

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Names of Claimants

Maxine Chappell
Ann S. Holman

Case No. 99-03094

Name of Respondent

Sunset Financial Services, Inc.

REPRESENTATION OF PARTIES

For Maxine Chappell ("Chappell") and Ann S. Holman ("Holman"), hereinafter collectively referred to as "Claimants": Thomas L. Krebs, Esq. of Ritchie & Rediker, L.L.C., Birmingham, Alabama.

For Sunset Financial Services, Inc. ("Sunset"), hereinafter referred to as "Respondent": John W. Shaw, Esq. of Berkowitz, Feldmiller, Stanton, Brandt, Williams & Stueve, LLP, Kansas City, Missouri.

CASE INFORMATION

Statement of Claim filed on or about: July 3, 1999.

Amendment to Statement of Claim filed on or about: August 16, 1999.

Second Amendment to Statement of Claim filed on or about: November 5, 1999.

Claimants signed the Uniform Submission Agreement: July 2, 1999.

Statement of Answer filed by Respondent Sunset on or about: September 7, 1999.

Answer to Second Amended Statement of Claim filed on or about: September 5, 2000.

Respondent signed the Uniform Submission Agreement: July 29, 1999.

CASE SUMMARY

Claimants asserted the following: Claimants were induced to leave the brokerage firm of IM&R and become affiliated with Respondent. The representations made to Claimants in Alabama and Missouri were of the existing capabilities of Respondent, which were known by Respondent to be false at the time they were made by Respondent.

In addition to out-of-pocket losses, the damages suffered by Claimants include lost commissions as a result of the following: Respondent's operational inabilities and numerous errors precluded Claimants from marketing and developing any new business; Respondent

failed to file appropriate transfers of Claimants' customers' mutual fund positions; and, Claimants had before them a great opportunity to obtain a significant portion of the U.S. Marine and U.S. Navy personnel mutual fund business in Yokosuka and Sasebo, Japan. Claimants' dollar cost averaging was destroyed when Respondent double debited the accounts of participants.

Respondent denied the allegations contained in the Statement of Claim and asserted the following: The registered representative agreements, which are governed by Missouri law, were not breached, but voluntarily terminated by Claimants. Further, Missouri law does not recognize fraud claims based on a contractual dispute, nor fraud claims based on representations of future success, nor does Missouri law recognize the cause of action of constructive fraud against a non-fiduciary. Moreover, Claimants did not reasonably rely to their detriment upon any material statement made by Respondent or any of its agents, representatives, or employees. The damages allegedly suffered by Claimants have no causal relationship with any act committed by Respondent or legally attributable to Respondent. The damages, if any, alleged to have been sustained by Claimants were caused, in whole or in part, by Claimants or by others acting beyond the control of Respondent.

Respondent asserted a counterclaim against Claimants for the outstanding balances Claimants owe to Respondent as a result of transaction fees, advanced balances, pay accounts, or subsidies in an amount in excess of \$10,000.00.

RELIEF REQUESTED

Claimants requested \$10,776.89 in out-of-pocket damages; \$20,000.00 in lost mutual fund trail commissions; and, \$600,000.00 in lost commissions as a result of the decline in Claimants' business, plus interest at the lawful rate, or such other relief as the Panel shall decide. Further, Claimants requested a dismissal of the counterclaim.

Respondent requested that the Panel dismiss all of Claimants' claims, and enter an award in favor of Respondent for \$11,063.94 with interest, and such other relief as the Panel deemed just.

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.

Respondents' motion for summary judgment as to the breach of contract claim is granted.

Respondents' motion for default judgment with respect to the counterclaim is denied.

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:

Claimants did not prove the merits of their claim. Therefore, Claimants' claims are denied in their entirety.

Respondents' counterclaim is denied in its entirety.

All other requests for relief not specifically addressed herein 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
Counterclaim filing fee	= \$750.00

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	= \$3,500.00

Adjournment Fees

Adjournments requested during these proceedings:

September 5 through 8, 2000 Hearing Dates, adjournment by Claimants	= \$1,125.00
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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 \$1,200.00	= \$1,200.00
Pre-hearing conference: January 12, 2000	1 session
Twelve Hearing sessions x \$1,200.00	= \$14,400.00
Hearing Dates: December 19, 2000	2 sessions
December 20, 2000	2 sessions
December 21, 2000	2 sessions

December 22, 2000	1 session
February 20, 2001	2 sessions
February 21, 2001	2 sessions
<u>February 22, 2001</u>	<u>1 session</u>

Total Forum Fees = \$15,600.00

The Panel has assessed \$7,800.00 of the forum fees to Claimants, jointly and severally.
The Panel has assessed \$7,800.00 of the forum fees to Respondent.

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.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$300.00
Adjournment Fee	= \$1,125.00
Forum Fees	= \$7,800.00
Total Fees	= \$9,225.00
<u>Less payments</u>	<u>= \$2,550.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$6,675.00

Respondent be and hereby is solely liable for:

Counterclaim Filing Fee	= \$750.00
Member Fees	= \$5,600.00
Forum Fees	= \$7,800.00
Total Fees	= \$14,150.00
<u>Less payments</u>	<u>= \$6,950.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$7,200.00

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties.

Concurring Arbitrators' Signatures

/s/ _____
David D. Brown, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Signature Date

Signature Date

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



Donald M. Helton

Public Arbitrator

2-28-01

Signature Date

Merle I. Hoch

Industry Arbitrator

Signature Date

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

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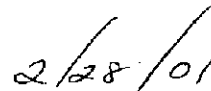
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David D. Brown, Esq.
Public Arbitrator, Presiding Chair



Signature Date

Donald M. Helton
Public Arbitrator

Signature Date

Merle I. Hoch

Merle I. Hoch
Industry Arbitrator

3/2/01

Signature Date

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