

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Vanessa Barber

96-05149

Name of Respondents

Interstate/Johnson Lane  
Jason Heller

REPRESENTATION

Claimant Vanessa Barber ("Claimant") was represented by Cynthia V. McNeely, Payner & Spruill, Charlotte, NC.

Respondents Interstate Johnson Lane ("IJL") and Jason Heller ("Heller") were represented by Pamela P. Warnement, Esq., Interstate Johnson Lane, Charlotte, NC.

CASE INFORMATION

Claimant's Statement of Claim was filed November 18, 1996.

Claimant's Uniform Submission Agreement was signed October 25, 1996.

The Joint Statement of Answer and Counterclaim of IJL and Heller (collectively "Respondents") was filed March 20, 1997.

IJL's Uniform Submission Agreement was signed March 19, 1997.

Heller's Uniform Submission Agreement was signed March 19, 1997.

HEARING INFORMATION

Hearing Dates/Sessions: December 15, 1997/two sessions  
December 16, 1997/two sessions

Hearing Location: Executive Park Hotel  
Charlotte, NC

CASE SUMMARY

Claimant alleged that Respondents made unauthorized trades in her portfolio and invested the proceeds of those unauthorized transactions in unsuitable securities. Claimant alleged that when she retired from Lowe's Corporation she held approximately 6,818 shares of Lowe's stock and she opened an account with IJL, and Heller was her account representative. Claimant alleged that Heller recommended diversification of her portfolio and Claimant agreed to allow Heller to sell no more than one-half of her Lowe's shares but only if he got the price of \$36.00 per share. Claimant asserted that she was very specific about the number of shares and the price per share. Claimant contended that she left on a planned trip to Sitka,

Alaska and discovered that the day after she left, Heller sold one-half of her shares at \$35.125, which was contrary to the explicit directions she had given to him. Claimant alleged that when she was speaking with Respondent from Alaska, she informed Heller's secretary that he was not to sell any additional shares of her Lowe's stock. Claimant alleged that when she returned from Alaska, she discovered that Heller had sold an additional 3,409 shares without her authorization, and against explicit orders, at \$35.375. Claimant alleged that Respondents invested the proceeds of the sales of the Lowe's stock in various mutual funds using the B load concept and did not even consider giving discounts or breakpoints. Claimant alleged that at one point the Lowe's shares went up to \$43.00 per share and she lost all opportunity to make that profit.

Respondents denied the allegations as asserted in the Statement of Claim. Respondents maintained that Claimant was experiencing seller's remorse because she authorized the sale of her Lowe's shares and then the price went up. Respondents maintained that on December 28, 1995, Claimant deposited 247 shares of Lowe's stock into her account and those shares were sold at her instructions on March 5, 1996 at \$35.00 per share. The transfer of the balance of her 6,818 shares took some time and during that time Claimant and Heller discussed diversification of her holdings and Claimant informed Heller that she would not sell for less than \$34.00 per share. Respondents maintained that by the time Claimant's shares transferred, the share price had dropped to \$30.00 per share and Claimant was extremely upset. Respondents maintained that on May 2, 1996, Claimant placed an open order to sell 3,500 shares of Lowes at \$36.00 per share but then on May 15, 1996 Claimant placed an unsolicited order to sell 3,318 shares of Lowe's at \$35.50 per share, but then both the May 2 and the May 15 orders were canceled on May 16, 1996. Respondents maintained that Claimant entered day orders on May 16 and May 17, 1996 to sell her 3,409 shares at \$35.00, but the order was not filled, and Claimant received confirmation of each of these orders and never objected or indicated the order was incorrect.

Respondents maintained that on May 21, 1996 the price of Lowe's stock traded above \$35.00, and consistent with the understanding of Claimant's order, Respondents placed an order to sell one-half of Lowe's shares at \$35 1/8 and one-half at \$35 3/8 and invested the proceeds consistent with the asset allocation proposal which Heller had previously sent to Claimant, in class B mutual funds. Respondents maintained that Claimant had received prospectuses on the funds and that Claimant had reviewed the information with Heller. In addition, Respondent asserted that Claimant paid no commissions on the purchase of her mutual fund shares since she had selected class B shares which carry no front-end load. Based on Claimant's stated objectives, Respondents maintained that the purchase of class B shares with their declining rear-end load was appropriate and suitable for Claimant.

In the Counterclaim, Respondents alleged that the claim brought by Claimant is patently frivolous and that Heller now has a black mark on his CRD registration.

#### RELIEF REQUESTED

Claimant requested damages of \$39,827.00.

Respondent requested that the claim be dismissed in its entirety; that Respondent's counterclaim be granted in an amount to be determined by the panel and that all costs, including attorney's fees, be assessed to Claimant.

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**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 originals remain 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. That Respondents are jointly and severally liable to Claimant in the amount of \$30,000.00 plus eight percent (8%) interest from October 25, 1996 through January 31, 1998 or until paid; and
2. That each party shall bear its own costs and expenses, including attorney's fees with the exception of Forum Fees as specified below; and
3. That Respondents' Counterclaim is denied; and
4. That any and all relief not specifically addressed herein is denied.

**OTHER COSTS**

Pursuant to Rule 10333 of the Code of Arbitration Procedure ("Code"), Respondent IJL is assessed a member surcharge of \$200.00 which has been paid leaving no further member surcharge due.

**FORUM FEES**

Pursuant to Rule 10332(c) of the NASD Regulation Code, the following Forum Fees are assessed:

4 sessions x \$400.00 = \$1,600.00

Forum Fees are assessed to Claimant at \$800.00 and to Respondents, jointly and severally, at \$800.00.

Claimant is to receive credit for the \$400.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Claimant of \$400.00.

Respondents are to receive credit for the \$600.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Respondents of \$200.00.

Fees are payable to the National Association of Securities Dealers Regulation, Inc.

DATE

1/3/98

CONCURRING ARBITRATORS' SIGNATURES

Wayne Parker  
Wayne Parker, Presiding  
Public Arbitrator

David Brooks Westwater, Jr.  
David Brooks Westwater, Jr.  
Public Arbitrator

Philip D. Small  
Philip D. Small  
Industry Arbitrator

Date Decision Served by NASD Regulation:

January 15, 1998

DATE

CONCURRING ARBITRATORS' SIGNATURES

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Wayne Parker, Presiding  
Public Arbitrator

January 5, 1998

David Brooks Westwater, Jr.  
Public Arbitrator

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Philip D. Small  
Industry Arbitrator

Date Decision Served by NASD Regulation:

January 15, 1998

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