

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of Claimants

William M. Franey, Individually
and on behalf of Gail Rusk, as Power of Attorney

vs.

Case Number: 06-00212
Hearing Site: Louisville, Kentucky

Names of Respondents

J.J.B. Hilliard, W.L. Lyons, Inc.,
Lisa Schmidt, Cathy Perrin,
and Ricki Hobgood

NATURE OF THE DISPUTE

Customers vs. Member and Associated Persons

REPRESENTATION OF PARTIES

William M. Franey, Individually and on behalf of Gail Rusk, as Power of Attorney, hereinafter collectively referred to as "Claimants," were represented by David L. Yewell, Esq. Yewell Law, LLC, Owensboro, Kentucky.

J.J.B. Hilliard, W.L. Lyons, Inc. ("JJB"), Lisa Schmidt ("Schmidt"), Cathy Perrin ("Perrin"), and Ricki Hobgood ("Hobgood"), hereinafter collectively referred to as "Respondents," were represented by Brian A. Carlis, Esq., Stark & Stark, Lawrenceville, New Jersey.

CASE INFORMATION

The Statement of Claim was filed on or about December 13, 2005. The Submission Agreement of Claimants, William M. Franey, Individually and on behalf of Gail Rusk as Power of Attorney, was signed on or about January 11, 2006. A Limited Power of Attorney on behalf of Gail Rusk was submitted on or about February 13, 2006.

The Statement of Answer was filed jointly by Respondents, JJB, Schmidt, Perrin, and Hobgood, on or about April 18, 2006. The Submission Agreement of Respondent, J.J.B. Hilliard, W.L. Lyons, Inc., was signed on or about March 13, 2006. The Submission Agreement of Respondent, Lisa Schmidt, was signed on or about March 24, 2006. The Submission Agreement of Respondent, Cathy Perrin, was signed on or about March 23,

2006. The Submission Agreement of Respondent, Ricki Hobgood, was signed on or about March 21, 2006.

CASE SUMMARY

Claimants asserted the following causes of action: negligence; breach of fiduciary duty; and failure to execute. The causes of action related to Claimants' allegation that Respondent's failed to execute a buy order of 4,000 shares of D&K Healthcare Resources stock. Claimants further alleged that the Respondents failed to take responsibility for their error and as a result, Claimants failed to realize the profits that would have been made after the stocks increase in value.

Unless specifically admitted in their Answer, Respondents, JJB, Schmidt, Perrin, and Hobgood, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim failed to state a claim upon which relief can be granted; Claimants, through William Franey, directed, approved, and authorized the transaction at issue; Claimants, through William Franey's conduct, and under all circumstances of this case, are estopped from asserting any claims with respect to the transactions at issue; any duties owed by Respondents to Claimants were fully and faithfully carried out; Respondents are not liable to Claimants because Respondents had no duty, contractual or otherwise, to disclose or inform Claimants of any facts other than those which were disclosed, nor did Respondents breach any duty owed to Claimants, if such a duty existed; the actions of Respondents are not the proximate cause of Claimants' alleged damages; Respondents discharged their responsibilities in a professional and ethical manner and all of their actions were well within the parameters of accepted brokerage procedures and all exchange and governmental regulations; and Claimants' claims are based on pure speculation and conjecture, which the law does not allow.

RELIEF REQUESTED

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$ 24,840.00
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

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, the evidence presented at the hearing, and the post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent, J.J.B. Hilliard, W.L. Lyons, Inc., is liable for and shall pay to Claimants, William M. Franey, Individually and on behalf of Gail Rusk as Power of Attorney, the sum of \$ 24,840.00 in compensatory damages;
- 2.) Respondent, J.J.B. Hilliard, W.L. Lyons, Inc., is liable for and shall pay to Claimants, William M. Franey, Individually and on behalf of Gail Rusk as Power of Attorney, the sum of \$ 12,439.73 in attorneys' fees pursuant to K.R.S § 417.045;
- 3.) Respondent, J.J.B. Hilliard, W.L. Lyons, Inc., is liable for and shall pay to Claimants, William M. Franey, Individually and on behalf of Gail Rusk as Power of Attorney, the sum of \$ 1,362.48 in costs;
- 4.) Claimants' claims asserted against Respondents, Lisa Schmidt, Cathy Perrin, and Ricki Hobgood, are denied and dismissed with prejudice in their entirety; and
- 5.) Any relief not specifically enumerated, including interest, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial Claim filing fee = \$ 125.00

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is J.J.B. Hilliard, W.L. Lyons, Inc.

Member surcharge = \$ 425.00

Forum Fees and Assessments

The Arbitrator has assessed forum fees for each hearing 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, including a pre-hearing conference with the arbitrator, that last four (4) hours or less. Fees associated with these proceedings are:

One (1) Decision on discovery-related motion on the papers
by one (1) arbitrator @ \$200.00 = \$ 200.00

Claimants submitted one (1) discovery-related motion – Motion for Pre-Hearing Information

Two (2) Pre-hearing sessions with a single arbitrator x \$ 450.00 = \$ 900.00
Pre-hearing conferences: August 1, 2006 1 session
December 19, 2006 1 session

Two (2) Hearing sessions x \$ 450.00 = \$ 900.00
Hearing Date: January 16, 2006 2 sessions

Total Forum Fees = \$ 2,000.00

The Arbitrator has assessed \$ 1,000.00 of the forum fees to William M. Franey, Individually and on behalf of Gail Rusk as Power of Attorney.

The Arbitrator has assessed \$ 1,000.00 of the forum fees to J.J.B. Hilliard, W.L. Lyons, Inc.

FEE SUMMARY

Claimants, William M. Franey, Individually and on behalf of Gail Rusk as Power of Attorney, are jointly and severally liable for:

Initial Filing Fee	= \$ 125.00
Forum Fees	= \$ 1,000.00
Total Fees	= \$ 1,125.00
Less payments	= \$ 575.00
Balance Due NASD Dispute Resolution	= \$ 550.00

Respondent, J.J.B. Hilliard, W.L. Lyons, Inc., is liable for:

Member Fees	= \$ 425.00
Forum Fees	= \$ 1,000.00
Total Fees	= \$ 1,425.00
Less payments	= \$ 425.00
Balance Due NASD Dispute Resolution	= \$ 1,000.00

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

ARBITRATOR

Hugh C. Durbin - Public Arbitrator, Presiding Chair

Arbitrator's Signature:

Hugh C. Durbin
Public Arbitrator, Presiding Chair

Signature Date

2/15/07
Date of Service (For NASD office use only)

Respondent, J.J.B. Hilliard, W.L. Lyons, Inc., is liable for:

Member Fees	= \$ 425.00
Forum Fees	= \$ 1,000.00
Total Fees	= \$ 1,425.00
Less payments	= \$ 425.00
Balance Due NASD Dispute Resolution	= \$ 1,000.00

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

ARBITRATOR

Hugh C. Durbin - Public Arbitrator, Presiding Chair

Arbitrator's Signature:

Hugh C. Durbin
Hugh C. Durbin
Public Arbitrator, Presiding Chair

14 Feb. 2007
Signature Date

2/15/07
Date of Service (For NASD office use only)