$ 8,550.00
Less payments	= \$(8,550.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

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

Willy Nordwind, Jr., Esq.	-	Public Arbitrator, Presiding Chair
Allan Levey	-	Public Arbitrator
Paul J. Robinson	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Willy Nordwind, Jr., Esq.
Chair, Public Arbitrator

October 11, 2006

Signature Date

Allan Levey
Public Arbitrator

Signature Date

Paul J. Robinson
Non-Public Arbitrator

Signature Date

10/12/06

Date of Service

ARBITRATION PANEL

Willy Nordwind, Jr., Esq.	-	Public Arbitrator, Presiding Chair
Allan Levey	-	Public Arbitrator
Paul J. Robinson	-	Non-Public Arbitrator

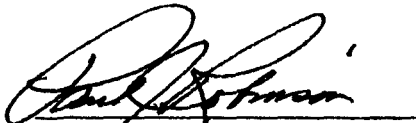
Concurring Arbitrators' Signatures

Willy Nordwind, Jr., Esq.
Chair, Public Arbitrator

Signature Date

Allan Levey
Public Arbitrator

Signature Date



Paul J. Robinson
Non-Public Arbitrator

10/11/06
Signature Date

10/12/06
Date of Service

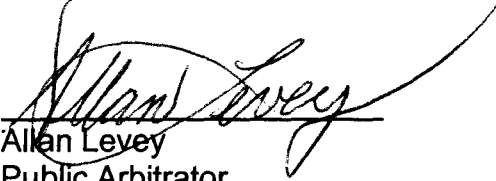
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Signature Date



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Public Arbitrator

10-12-2006
Signature Date

Paul J. Robinson
Non-Public Arbitrator

Signature Date

10-23-06
Date of Service