

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Constance Laney

Case No. 99-03230

Names of Respondents

J.J.B. Hilliard, W.L. Lyons, Inc.
George M. Johnson

REPRESENTATION OF PARTIES

For Constance Laney ("Laney"), hereinafter referred to as "Claimant": John P. Freeman, Esq.,
Columbia, South Carolina.

For J.J.B. Hilliard, W.L. Lyons, Inc. ("Hilliard"): Ronald R. Davis, Esq., Womble Carlyle
Sandridge & Rice, LLC, Winston-Salem, North Carolina.

For George M. Johnson ("Johnson"): Stephan V. Futeral, Esq., M. Lee Robertson, Jr., P.A.,
Mt. Pleasant, South Carolina. On or about June 14, 2000, Jennifer A. Youngs, Esq., James,
McElroy & Diehl, P.A., Charlotte, North Carolina, substituted as counsel for Respondent
Johnson.

CASE INFORMATION

Statement of Claim filed on or about: July 15, 1999.

Claimant signed the Uniform Submission Agreement on: July 8, 1999.

Statement of Answer to Statement of Claim, Statement of Answer to Cross Claim,
Counterclaim as to Claimant, and Cross Claim as to Respondent Johnson, filed by
Respondent Hilliard on or about: October 13, 1999.

Statement of Answer to Statement of Claim, Counterclaim as to Claimant and Cross Claim as
to Respondent Hilliard, filed by Respondent Johnson on or about: March 11, 2000.

Respondent Hilliard signed the Uniform Submission Agreement on: October 6, 1999.

Respondent Johnson signed the Uniform Submission Agreement on: November 18, 1999.

Claimant's Reply to Respondent Hilliard's Counterclaim filed on or about: October 17, 1999.

Claimant's Reply to Respondent Johnson's Counterclaim filed on or about: March 14, 2000.

Respondent Hilliard's Reply to Counterclaim of Respondent Johnson filed on or about:
March 23, 2000.

CASE SUMMARY

Claimant asserted the following causes of action against Respondents Hilliard and Johnson:

1) unsuitability; 2) negligence; 3) gross negligence; and 4) fraud. The causes of action relate to a mutual fund switching scheme.

Unless specifically admitted in its Answer, Respondent Hilliard denied the allegations made in the Statement of Claim and asserted the following defenses: 1) Claimant failed to state a claim upon which relief may be granted; 2) Claimant is barred from recovery by the doctrine of settlement; 3) Claimant is barred from recovery by the doctrine of accord and satisfaction; 4) Claimant has not incurred damages, and Claimant's claim for additional profits are speculative; 5) Claimant authorized and ratified the mutual fund switch letters and the terms of her account; 6) no scienter exists because Respondent Johnson shared information with Claimant, and Claimant received confirmation slips and account statements detailing the activity and status of her account; 7) Claimant is barred from recovery by the doctrines of waiver and estoppel; 8) Claimant proximately caused her damages and is thereby subject to the doctrine of comparative fault; 9) Claimant's acts or omissions were the cause, proximate cause, producing cause, superseding cause, and intervening cause of her alleged damages, if any; 10) Respondent Hilliard is entitled to an offset to the extent Claimant may recover or receive payments from collateral sources; 11) Respondent Hilliard acted in good faith, and did not directly or indirectly induce the acts constituting a violation of law; 12) Respondent Hilliard took precautionary measures and established internal controls, including but not limited to mutual fund switch letters, and maintained controls in a diligent manner to adequately supervise its employees; 13) Claimant should not recover punitive damages as a matter of law because the conduct of Respondent Hilliard was not extreme and outrageous; 14) Respondent Johnson did not have any authority, apparent or otherwise, to act on behalf of Respondent Hilliard in a fraudulent, negligent or otherwise illegal manner; 15) Respondent Hilliard did not ratify the actions of Respondent Johnson; 16) Claimant is barred from recovery by the applicable statute of frauds; 17) Claimant is barred from recovery by the parol evidence rule, under common law and applicable statute; 18) Claimant is limited to recovery of commissions and interest if she prevails on her claim of churning; 19) Claimant has suffered no out-of-pocket damages as to her claim of unsuitability; 20) Claimant is barred from recovery by the applicable statutes of limitations; and 21) the investments in Claimant's account were suitable.

