

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Taylor King, Individually and as
Executor of the Estate of Mary Lou King

Case No. 99-01673

Names of Respondents

Whale Securities Co., L.P
William G. Walters
Joseph E. Haick
Donald J. O'Connor
George P. Bisnoff

REPRESENTATION OF PARTIES

For Claimant Taylor King, Individually and as Executor of the Estate of Mary Lou King (the "decedent"), hereinafter referred to as "Claimant": Steven B. Caruso, Esq. of the law firm of Maddox, Koeller, Hargett & Caruso, New York, New York.

For Respondents Whale Securities Co., L.P. ("Whale"), William G. Walters ("Walters"), Joseph E. Haick ("Haick") and Donald J. O'Connor ("O'Connor"): David C. Richan, Esq. of the law firm of Tenzer, Greenblatt, LLP, New York, New York.

For Respondent George P. Bisnoff ("Bisnoff"): Joel S. Forman, Esq. of the law ~~firm~~ of Bondy & Schloss, LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: April 9, 1999.

Claimant Taylor King, Individually and as Executor of the Estate of Mary Lou King, signed the Uniform Submission Agreement: April 5, 1999.

Motions, Answer and Affirmative Defenses of Respondents Whale, Walters, Haick and O'Connor filed on ~~or~~ about: June 30, 1999.

Respondents Whale, Walters, Haick and O'Connor did not file executed Uniform Submission Agreements.

Statement of Answer filed by Respondent Bisnoff on or about: June 30, 1999.

Respondent Bisnoff signed the Uniform Submission Agreement: June 29, 1999.

CASE SUMMARY

Claimant alleged the following: Respondents, while not licensed to transact business in North Carolina, effectuated approximately three hundred twenty-one (321) improper, unsuitable and excessive transactions in the account of the decedent, resulting in losses of approximately \$385,000.00. Respondent Bisnoff improperly received, directly from the decedent, approximately \$95,000.00 in cash and the proceeds of her IRA account, in the approximate amount of \$137,000.00, which led to estate tax liabilities in the approximate amount of \$14,555.00. Claimant further asserted the following causes of action: violation of Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934; common law fraud, negligence, breach of contract, breach of fiduciary duty and respondeat superior; violation of NASD Rules 2110, 2120, 2310 and 3010; violation of Sections 78A-8(1), (2) and (3), 78A-36 and 78A-56(c) of the North Carolina Securities Act; violation of the North Carolina Deceptive Trade Practices Act; and violation of New York State General Business Law.

Respondents Whale, Walters, Haick and O'Connor denied the allegations asserted against them and alleged the following: Claimant had represented herself as a resident of Virginia, where Respondent Whale is licensed. Respondent Whale acted in good faith and relied upon Claimant's representations. Respondents Whale, Walters, Haick and O'Connor acted in good faith and had no reasonable grounds to suspect the alleged violations, causes of action, or facts which allegedly gave rise to Respondent Bisnoff's liability. Respondents Walters and O'Connor had no direct supervisory responsibility over Respondent Bisnoff and Claimant failed to connect Respondents Walters, Haick or O'Connor with the account activity at issue. Claimant was a relatively sophisticated investor, capable of monitoring, and who did monitor, her investments. Claimant had visited Respondent Whale's offices and represented to its Chairman that she was sophisticated and well aware of her account activity. In December, 1996, Claimant, expressing her satisfaction with her account, wrote that "[t]he level of service [Mr. Bisnoff] provides to me is extraordinary", and that she had had other accounts at other securities firms with Mr. Bisnoff.

Respondents Whale, Walters, Haick and O'Connor asserted the following defenses: Claimant's federal and state law claims are barred by statutes of limitations; Claimant's fiduciary duty claim is barred as she had a non-discretionary account and preapproved trades in her account; New York law bars arbitration awards for attorneys' fees absent an express agreement therefor in the agreement to arbitrate, bars punitive damage awards and creates no fiduciary duty for Respondents to Claimant. Furthermore, Claimant's claims are barred by Respondents' good faith actions, requisite degree of care, diligence and skill; Respondent Whale's appropriate supervision; Claimant's failure to state a claim, contributory negligence, lack of diligence, reckless disregard, and failure to mitigate damages; estoppel, waiver and ratification; and, lack of NASD provisions for private rights of recovery.

Respondent Bisnoff denied each and every allegation asserted against him in the Statement of Claim and alleged that Claimant was an experienced investor and established businesswoman who authorized every transaction in her account. Claimant was keenly aware of the status of her account, including losses, and was entirely satisfied with the investments and economic

results in the account. Respondent Bisnoff further asserted that the Statement of Claim failed to set forth any claim against Respondent Bisnoff upon which relief may be granted.

RELIEF REQUESTED

Claimant requested an award against the Respondents, jointly and severally, for compensatory damages of \$631,555.00, unspecified lost interest, lost appreciation, attorney's fees, reimbursement of costs, assessment of forum fees solely against Respondents, punitive/treble damages, reimbursement of filing fees and hearing deposits in the amount of \$1,700.00, and for such other and further relief as may be deemed just, proper and equitable under the facts and circumstances presented.

