

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of Claimant

Carl R. Lippert

vs.

Case Number: 06-01436

Hearing Site: Pittsburgh, Pennsylvania

Names of Respondents

Woodbury Financial Services, Inc. and
Eric Daniel Kondrit

NATURE OF THE DISPUTE

Customer vs. Member and Associated Person

REPRESENTATION OF PARTIES

Carl R. Lippert ("Claimant") appeared pro se.

Woodbury Financial Services, Inc. ("Woodbury") was represented by Paul A. Fischer, Esq., Jorden Burt, LLP, Washington, D.C.

Eric Daniel Kondrit ("Kondrit") was represented by Barry R. Temkin, Esq., Fiedelman Garkinkel & Lesman, New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about March 21, 2006. The Submission Agreement of Claimant, Carl R. Lippert, was signed on or about March 17, 2006. On or about August 30, 2006, Claimant filed Rebuttals to both Respondent Woodbury's and Respondent Kondrit's Answers. On or about September 28, 2006, Claimant filed a Motion for Leave to Amend the Statement of Claim.

The Statement of Answer was filed by Respondent, Woodbury Financial Services, Inc., on or about June 30, 2006. The Submission Agreement of Respondent, Woodbury Financial Services, Inc., was signed on or about June 30, 2006. On or about October 9, 2006, Woodbury filed a Response to Claimant's Motion for Leave to Amend the Statement of Claim.

The Statement of Answer was filed by Respondent, Eric Daniel Kondrit, on or about June 30, 2006. The Submission Agreement of Respondent, Eric Daniel Kondrit, was signed on or about July 26, 2006. On or about October 12, 2006, Kondrit filed a Response to Claimant's Motion for Leave to Amend the Statement of Claim.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; breach of contract; failure to execute; and failure to transfer. The causes of action related to the recommendation and purchase of various unspecified securities. Claimant alleged that while managing his IRA account, Respondent Kondrit violated a commitment to sell any stock, which was declining in value before the stock reached an 8% loss. Claimant named Woodbury as a Respondent because Woodbury replied to Claimant's letter to Kondrit raising the claim.

Unless specifically admitted in its Answer, Respondent Woodbury denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Respondent Woodbury asserted that no stop loss instructions were transmitted to or placed with Respondent Woodbury and that Claimant failed to allege any misconduct or wrongdoing by Woodbury; the Statement of Claim failed to state a claim or cause of action upon which relief can be granted; Claimant's claims are barred by the doctrines of ratification, waiver, and estoppel; Claimant is not entitled to recover from Woodbury because Claimant's damages, if any were not caused by any act or omission of Woodbury, or in the alternative were caused by the acts or omissions of others for which Woodbury had no responsibility; Claimant failed to mitigate or otherwise avoid his damages, if any; any alleged acts, statements, representations, or omissions by persons or entities other than Woodbury that may have caused damage to Claimant, which Woodbury does not concede, were not authorized or ratified by Woodbury, and were not performed or given with actual, apparent, implied or ostensible authority; Claimant's claims are barred in whole or in part by Claimant's acts of contributory or comparative negligence; Woodbury is not liable for misconduct, if any, of Respondent Eric Kondrit on any basis of secondary liability; at all relevant times, Woodbury acted in good faith and did not directly or indirectly induce the claimed acts or omissions constituting the alleged causes of action; Woodbury denies that it breached any duty or obligation allegedly owed to Claimant; Claimant failed to allege any connection between Woodbury and the transactions at issue; and Woodbury is entitled to a setoff of any sum recovered by or awarded to Claimant from the other Respondent for the damages allegedly suffered by Claimant.

Unless specifically admitted in his Answer, Respondent Kondrit denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Respondent alleged that the 8% stop loss guide was removed at a quarterly portfolio meeting on April 13, 2004. Respondent Woodbury also asserted that Claimant ratified the transactions in his account and failed to timely object to the trades that allegedly violated any 8% loss rule; Claimant's losses, if any, were market losses that were not caused by the

him, and he should not be liable; the claims are barred by the legal defenses of laches and estoppel; Respondent Kondrit at all times acted in good faith; the claims are barred in whole or in part by the applicable statute of limitations and the NASD Code of Arbitration Procedure; if the Claimant contends that the investments were unsuitable or unauthorized, then the Claimant failed to exercise reasonable care and/or failed to reasonably rely upon Respondent Kondrit; the Claimant did not properly allege or state claims, or otherwise meet the legal requirements to assert the various causes of action set forth in the statement of claim; Claimant failed to timely notify Respondent Kondrit of complaints arising out of the account and, therefore, waived the purported claims and is estopped from asserting them; Claimant's claims are barred, in whole or in part, by the doctrine of comparative negligence; the statement of claim failed to state a claim for which relief may be granted; Claimant authorized and directed the execution of transactions in the accounts and thereby cannot assert the purported claims set forth in the Statement of Claim; Claimant assumed the risk of investing in the securities market; and there is no private cause of action for breach or violation of any rules or regulations of the NYSE, NASD, or any other self-regulatory organization.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$ 20,186.00
Interest	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondent Woodbury requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

Respondent Kondrit requested that the claims asserted against him be denied in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

After Respondents Kondrit and Woodbury had filed their Answers, the Claimant attempted to file a Rebuttal to each of those Answers. After the NASD informed the Claimant that he did not have a procedural right to file the Rebuttals, the Claimant filed a Motion to "Amend" (or Supplement) Claim so as to Respond to Respondent Kondrit's Answer, and a Motion to "Amend/Supplement" Claim so as to respond to Woodbury's Answer. Respondent Kondrit filed an Affidavit opposing the Claimant's Motion to Amend and Supplement and Respondent Woodbury filed a Statement in Opposition to Claimant's Motions to Amend.