Unless specifically admitted in his Answer, Respondent Johnson denied the allegations made in the Statement of Claim and asserted the following defenses: 1) Claimant failed to state a claim upon which relief may be granted; 2) Claimant has not incurred damages; 3) Claimant was fully informed of all trading activities regarding her account, authorized all trades and signed all switch letters; 4) Claimant had an unreasonable expectation for growth in her account; 5) Claimant authorized all switching of mutual funds; 6) Claimant's account grew approximately thirty percent (30%) despite withdrawals of approximately \$125,000.00; 7) all funds and stock were suitable to Claimant; 8) Claimant has not incurred damages, and Claimant's claim for additional profits are speculative; 9) Claimant authorized and ratified the mutual fund switch letters and the terms of her account; 10) no scienter exists because Respondent Johnson shared information with Claimant, and Claimant received confirmation slips and account statements detailing the activity and status of her account; 11) Claimant proximately caused her damages and is thereby subject to the doctrine of comparative fault;

12) Claimant's acts or omissions were the cause, proximate cause, producing cause, superseding cause, and intervening cause of her alleged damages, if any; 13) Claimant should not recover punitive damages as a matter of law because the conduct of Respondent Hilliard was not extreme and outrageous; 14) Claimant is barred from recovery by the parol evidence rule, under common law and applicable statute; 15) Claimant is limited to recovery of commissions and interest if she prevails on her claim of churning; 16) Claimant has suffered no out-of-pocket damages as to her claim of unsuitability; 17) Claimant is barred from recovery by the applicable statutes of limitations; and 18) the investments in Claimant's account were suitable.

Respondent Hilliard asserted the following causes of action in its counterclaim against Claimant: 1) breach of contract; and 2) specific enforcement of a settlement agreement. The causes of action relate to a settlement wherein Claimant agreed to accept \$30,000.00 to settle her claims, Respondent Hilliard tendered a check payable to Claimant in the amount of \$30,000.00 and Claimant refused to complete the settlement.

Unless specifically admitted in her Reply, Claimant denied the allegations of Respondent Hilliard's counterclaim and asserted that settlement discussions are confidential.

Respondent Johnson asserted a cause of action in his counterclaim against Claimant for filing frivolous and bad faith claims in arbitration.

Unless specifically admitted in her Reply, Claimant denied the allegations of Respondent Johnson's counterclaim and asserted that Respondent Johnson failed to state a claim upon which relief may be granted.

Respondent Hilliard asserted causes of action in its cross claim against Respondent Johnson for indemnification and contribution for any recovery awarded against Respondent Hilliard.

Unless specifically admitted in his Answer, Respondent Johnson denied the allegations of Respondent Hilliard's cross claim and asserted the following defenses: 1) Respondent Hilliard failed to state a claim upon which relief may be granted; 2) Respondent Hilliard had full access to all information contained in Claimant's account; 3) Respondent Hilliard had full knowledge of all actions taken by its agent, Respondent Johnson; 4) Respondent Hilliard acquiesced to and/or ratified all conduct engaged in by its agent, Respondent Johnson; 5) Respondent Hilliard profited from all transactions as it retained sixty five percent (65%) of all commissions earned by Respondent Johnson; and 5) Respondent Hilliard is estopped from asserting any claim for set-off, contribution or indemnification as to Respondent Johnson.

Respondent Johnson asserted an unspecified cause of action in his counterclaim against Respondent Hilliard for recovery of actual and punitive damages.

Unless specifically admitted in its Reply, Respondent Hilliard denied the allegations of Respondent Johnson's counterclaim and asserted the following defenses: 1) Respondent Johnson failed to state a claim upon which relief may be granted; 2) there is no basis in law

for the recovery of attorneys' fees by Respondent Johnson; 3) there is no factual basis in the counterclaim to support an award of actual or punitive damages; 4) Respondent Johnson proximately caused his alleged damages and therefore, Respondent Johnson is subject to comparative fault; 5) Respondent Johnson's acts or omissions were the proximate cause, producing cause, superseding cause, and intervening cause of his alleged damages, if any; 6) Respondent Johnson had no authority, apparent or otherwise, to act on behalf of Respondent Hilliard in a fraudulent, negligent or otherwise illegal manner; and 7) Respondent Hilliard did not ratify Respondent Johnson's actions.

