

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Mary Margaret Hanes

98-00178

Names of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
John Mark Wallach
Richard Lede
Marilyn O'Leary
Crown Financial Associates, Inc.

REPRESENTATION

For Claimant: Russell L. Forkey, Esq. of Russell L. Forkey, P.A., Ft. Lauderdale, FL.

For Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill"): Marianne Bretton-Granatoor, Esq., Vice-President & Senior Counsel of Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY.

For Respondents Crown Financial Associates, Inc. ("Crown") and Richard Lede ("Lede"): Ronald J. Zeller, Esq. of Zeller & Keihner, L.L.P., Palm Beach, FL. At the beginning of the final hearing in this matter on April 5, 1999, Mr. Zeller advised the Arbitration Panel that he had withdrawn as counsel for Crown and Lede.

For Respondent Marilyn O'Leary ("O'Leary"): Brian H. Reis, Esq. of Brian H. Reis & Associates, New York, NY.

Respondent John Mark Wallach ("Wallach") appeared pro se.

CASE INFORMATION

Statement of Claim filed on January 14, 1998.

Amended Statement of Claim filed on August 13, 1998.

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Claimant's Submission Agreement signed on January 9, 1998.

Statement of Answer filed by Respondent Merrill on May 18, 1998.

Statement of Answer to Amended Statement of Claim filed by Respondent Merrill on September 14, 1998.

Respondent Merrill's Submission Agreement signed on May 11, 1998.

Statement of Answer filed by Respondents Crown, Lede, and O'Leary on October 13, 1998.

Cross-Claim filed by Crown, Lede, and O'Leary against Merrill and Wallach on October 13, 1998.

Statement of Answer to Cross-Claim filed by Crown, Lede, and O'Leary filed by Respondent Merrill on November 3, 1998.

Cross-Claim filed by Merrill against Wallach on September 14, 1998.

Respondents Crown, Lede, O'Leary, and Wallach did not file executed Submission Agreements (see "Other Issues").

Respondent Wallach did not file a Statement of Answer (see "Other Issues").

HEARING INFORMATION

A telephonic pre-hearing conference which lasted one (1) session was conducted with the Arbitration Panel on October 26, 1998. A telephonic pre-hearing conference which lasted one (1) session was conducted with the Chairperson on January 22, 1999.

The evidentiary hearing which lasted one (1) session was conducted in Boca Raton, Florida on April 5, 1999.

CASE SUMMARY

Claimant sued Respondents Merrill, Crown, Wallach, O'Leary, and Lede for fraud, negligence, breach of fiduciary duty, breach of contract, and other matters relating to the handling of the Claimant's account at Crown Financial Associates, Incorporated.

Respondents Crown, Lede, and O'Leary denied each and every claim and further alleged the following: that Wallach was the financial consultant responsible for Claimant's accounts; that Wallach was responsible for any unauthorized or unsuitable transactions; that Crown was

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unaware that Wallach had engaged in any of the conduct alleged in the Amended Statement of Claim; that Crown, Lede, and O'Leary were unaware of any actions taken by Wallach which were beyond the scope of the broker/client relationship; that Crown and Lede maintained adequate supervision and control over their employees; that if Merrill had advised Crown, Lede, or O'Leary about the circumstances behind Wallach's termination from Merrill, Crown would not have hired Wallach; and, that Merrill misled Crown and Lede into hiring Wallach.

Respondent Merrill denied each and every allegation and further alleged the following: that Wallach became Claimant's financial consultant on or about March 1991; that Wallach left Merrill in November 1995 and Claimant transferred her account from Merrill to Wallach at Crown in April 1996; that there were no unsuitable or unauthorized transactions; that to the extent that Claimant states a claim for liability with respect to the handling of Claimant's Merrill accounts, Wallach bears full and complete responsibility for any losses alleged by Claimant; that there can be no claim against Merrill relating to the Claimant's "Consults" accounts because these are discretionary accounts managed by non-Merrill outside investment advisers; that Merrill maintained an adequate and reasonable system of supervision and control over its employees; and, that Merrill acted in good faith at all times and never induced any act constituting a violation or cause of action.

