

## AWARD

**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between

**Name of Claimant**

Estate of Vera I. Vitt, by James J. Anders, Personal Representative

96-04858

**Name of Respondents**

J.J.B. Hilliard, W.L. Lyons, Inc.  
Richard C. Hirschl

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### **REPRESENTATION**

For Claimant: Estate of Vera I. Vitt, by James J. Anders, Personal Representative ("Vitt") was represented by Isadore I. Lamke, Esq., located in Washington, Missouri.

For Respondents: J.J.B. Hilliard, W.L. Lyons, Inc. ("Hilliard") and Richard C. Hirschl ("Hirschl") were represented by Melanie R. King, Esq., of Gallop, Johnson & Neuman, L.C., located in St. Louis, Missouri.

### **CASE INFORMATION**

Statement of Claim filed: October 31, 1996

Claimant's Submission Agreement signed on: November 14, 1997 by James J. Anders, Personal Representative, Estate of Vera I Vitt.

Statement of Answer filed by Respondents on: March 10, 1997

Respondent J.J.B. Hilliard, W.L. Lyons' Submission Agreement signed on: March 5, 1997 by Kenneth L. Wagner, Senior Vice President, J.J.B. Hilliard, W.L. Lyons, Inc.

Respondent Hirschl's Submission Agreement signed on: February 5, 1997.

Memorandum of Law in Support of Motion to Dismiss filed by Respondents on: January 26, 1998.

Claimant's Response to Memorandum of Law in Support of Motion to Dismiss filed on: February 3, 1998.

### **HEARING INFORMATION**

Pre-Hearing Conference: June 11, 1997 with staff;  
September 17, 1997 before One Arbitrator.

Hearing Dates/Sessions: July 6, 1998 for Two Sessions;  
July 7, 1998 for Two Sessions;  
July 8, 1998 for Three Sessions; and  
July 9, 1998 for Two Sessions.

Hearing Location: St. Louis, Missouri.

### **CASE SUMMARY**

Claimant alleged that Respondent Hirschl, while employed by or acting as an agent for Respondent Hilliard, orchestrated the transfer of \$1,187,845.87 worth of stock from the account of Vitt, an 87 year old widow with failing eyesight and signs of senility, to the account of her personal nurse and care giver. Claimant specifically alleged that Hirschl not only failed to insure that Vitt understood the transactions and was making them willingly, but actively misrepresented and omitted facts in order to effect the transfer of the assets from Vitt's account. In addition, Hirschl failed to consult with Vitt's independent legal counsel or family and friends even though he was aware that the stock had been placed with Hilliard to conserve and protect Vitt's assets. It was further alleged that Hilliard failed to supervise the activities of Hirschl. Based upon these allegations, Claimant asserted claims for breach of fiduciary duty; fraud; misrepresentation; violation of NASD rules and regulations; and failure to supervise.

Respondents denied the material allegations of the statement of claim, alleging that Vitt was not senile and that Respondents were following her express instructions to transfer the stocks to her care giver's account in order to take care of his expenses and take care of him monetarily. In addition, Respondents had a legal duty to keep Vitt's transactions confidential and could not contact other legal and financial advisors unless instructed to do so by the client. Hirschl did not encourage Vitt to transfer the stocks, but was merely following her instructions. Respondents also asserted several affirmative defenses for the panel's review.

### **RELIEF REQUESTED**

Claimant requested entry of an award against Respondents for actual damages of \$1,324,009.66,

plus punitive damages of \$5,000,000.00, together with attorneys' fees and costs.

Respondents requested that the panel find that Claimant is entitled to no recovery from Respondents and award them attorneys' fees and costs as permissible by law.

### **OTHER ISSUES CONSIDERED & DECIDED**

On April 14, 1998, the panel determined that the Motion to Dismiss filed by Respondents was denied.

After the record was closed, the Respondent filed a request that the record be reopened to permit the filing of additional case law. After review of the request and the response, the panel determined that the motion would be 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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

### **AWARD**

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

1. Respondents J.J.B. Hilliard, W.L. Lyons, Inc. and Richard C. Hirsch are jointly and severally liable for and shall pay to the Claimant, Estate of Vera I Vitt, by James J. Anders, Personal Representative, the sum of \$552,221.00 as compensatory damages;
2. The request for punitive damages is dismissed and denied;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein;
4. Any relief not specifically awarded is hereby denied.

### **OTHER COSTS**

Pursuant to Rule 10333 of the Code, Respondent J.J.B. Hilliard, W.L. Lyons, Inc. has paid to NASD Regulation, Inc. the \$500.00 member surcharge previously invoiced. In addition, NASD Regulation, Inc. shall retain the \$1,500.00 postponement fee previously paid by Respondent J.J.B. Hilliard, W.L. Lyons, Inc.

### **FORUM FEES**

Pursuant to Rule 10332[c] of the Code of Arbitration Procedure, the following Forum Fees are assessed: One pre-hearing x \$300.00 = \$300.00; Nine hearing sessions x \$1,500.00 per session = \$13,500.00; Total forum fees = \$13,800.00.

The NASD Regulation, Inc. Office of Dispute Resolution shall retain the \$300.00 claim filing fee and, as forum fees, the \$1,500 hearing session deposit previously paid by the Claimant. Respondents J.J.B. Hilliard, W.L. Lyons, Inc. and Richard C. Hirschl are jointly and severally liable for and shall pay to the Claimant, Estate of Vera I Vitt, by James J. Anders, Personal Representative, the sum of \$1,800.00 as reimbursement of the above fees. In addition, Respondents J.J.B. Hilliard, W.L. Lyons, Inc. and Richard C. Hirschl are jointly and severally liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$12,300.00 as forum fees.

Concurring Arbitrators' Signatures  
Name

Date

/s/ Thomas A. Cipolla, Esq.  
Thomas A. Cipolla, Esq.  
Public Arbitrator/Chairperson

November 17, 1998

/s/ Stuart M. Schwartz, Esq.  
Stuart M. Schwartz, Esq.  
Public Arbitrator

November 17, 1998

/s/ Richard J. Zaegel  
Richard J. Zaegel  
Industry Arbitrator

November 17, 1998

For ODR Use Only/Date of Decision: November 18, 1998