

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Names of Claimants

Sherrie S. and John E. Rieber

Case No. 99-01818

Names of Respondents

Gregory L. Luken
Wiley Bros.-Aintree Capital, LLC

REPRESENTATION OF PARTIES

For Sherrie S. and John E. Rieber ("Rieber"), hereinafter collectively referred to as "Claimants": Steven J. Gard, Esq. of the law firm of Page, Gard, Smiley & Bishop, LLP, Atlanta, Georgia.

For Gregory L. Luken ("Luken") and Wiley Bros.-Aintree Capital, LLC ("Wiley"), hereinafter collectively referred to as "Respondents": Jo Lanier Meeks, Esq. of the law firm of Pursley, Howell, Lowery & Meeks, LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on or about: April 16, 1999.

Claimants signed the Uniform Submission Agreement: April 12, 1999.

Respondents' Answer to Statement of Claim filed on or about: July 8, 1999.

Respondent Luken signed the Uniform Submission Agreement: July 8, 1999.

Respondent Wiley signed the Uniform Submission Agreement: June 30, 1999.

CASE SUMMARY

Claimants alleged the following: Claimants maintained a joint account with Respondents. In March 1997, Claimants closed their joint account at Respondent Wiley and transferred all of the assets of that account into an individual Wiley account in the name of Sherrie Rieber. Claimants told Respondent Luken that the reason they were doing this was because Mr. Rieber had been threatened with litigation and expected to lose his job (Mr. Rieber in fact did lose his job in May, 1997). Claimants told Respondent Luken that the assets in Mrs. Rieber's account at Wiley represented virtually all of their net worth. In addition, at that time in 1997, Mrs. Rieber was also unemployed. Respondent Luken acknowledged that he

and Respondent Wiley would closely monitor Mrs. Rieber's account and would recommend only good quality companies to invest in.

Instead, Respondent Luken excessively traded Mrs. Rieber's account on a discretionary basis, and purchased large quantities of highly speculative stocks in her account on margin. In just a little more than a year and a half, Mrs. Rieber suffered losses in excess of \$66,600.00 as a result of Respondents' excessively trading her account and directing and effecting unsuitable trades in Mrs. Rieber's account.

Respondents denied any intentional wrongdoing or mishandling of Mrs. Rieber's individual securities account, formerly Mr. and Mrs. Rieber's joint trading account, and alleged the following: Claimants have a multi-year history of trading with Respondent Luken when he was affiliated with two other broker/dealers prior to his affiliation with Respondent Wiley. Throughout the relationship, Claimants maintained a discretionary account utilizing margin with a portion of the account trading aggressively in options as well as speculative stocks. A former executive with Shoneys, Inc., Mr. Rieber became president and CEO of Huddle House, Inc., a privately held corporation based in Atlanta, Georgia. Claimants represented they had a high net worth and were not relying on the account for living expenses. Claimants also had IRA accounts. When Claimants requested that their joint account be transferred to an account held solely by Mrs. Rieber, the account objectives and strategy remained the same. Claimants failed to disclose to Respondent Luken changes in their financial situation, affirmatively misrepresented their financial circumstances to Respondent Luken and did not advise him of their need for cash withdrawals from the account. During the time Claimants had an account at Wiley, and before Claimants began withdrawing cash from the account, the account was extremely profitable. Claimants are now attempting to improve their financial condition by recouping losses from Respondents without any legal basis.

RELIEF REQUESTED

Claimants requested the following:

1. Net out-of-pocket damages in the amount of \$66,601.15;
2. Margin interest in the amount of \$22,189.04 and commissions in the amount of \$35,477.89, to be awarded under the case of *Miley v. Oppenheimer & Co.*, 637 F.2d 318, 326 (5th Cir. 1981);
3. Reimbursement of Claimants' costs and expenses, including attorneys' fees, which may be awarded pursuant to the Georgia Securities Act;
4. Punitive damages for breach of fiduciary duty in an amount to be determined by the arbitrators; and,
5. For such other relief as the arbitration panel deemed just and proper.

Respondents requested that the Statement of Claim be dismissed, casting all costs, including reasonable attorneys' fees, against Claimants and for such further and other relief as may be deemed proper by the arbitration panel.

OTHER ISSUES CONSIDERED AND 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.

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:

Respondent Wiley is liable and shall pay to Claimants the sum of \$27,528.00 in compensatory damages.

Respondent Luken is liable and shall pay to Claimants the sum of \$27,528.00 in compensatory damages.

All other requests for relief, including Claimants' request for punitive damages, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$300.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$600.00
Hearing process fee	= \$2,500.00

Adjournment Fees

Adjournments requested during these proceedings:

No adjournments were requested during these proceedings.

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:

One Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: October 21, 1999	1 session

Four Hearing sessions x \$1,125.00	= \$ <u>4,500.00</u>
Hearing Dates: July 18, 2000	2 sessions
July 19, 2000	<u>2 sessions</u>
Total Forum Fees	= \$5,625.00

The Panel has assessed \$2,812.50 of the forum fees to Claimants, jointly and severally.
The Panel has assessed \$1,406.25 of the forum fees to Respondent Luken.
The Panel has assessed \$1,406.25 of the forum fees to Respondent Wiley.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

Fee Summary

Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$300.00
Forum Fees	= \$2,812.50
Total Fees	= \$3,112.50
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,687.50

Respondent Wiley be and hereby is solely liable for:

Member Fees	= \$4,600.00
Forum Fees	= \$1,406.25
Total Fees	= \$6,006.25
<u>Less payments</u>	<u>= \$4,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,406.25

Respondent Luken be and hereby is solely liable for:

Forum Fees	= \$1,406.25
Total Fees	= \$1,406.25
<u>Less payments</u>	<u>= \$0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,406.25

All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

_____/s/_____
William E. Beringer
Public Arbitrator, Presiding Chair

Signature Date

_____/s/_____
Ralph F. Neely
Public Arbitrator

Signature Date

_____/s/_____
Richard V. McGalliard
Industry Arbitrator

Signature Date

August 8, 2000
Date of Service (For NASD-DR office use only)

Concurring Arbitrators' Signatures

William E. Beringer
William E. Beringer
Public Arbitrator, Presiding Chair

7-31-00
Signature Date

Ralph F. Neely
Ralph F. Neely
Public Arbitrator

Signature Date

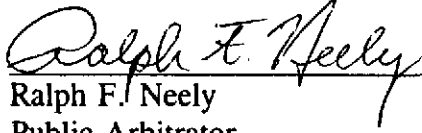
Richard V. McGalliard
Richard V. McGalliard
Industry Arbitrator

Signature Date

Date of Service (For NASD-DR office use only)

Concurring Arbitrators' Signatures

William E. Beringer
Public Arbitrator, Presiding Chair


Ralph F. Neely
Public Arbitrator

Signature Date

8-3-00
Signature Date

Richard V. McGalliard
Industry Arbitrator

Signature Date

Date of Service (For NASD-DR office use only)

Concurring Arbitrators' Signatures

William E. Beringer
Public Arbitrator, Presiding Chair

Signature Date

Ralph F. Neely
Public Arbitrator

Signature Date

Richard V. McGalliard
Richard V. McGalliard
Industry Arbitrator

7-31-00
Signature Date

Date of Service (For NASD-DR office use only)