RELIEF REQUESTED

Claimant requested compensatory damages of \$400,000.00, punitive damages of \$100,000.00, interest, and reasonable costs.

Respondent Merrill requested that the Arbitration Panel: issue an order dismissing those portions of the Amended Statement of Claim which purport to state a claim against Merrill for liability with respect to transactions for Claimant's Consults accounts; or issue an award dismissing the Statement of Claim in its entirety; or issue an award directing that Wallach indemnify Merrill for any liability with respect to Claimant's claims for relief; and, grant Merrill such other, further and different relief as the Arbitration Panel may deem appropriate.

Respondent Merrill also requested that the Arbitration Panel issue an order dismissing the Cross-Claim against it in its entirety and granting Merrill such other further and different relief as the Arbitration Panel may deem appropriate.

Respondents Crown, Lede, and O'Leary requested that the Arbitration Panel issue an award: dismissing the Amended Statement of Claim in its entirety and awarding Crown, Lede, and O'Leary attorneys' fees and costs and such other and further relief as the Arbitration Panel deems just and equitable; and, to the extent that Crown, Lede, and O'Leary are found to be liable in this matter, Crown, Lede, and O'Leary request that the Arbitration Panel enter an order against Wallach and Merrill to completely indemnify Crown, Lede, and O'Leary for any liability with respect to Claimant's claims for relief.

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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 original remains on file with NASD Regulation, Inc.

The Arbitration Panel denied Merrill's motion to dismiss on September 11, 1998.

The Arbitration Panel denied Crown, Lede, and O'Leary's motion to dismiss on September 11, 1998.

Respondent O'Leary was voluntarily dismissed with prejudice on April 5, 1999 during the morning session of the final hearing.

Respondent Merrill was voluntarily dismissed with prejudice on April 12, 1999.

Respondents Crown, Lede, and Wallach failed to appear at the final hearing.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Wallach has been properly served with the Statement of Claim pursuant to rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code").

Respondent Wallach did not file with the NASD Regulation, Inc., Office of Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the Code and is bound by the determination of the Arbitration Panel on all issues submitted.

Respondents Crown and Lede did not file with the NASD Regulation, Inc., Office of Dispute Resolution, properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the Code and having answered the claim, are bound by the determination of the Arbitration Panel on all issues submitted.

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:

Respondents Crown, Lede, and Wallach are liable, jointly and severally, and shall pay to the Claimant the sum of \$473,266.11 as compensatory damages. Respondents Crown, Lede, and

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Wallach shall pay interest at the prevailing Florida Statutory rate on this amount from April 5, 1999 until paid.

Claimant's request for punitive damages is granted. Respondents Crown, Lede, and Wallach are liable, jointly and severally, and shall pay to the Claimant the sum of \$200,000.00 as punitive damages.

Respondents Crown, Lede, and Wallach are liable, jointly and severally, and shall pay to the Claimant the sum of \$200.00 as reimbursement of Claimant's filing fee.

Respondent Merrill's Cross-Claim against Wallach is dismissed with prejudice.

The Cross-Claim filed by Respondents Crown, Lede, and O'Leary against Merrill and Wallach is dismissed with prejudice.

OTHER FEES

Pursuant to Rule 10332 of the Code, the Claimant has paid to NASD Regulation, Inc. the claim filing fee of \$200.00.

Pursuant to Rule 10332 of the Code, Respondent Merrill has paid to NASD Regulation, Inc. the claim filing fee of \$500.00 for its cross-claim.

Pursuant to Rule 10332 of the Code, Respondents Crown, Lede, and O'Leary, jointly and severally, shall pay to NASD Regulation, Inc. the claim filing fee of \$500.00 for their cross-claim.

