

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Joan and Randall Yearwood

Claimant(s)

and

NO. 88-01184

Private Ledger Financial Services, Inc.
and James H. Samuel

Respondent(s)

CASE SUMMARY

In a claim filed with the NASD on or about April 14, 1988, Claimants Joan and Randall Yearwood ("the Yearwoods") alleged that Respondents Private Ledger Financial Services ("Private Ledger") and James H. Samuel ("Samuel") misrepresented material facts including the inherent risk regarding the sale to the Yearwoods of five limited partnership investments. The partnerships which were purchased through Private Ledger and Samuel were Needco II-3, Calcutta Partners Ltd., Stratton Partners Ltd., Hilliard Properties Ltd. and Palm Place.

In its statement of answer filed with the NASD on or about June 23, 1988, Private Ledger generally denied the allegations of the claim and specifically denied that Samuel misrepresented the various investment products purchased by the Yearwoods. Private Ledger also asserted various affirmative defenses, including but not limited to, estoppel, waiver, laches, assumption of risk and that the claims were barred by the applicable statute of limitations. In a separate statement of answer filed with the NASD on or about June 29, 1988, Samuel also denied that he misrepresented any of the investment products purchased by the Yearwoods.

Samuel asserted a cross-claim against Private Ledger for indemnification. Private Ledger answered the cross-claim of Samuel and alleged that if Samuel was found liable for any damages to the Yearwoods, Samuel was acting expressly beyond the scope of his authority and Private Ledger was not responsible for any damages under the doctrine of respondent superior.

Private Ledger also cross-claimed for indemnity against Samuel for any damages recovered by the Yearwoods. Samuel denied any liability to Private Ledger on its crossclaim should the Yearwoods prevail on their claim.

RELIEF REQUESTED

The Yearwoods sought damages of \$124,452.00, plus interest and attorneys' fees. Private Ledger requested dismissal of the claim in its entirety, an award of its reasonable attorney's fees and assessment of costs to the Yearwoods. Additionally, Private Ledger sought indemnity from Samuel in the event the Yearwoods sustained any compensatory damages. Samuel also requested dismissal of the claim in its entirety, an award of attorney's fees and assessment of costs against the Yearwoods. Samuel also sought indemnity from Private Ledger in the event the Yearwoods sustained any compensatory damages.

OTHER ISSUES

Private Ledger filed a motion to dismiss the Yearwood's claim with the NASD Arbitration Department. The Yearwoods replied to the motion and Private Ledger responded to the reply. Each of these documents was received by the panel on August 23, 1989 and the documents were added to Arbitrators Exhibit No. 1. The panel heard evidence on this motion via testimony of the Yearwood's CPA.

After hearing testimony from the Yearwood's CPA, the panel determined that it would hear no proof on Palm Place feeling that the claim for damages on this security purchase was time barred by the applicable statute of limitations. Prior to the conclusion of testimony on August 23, 1989, the panel also determined that the claim for damages on Needco was time barred by the applicable statute of limitations.

At the continued hearing on July 30 and 31, 1990, the arbitrators heard evidence on the Yearwood's remaining claims for damages resulting from their purchase of Calcutta, Stratton and Hilliard.

On Wednesday, August 23, 1989, Monday, July 30, 1990 and Tuesday, July 31, 1990 in Nashville, Tennessee during a hearing lasting six (6) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on April 4, 1988 by Claimants Joan and Randall Yearwood, on June 24, 1988 by Jonathan A. Boynton on behalf of Respondent Private Ledger Financial Services, Inc. and on October 25, 1988 by Respondent James H. Samuel.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Private Ledger is liable for and shall pay to the Yearwoods, without interest, the sum of Eighteen Thousand Twelve Dollars and Fifty Cents (\$18,012.50);
2. The Yearwoods' claim asserted against Samuel shall be and is hereby denied and dismissed in its entirety, and therefore, Samuel's claim for indemnification asserted against Private Ledger is also dismissed in its entirety;

3. Private Ledger's crossclaim for indemnification asserted against Samuel shall be and is hereby denied and dismissed in its entirety;

4. The parties shall each bear their respective costs, expenses and attorney's fees incurred in this matter;

5. Pursuant to Section 30(b) of the Code of Arbitration Procedure, the NASD shall retain the \$100.00 postponement fee paid to the NASD by Private Ledger to obtain a postponement of a previously scheduled hearing date in this matter; and

6. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund the \$750.00 filing fee previously deposited with the NASD by the Yearwoods and Private Ledger is assessed \$4500.00 as forum fees. No forum fees are assessed against Samuel.

By the Panel

Date: 8/26/90

/S/ William J. Landers
William J. Landers, Esq.
Presiding Chair

Date: _____

/S/ _____
Guilford Dudley, Jr.

Date: _____

/S/ _____
Lawrence F. Wahl

3. Private Ledger's crossclaim for indemnification asserted against Samuel shall be and is hereby denied and dismissed in its entirety;

4. The parties shall each bear their respective costs, expenses and attorney's fees incurred in this matter;

5. Pursuant to Section 30(b) of the Code of Arbitration Procedure, the NASD shall retain the \$100.00 postponement fee paid to the NASD by Private Ledger to obtain a postponement of a previously scheduled hearing date in this matter; and

6. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund the \$750.00 filing fee previously deposited with the NASD by the Yearwoods and Private Ledger is assessed \$4500.00 as forum fees. No forum fees are assessed against Samuel.

By the Panel

Date: _____

/S/ _____
William J. Landers, Esq.
Presiding Chair

Date: 8/22/90

/S/ Guilford Dudley, Jr.
Guilford Dudley, Jr.

Date: _____

/S/ _____
Lawrence F. Wahl

3. Private Ledger's crossclaim for indemnification asserted against Samuel shall be and is hereby denied and dismissed in its entirety;

4. The parties shall each bear their respective costs, expenses and attorney's fees incurred in this matter;

5. Pursuant to Section 30(b) of the Code of Arbitration Procedure, the NASD shall retain the \$100.00 postponement fee paid to the NASD by Private Ledger to obtain a postponement of a previously scheduled hearing date in this matter; and

6. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund the \$750.00 filing fee previously deposited with the NASD by the Yearwoods and Private Ledger is assessed \$4500.00 as forum fees. No forum fees are assessed against Samuel.

By the Panel

Date: _____

/S/ _____
William J. Landers, Esq.
Presiding Chair

Date: _____

/S/ _____
Guilford Dudley, Jr.

Date: 8/24/90

/S/ Laurence F. Wahl
Laurence F. Wahl