

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

The Estate of Laura Neef,
by Allen Neef, Personal Representative,

Claimant,

No. 96-01297

Arnold Fiscilli, James Parrelly,
and Hamilton Investments,

Respondents.

REPRESENTATION OF PARTIES

Claimant The Estate of Laura Neef, by Allen Neef, Personal Representative ("Claimant") was represented by Walter L. Baumgardner, Esq. of Musilli, Baumgardner, Wagner & Parnell, P.C. located in St. Clair Shores, Michigan.

Respondents Arnold Fiscilli ("Fiscilli") and James Parrelly ("Parrelly") were represented by Gary M. Saretsky, Esq. of Hertz, Schram & Saretsky, P.C. located in Bloomfield Hills, Michigan.

Respondent Hamilton Investments ("Hamilton") was represented by Clarence L. Pozza, Jr., Esq. and Thomas R. Cox, Esq. of Miller, Canfield, Paddock and Stone, P.L.C. located in Detroit, Michigan.

CASE INFORMATION

The Statement of Claim was filed on or about March 26, 1996.

The Amended Statement of Claim was filed on or about June 25, 1996.

Claimant's Submission Agreement was signed on April 24, 1996.

The Statement of Answer of Respondent Hamilton was filed on or about August 28, 1996.

The Joint Statement of Answer of Respondents Fiscilli and Parrelly was filed on or about September 9, 1996.

Respondent Hamilton's Submission Agreement was signed on November 20, 1996.

Respondents Fiscilli and Parrelly did not file signed Submission Agreements.

HEARING INFORMATION

The hearing was held on April 5, 1998 for two (2) sessions in Southfield, Michigan.

CASE SUMMARY

Claimant contended that Respondents Fiscilli, James Parrelly, and Hamilton (collectively referred to as "Respondents") recommended and sold a large number of highly speculative and risky investments, consisting of stocks and mutual funds, which were unsuitable based on Laura Neef's conservative investment objectives. Claimant alleged that Respondents made at least forty-eight trades in twenty months in Laura Neef's account, which constitutes churning. Claimant contended that Respondents engaged in fraud and misrepresentation involving their failure to disclose the risks associated with the investments at issue. Claimant asserted that the personal representative discovered Respondents' wrongdoing after Laurie Neef died at age ninety-three. Claimant maintained that Respondents engaged in a continuum of negligent and/or intentional acts which violated the various federal and state securities laws, statutes, and the rules and regulations of the NASD and NYSE.

Respondents alleged that Laura Neef was a sophisticated, experienced and aggressive investor who understood and acknowledged the risks involved with the investments at issue. Respondents contended that they made suitable recommendations in accordance with Laura Neef's expressed investment objectives, risk tolerance and net worth, as well as her prior investment history. Respondents maintained that Laura Neef was fully informed of and accepted the market risks associated with each and every investment in her account. Respondents asserted that Laura Neef's estate wrongly complains about only those investments in her account that have turned out unprofitable, although Laura Neef herself never complained about any of the transactions at issue.

RELIEF REQUESTED

In the Amended Statement of Claim, Claimant requested an award consisting of: loss of principal, all commissions paid, margin interest, lost income, attorney fees, and exemplary damages.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice, plus an award of attorney fees and costs. At the hearing, Respondents Fiscilli and Parrelly requested that this matter be expunged from their CRD records.

OTHER ISSUES CONSIDERED & DECIDED

Respondents Fiscilli and Parrelly did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but are required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

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(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

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) That the Statement of Claim is hereby dismissed in its entirety with prejudice;
- (2) That all reference to this matter is ordered expunged from the Central Registration Depository of the National Association of Securities Dealers, Inc. for the records of Respondents Arnold Fiscilli and James Parrelly;
- (3) That other than forum fees which are specified below, the parties shall each bear their own costs, attorney fees and expenses incurred in this matter; and
- (4) That any relief not specifically enumerated is hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) hearing sessions x \$600 = \$1,200 in forum fees. Pursuant to §10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$250 and shall retain as forum fees the hearing session deposit in the amount of \$700 previously deposited by the Claimant.

Pursuant to §10332(c) of the Code, Claimant is liable for and shall pay forum fees in the amount of \$500 (total forum fees - hearing session deposit).

Pursuant to §10319 and §10332(c) of the Code, Respondent Hamilton is liable for and shall pay postponement fees in the amount of \$600.

Pursuant to §10319 and §10332(c) of the Code, Respondents Fiscilli and Parrelly are jointly liable for and shall pay postponement fees in the amount of \$600.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signature:

\s\ Jacqueline R. Fox, Esq.
Jacqueline R. Fox, Esq.
Chairperson
Public Arbitrator

May 7, 1998
Dated:

\s\ David E. Nims, III, Esq.
David E. Nims, III, Esq.
Panelist
Public Arbitrator

May 7, 1998
Dated:

\s\ Timothy D. Wasson
Timothy D. Wasson
Panelist
Industry Arbitrator

May 8, 1998
Dated:

For NASD Regulation use only:

Date award served on parties: May 12, 1998