Pursuant to Rule 10333 of the Code, Respondent Merrill has paid to NASD Regulation, Inc. the member surcharge of \$1,500.00.

Pursuant to Rule 10333 of the Code, Respondent Crown shall pay to NASD Regulation, Inc. the member surcharge of \$1,500.00.

Pursuant to Rule 10333 of the Code, Respondent Merrill has paid to NASD Regulation, Inc. the pre-hearing process fee of \$600.00.

Pursuant to Rule 10333 of the Code, Respondent Crown shall pay to NASD Regulation, Inc. the pre-hearing process fee of \$600.00.

Pursuant to Rule 10333 of the Code, Respondent Merrill has paid to NASD Regulation, Inc. the hearing process fee of \$2,500.00.

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Pursuant to Rule 10333 of the Code, Respondent Crown shall pay to NASD Regulation, Inc. the hearing process fee of \$2,500.00.

FORUM FEES

Pursuant to Rule 10332 of the Code, the Arbitration Panel has assessed forum fees in the amount of \$1,800.00 (one (1) pre-hearing conference-Chairperson x \$300.00 plus one (1) pre-hearing conference-Panel x \$750.00 plus one (1) hearing session-Panel x \$750.00) as follows:

Respondents Crown, Lede, and Wallach are assessed, jointly and severally, the sum of \$1,800.00.

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

Concurring Arbitrators Signatures

Name

Public/Industry

/s/

Public

Lewis J. Levey, Esq.

/s/

Public

Michael Lau

/s/

Industry

Bernard A. D'Amour

Date of Decision: May 17, 1999

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Pursuant to Rule 10333 of the Code, Respondent Crown shall pay to NASD Regulation, Inc. the hearing process fee of \$2,500.00.

FORUM FEES

Pursuant to Rule 10332 of the Code, the Arbitration Panel has assessed forum fees in the amount of \$1,800.00 (one (1) pre-hearing conference-Chairperson x \$300.00 plus one (1) pre-hearing conference-Panel x \$750.00 plus one (1) hearing session-Panel x \$750.00) as follows:

Respondents Crown, Leds, and Wallach are assessed, jointly and severally, the sum of \$1,800.00.

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

Concurring Arbitrators' Signatures

Name

Public/Industry


Lewis J. Levey, Esq.

Public

Michael Lau

Public

Bernard A. D'Amour

Industry

Date of Decision: _____

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Pursuant to Rule 10333 of the Code, Respondent Crown shall pay to NASD Regulation, Inc. the hearing process fee of \$2,500.00.

FORUM FEES

Pursuant to Rule 10332 of the Code, the Arbitration Panel has assessed forum fees in the amount of \$1,800.00 (one (1) pre-hearing conference-Chairperson x \$300.00 plus one (1) pre-hearing conference-Panel x \$750.00 plus one (1) hearing session-Panel x \$750.00) as follows:

Respondents Crown, Lode, and Wallach are assessed, jointly and severally, the sum of \$1,800.00.

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

Concurring Arbitrators' Signatures
Name

Public/Industry

Lewis J. Levey, Esq.

Public

Michael Lan

Public

Bernard A. D'Amour

Industry

Date of Decision:

5/14/99

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Pursuant to Rule 10313 of the Code, Respondent Crown shall pay to NASD Regulation, Inc. the hearing process fee of \$2,500.00.

FORUM FEES

Pursuant to Rule 10312 of the Code, the Arbitration Panel has assessed forum fees in the amount of \$1,800.00 (one (1) pre-hearing conference-Chairperson x \$300.00 plus one (1) pre-hearing conference-Panel x \$750.00 plus one (1) hearing session-Panel x \$750.00) as follows:

Respondents Crown, Lede, and Wallach are assessed, jointly and severally, the sum of \$1,800.00.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

Lewis J. Levey, Esq.

Public

Michael Lau

Public

Bernard A. D'Amour

Industry

Date of Decision: _____