

86012

NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Names of Claimants

Harold R. Barrentine  
Kaye V. Barrentine  
Burton B. Barmore, III

vs.

Case No.  
95-03365

Names of Respondents

Interstate/Johnson Lane  
George F. Claussen, III

REPRESENTATION

For Claimants Harold R. Barrentine ("H. Barrentine"), Kaye V. Barrentine ("K. Barrentine"), and Burton B. Barmore, III ("Barmore"), hereinafter collectively referred to as "Claimants," appeared Thomas Gallo, Esq. of the law firm Robins, Kaplan, Miller & Ciresi located in Atlanta, Georgia.

For Respondent Interstate/Johnson Lane ("Interstate") appeared Pamela P. Warnement, Esq., in-house counsel for Respondent Interstate located in Charlotte, North Carolina.

For Respondent George F. Claussen, III ("Claussen") appeared Louise B. Duffy, Esq. of the law firm Sutherland, Asbill & Brennan located in Atlanta, Georgia.

CASE INFORMATION

Claimants' Statement of Claim was filed on July 10, 1995. Claimants filed an Amended Statement of Claim on October 30, 1995. Claimant H. Barrentine's Submission Agreement was signed on June 6, 1995. Claimant K. Barrentine's Submission Agreement was signed on June 6, 1995. Claimant Barmore's Submission Agreement was signed on July 6, 1995.

Respondents filed a Joint Statement of Answer to the Amended Statement of Claim on November 27, 1995. Respondent Interstate's Submission Agreement was signed on November 27, 1995. Respondent Claussen's Submission Agreement was signed on October 27, 1995.

HEARING INFORMATION

Hearing Dates/Sessions:	January 21, 1997	-	Two Sessions
	January 22, 1997	-	Two Sessions
	January 23, 1997	-	One Session
	November 20, 1997	-	Two Sessions
	November 21, 1997	-	Two Sessions

The hearing was conducted at the offices of NASD Regulation, Inc. located in Atlanta, Georgia, with the exception of the sessions held on January 21, 1997, which were conducted at the Marriott Buckhead Courtyard Hotel located on Peachtree Road located in Atlanta, Georgia.

**CASE SUMMARY**

Claimants stated that in 1989 they opened new investment accounts with Respondent Interstate, and that Respondent Claussen was the account executive. Claimants also stated that they informed Respondent Claussen about their intentions of making low-risk investments. Claimants further stated that immediately after they opened their accounts with Respondent Interstate, Respondent Claussen began actively advising them to invest in speculative and unsuitable stocks including InterDigital Communications ("IDC"), Peer Review Analysis ("Peer"), and Sphinx Pharmaceutical Corp. ("Sphinx"). Claimants alleged that Respondent Claussen breached his fiduciary duties and contractual obligations, and engaged in common law, actual or constructive fraud by misrepresenting and omitting material facts, including that recommended investments were low-risk. Claimants also alleged that Respondents violated Section 12(a)(2) of the Georgia Securities Act, O.C.G.A. Section 10-5-12(a)(2). Claimants further alleged that Respondent Interstate did not maintain and implement a system to supervise the activities of Respondent Claussen.

Respondents maintained that Claimants were informed of the risks associated with the stocks they purchased, and that Claimants ratified the transactions when they failed to complain after receiving confirmations of the trades and monthly account statements. Respondents also maintained that Claimants made all of their own investment decisions; their accounts were not discretionary. Respondents denied any liability for the alleged losses sustained by Claimants, since Claimants made their investment decisions independently. Respondents also denied that they made any misrepresentations and/or omissions to Claimants; that Respondent Claussen directed and controlled Claimants' accounts; that Respondent Claussen's recommendations were unsuitable; that Respondent Claussen committed fraud; and that he churned or controlled Claimants' accounts.

**RELIEF REQUESTED**

Claimants requested:

1. Compensatory damages in an amount no less than \$200,000.00, plus prejudgment interest.
2. Punitive and exemplary damages, in a sum sufficient to punish Respondents and to deter future violations by others similarly situated.
3. Reasonable attorneys' fees and costs of this action.
4. Such other and further relief as is just and proper under the circumstances.

Respondents requested that the claims against them be dismissed.

**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. In either case, the parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

**AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant is awarded a total of \$2,000.00 in compensatory damages in accordance with paragraphs two and three.
2. Respondent Interstate be and hereby is liable and shall pay to Claimants H. Barrentine and K. Barrentine the sum of \$1,000.00 in compensatory damages.
3. Respondent Claussen be and hereby is liable and shall pay to Claimants H. Barrentine and K. Barrentine the sum of \$1,000.00 in compensatory damages.
3. Claimant Barmore's claims are hereby denied.
4. Each party shall bear its respective costs, including attorneys' fees.
5. All other requests for relief are hereby denied.

**FORUM FEES**

Pursuant to Rule 10332 of the *Code of Arbitration Procedure*, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$200.00 non-refundable filing fee previously submitted by Claimants, and have assessed the following forum fees:

9 Hearing Sessions x \$750.00	=	\$6,750.00
Total Forum Fees	=	\$6,750.00

The arbitrators have determined that the forum fees are to be split equally between the Claimants and Respondents.

1. Claimants be and hereby are liable and shall pay the sum of \$3,375.00, representing one-half of the total forum fees assessed. Claimants previously deposited \$750.00 with NASD Regulation, Inc., and, therefore, Claimants shall pay the balance of \$2,625.00.
2. Respondents be and hereby are liable and shall pay the sum of \$3,375.00, representing one-half of the total forum fees assessed.
3. Respondent Interstate be and hereby is liable and shall pay the sum of \$350.00 for the Member Surcharge. Respondent Interstate has submitted the sum of \$350.00, and, therefore, does not owe the Member Surcharge.
4. Respondent Claussen be and hereby is liable and shall pay the sum of \$750.00 for the postponement fee.

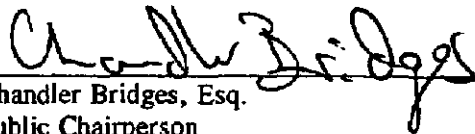
Fees are payable to NASD Regulation, Inc.

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Award 95-03365

Page Four

**CONCURRING ARBITRATORS' SIGNATURES**

  
Chandler Bridges, Esq.  
Public Chairperson

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James H. McAvoy, Sr.  
Public Panelist

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Thomas C. Moxley  
Industry Panelist

Date of Decision: January 15, 1998

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Award 95-03365  
Page Four

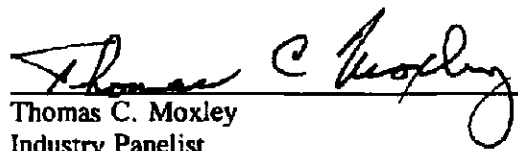
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Award 95-03365  
Page Four

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