Respondents Whale, Walters, Haick and O'Connor requested that the claim be dismissed against them in its entirety, with prejudice, and an award of the costs incurred in defending the claim.

Respondent Bisnoff requested that the Statement of Claim be dismissed in its entirety against him, and that he be awarded his attorneys' fees, costs and disbursements incurred in defending the proceeding.

OTHER ISSUES CONSIDERED AND DECIDED

On February 4, 2000, the Arbitration Panel (the "Panel") denied Respondent Bisnoff's Motion to Adjourn (Postpone), and ruled that Respondent Bisnoff was permitted to submit a video deposition of his testimony, costs of the video deposition to be split equally among the parties, and that Respondent Bisnoff was permitted to appear telephonically at the evidentiary hearing. On February 11, 2000, the Panel denied Respondent Bisnoff's Motion to Reconsider his Motion to Adjourn.

Respondent Bisnoff failed to appear, even telephonically, at the evidentiary hearing in this matter. Upon review of the file and the representations made by/on behalf of the Claimants, the Panel determined that Respondent Bisnoff had been properly served with the Statement of Claim, answered the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents Whale, Walters, Haick and O'Connor 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 the Code and having answered the Statement of Claim, are bound by the determination of the Panel on all issues submitted.

At the evidentiary hearing the Panel granted the Claimant's oral motion to amend the pleadings to conform with the evidence.

The parties present at the hearing have agreed that the Award in this matter may be executed

in counterpart copies **or** that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Whale, Walters, Haick, O'Connor and Bisnoff are liable, jointly and severally, and shall pay to Claimant the sum of \$134,180.00. representing compensatory damages, prejudgment interest specifically denied.
2. Respondent Bisnoff is additionally liable individually and shall pay to Claimant the sum of \$224,017.00, representing compensatory damages, prejudgment interest specifically denied.
3. Claimant's request for an award of punitive damages is denied.
4. Claimant's request for an award of attorney's fees is denied.
5. Respondents Whale, Walters, Haick, O'Connor and Bisnoff are liable, jointly and severally, and shall pay to Claimant the sum of \$2,883.28, representing Claimant's costs
6. Respondents Whale, Walters, Haick, O'Connor and Bisnoff are liable, jointly and severally, and shall pay to Claimant the sum of \$237.00, representing witness costs.
7. Claimant's request for an award representing reimbursement of Claimant's filing fee is denied.
8. All other requests for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 500.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings **or** to the member firm that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm, Respondent Whale, is a party.

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$ 600.00

Hearing process fee = \$4,500.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$1,200.00	= \$2,400.00
Pre-hearing conferences: October 18, 1999 1 session	
February 4, 2000 1 session	
Five (5) Hearing sessions x \$1,200.00	= <u>\$6,000.00</u>
Hearing Dates: February 14, 2000 2 sessions	
February 15, 2000 2 sessions	
February 16, 2000 1 session	
Total Forum Fees	= \$8,400.00

The Panel has assessed the total forum fees of \$8,400.00 jointly and severally to Respondents Whale, Walters, Haick, O'Connor and Bisnoff.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$500.00
Total Fees	= \$500.00
<u>Less payments</u>	<u>= \$500.00</u>
Balance Due NASD Regulation, Inc	= \$ 0.00

Respondent Whale be and hereby is solely liable for:

Member Fees	= \$7,600.00
Total Fees	= \$7,600.00
<u>Less payments</u>	<u>= \$3,100.00</u>
Balance Due NASD Regulation, Inc.	= \$4,500.00

Respondents Whale, Walters, Haick, O'Connor and Bisnoff be and hereby are jointly and severally liable for:

Forum Fees	= \$8,400.00
Total Fees	= \$8,400.00
<u>Less Payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Regulation, Inc	= \$8,400.00

All balances are due and payable to NASD Regulation, Inc

Concurring Arbitrators' Signatures

John R. Angermayer
Public Arbitrator, Presiding Chair

Signature Date

/s/

Dorothy C. Bernholz, **Esq.**
Public Arbitrator


Signature Date

Diane Wells Pace
Industry Arbitrator

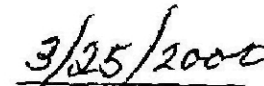
Signature Date

March 30, 2000
Date of Service (**For** NASD office use only)

Concurring Arbitrators' Signatures



John R. Angermayer
Public Arbitrator, Presiding Chair



Signature Date

Dorothy C. Bernholz, Esq.
Public Arbitrator

Signature Date

Diane Wells Pace
Industry Arbitrator


Signature Date

Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

John R. Angermayer
Public Arbitrator, Presiding Chair

Signature Date


Dorothy C. Bernholz, Esq.
Public Arbitrator

3/28/00
Signature Date

Diane Wells Pace
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)