During a telephonic conference on October 26, 2006, the parties agreed that the Arbitrator would decide this matter on the pleadings filed by the parties and without a hearing. The parties requested until November 17, 2006, to try and settle this matter. If that time passed without confirmation of settlement, the Arbitrator could then issue a ruling on the papers.

It was determined and ordered that the pleadings on which the matter would be decided would consist of the following (including, where applicable, the exhibits thereto):

- A. Claimant Lippert's Statement of Claim;
- B. Respondent Kondrit's Answer;
- C. Respondent Woodbury's Answer;
- D. Claimant Lippert's Response to Respondent Kondrit's Answer to Claim [as attached to Claimant Lippert's Motion to "Amend"(or supplement) Claim so as to respond to Respondent Kondrit's Answer to Statement of Claim as directed in NASD Letter dated September 13, 2006];
- E. Claimant Lippert's Response to Respondent Woodbury's Answer [as attached to Claimant Lippert's Motion to "Amend/Supplement" Claim so as to respond to Woodbury's Answer to Statement of Claim as directed in NASD Letter dated September 13, 2006];
- F. Affidavit of Eric Kondrit, dated October 12, 2006, filed in opposition to the Claimant's Motion to Amend the Pleadings.

The Arbitrator has made the following Finding of Fact:

The pleadings and exhibits support the Claimant's position that initially there was an 8% stop loss rule agreed upon by the Claimant and Respondent Kondrit. The issue in this matter is whether the Claimant and Respondent Kondrit agreed to later modify the 8% stop loss rule. Based on the evidence provided, including the contemporaneous notes of Respondent Kondrit in his activity log (Exhibit K to Respondent Kondrit's Answer), it appears to be more likely than not that the 8% stop loss rule was modified by the Claimant and Respondent Kondrit on April 13, 2004.

The transactions complained about by the Claimant occurred after the 8% stop loss rule was modified and are consistent with the stated purposes for modifying the rule – "to allow for extensions of stop loss or the addition of shares to complete an unfulfilled allocation."

Therefore, the Claimant's request for damages in the amount of \$20,186.00 is denied and the claim against Respondent Kondrit is dismissed.

The Claimant has failed to assert any facts or theory that could form a basis for liability by Respondent Woodbury in this matter. Therefore, the Claimant's request for damages in the amount of \$20,186.00 is denied

and the claim against Respondent Woodbury is dismissed.

Respondent Woodbury's request for attorney's fees and costs is denied.

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

- 1.) Claimant's claims, each and all, are hereby denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated 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 person at the time of the events giving rise to the dispute. In this matter, the member firm is Woodbury Financial Services, 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 lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator x \$450.00	= \$ 900.00
Pre-hearing conferences: September 25, 2006	1 session
October 26, 2006	1 session

<u>Award Issued on the Papers</u>	= \$ 300.00
<u>Total Forum Fees</u>	= \$1,200.00

The Arbitrator has assessed \$400.00 of the forum fees to Carl R. Lippert.

The Arbitrator has assessed \$400.00 of the forum fees to Woodbury Financial Services, Inc.

The Arbitrator has assessed \$400.00 of the forum fees to Eric Daniel Kondrit

FEE SUMMARY

Claimant, Carl R. Lippert, is liable for:

Initial Filing Fee	= \$ 125.00
<u>Forum Fees</u>	= \$ 400.00
<u>Total Fees</u>	= \$ 525.00
<u>Less payments</u>	= \$ 575.00
Refund Due Claimant	= \$ 50.00

Respondent, Woodbury Financial Services, Inc., is liable for:

Member Fees	= \$ 425.00
<u>Forum Fees</u>	= \$ 400.00
<u>Total Fees</u>	= \$ 825.00
<u>Less payments</u>	= \$ 425.00
Balance Due NASD Dispute Resolution	= \$ 400.00

Respondent, Eric Daniel Kondrit, is liable for:

<u>Forum Fees</u>	= \$ 400.00
<u>Total Fees</u>	= \$ 400.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 400.00

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

ARBITRATOR

Michael C. Hanzel - Public Arbitrator, Presiding Chair

Arbitrator's Signature:

/s/ Michael C. Hanzel
Michael C. Hanzel
Public Arbitrator, Presiding Chair

December 21, 2006
Signature Date

December 21, 2006
Date of Service (For NASD office use only)

ARBITRATOR

Michael C. Hanzel - Public Arbitrator, Presiding Chair

Arbitrator's Signature:

Arbitrator's Signature: Michael C. Hanzel

Michael C. Hanzel

Public Arbitrator, Presiding Chair

DECEMBER 21, 2006

Signature Date

Date of Service (For NASD office use only)