RELIEF REQUESTED

Claimant requested: 1) dismissal of Respondent Johnson's counterclaim; 2) dismissal of Respondent Hilliard's counterclaim; 3) compensatory damages in an amount exceeding \$380,000.00; 4) punitive damages; 5) costs; 6) interest; and 7) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondent Hilliard requested: 1) dismissal of the Statement of Claim; 2) dismissal of Respondent Johnson's counterclaim; 3) enforcement of the settlement previously entered into by the parties; 4) recovery from Respondent Johnson of any amounts recovered by Claimant against Respondent Hilliard; 5) costs; 6) attorneys' fees; and 7) such other relief the Panel deemed just and proper.

Respondent Johnson requested: 1) dismissal of the Statement of Claim; 2) dismissal of Respondent Hilliard's cross claim; 3) unspecified compensatory damages for injury to his business reputation and loss of good will; 4) punitive damages; 5) costs; 6) attorneys' fees; and 7) such other relief the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about June 13, 2000, Respondent Hilliard filed its Motion to Dismiss Counterclaim of George Johnson wherein Respondent Hilliard sought dismissal of the claims asserted by Respondent Johnson in its counterclaim against Respondent Hilliard. On June 19, 2000, the Panel granted the motion and dismissed the counterclaim.

On or about June 14, 2000, Claimant filed her Motion to Dismiss Counterclaim of Respondent Johnson wherein Claimant sought dismissal of the claims asserted by Respondent Johnson in his counterclaim against Claimant. On June 19, 2000, the Panel granted the motion and dismissed the counterclaim.

On or about June 14, 2000, Respondent Johnson filed his Motion to Dismiss wherein Respondent Johnson sought dismissal of the claims asserted by Claimant in her Statement of Claim against Respondent Johnson. On June 19, 2000, the Panel denied the motion to dismiss.

On June 19, 2000, the Panel dismissed the claims asserted by Respondent Hilliard in its

cross claim against Respondent Johnson.

On or about June 27, 2000, Claimant and Respondent Hilliard filed with NASD Dispute Resolution, Inc. their Stipulation and Agreed Order of Dismissal of Respondent Hilliard with Prejudice. Claimant and Respondent Hilliard requested the Panel to approve the dismissal. On or about July 8, 2000, the Panel entered its Order of Approval of Dismissal with Prejudice wherein the Panel approved the dismissal of Claimant's claims against Respondent Hilliard.

On January 8, 2001, Respondent Johnson notified NASD Dispute Resolution that Claimant and Respondent Johnson had entered into a settlement agreement.

On or about January 22, 2001, Claimant and Respondent Johnson filed with NASD Dispute Resolution, Inc. their Stipulation and Agreed Order of Dismissal of Respondent Johnson with Prejudice. Claimant and Respondent Johnson requested the Panel to approve the dismissal. On or about February 5, 2001, the Panel entered its Order of Approval of Dismissal with Prejudice wherein the Panel approved the dismissal of Claimant's claims against Respondent Johnson.

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 and the settlements of the parties, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

All claims asserted by all parties in this arbitration proceeding are dismissed with prejudice.

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/cross claim filing fee (Hilliard)	= \$1,000.00
Counterclaim filing fee (Johnson)	= \$ 250.00

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	= \$2,500.00

Adjournment Fees

Adjournments requested during these proceedings:

June 20, 21 and 22, 2000, adjournment request by Respondent Johnson = \$1,125.00

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:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: June 6, 2000 1 session	

Two (2) Pre-hearing sessions with Panel x \$1,125.00	= \$2,250.00
Pre-hearing conference: February 23, 2000 1 session	
June 19, 2000 1 session	

One (1) Hearing session x \$1,125.00	= \$1,125.00
Hearing Date: October 10, 2000 1 session	

Total Forum Fees	= \$3,825.00
------------------	--------------

The Panel has assessed \$1,125.00 of the forum fees to Claimant.

The Panel has assessed \$281.25 of the forum fees to Respondent Hilliard.

The Panel has assessed \$2,418.75 of the forum fees to Respondent Johnson.

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

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,125.00
Total Fees	= \$1,425.00
<u>Less payments</u>	<u>= \$1,425.00</u>

Balance Due NASD Dispute Resolution, Inc. = \$0.00

Respondent Hilliard be and hereby is solely liable for:

Counterclaim/Cross Claim Filing Fee	= \$1,000.00	
Member Fees	= \$4,600.00	
Forum Fees	= \$ 281.25	
Total Fees	= \$5,881.25	
<u>Less payments</u>	<u>= \$3,600.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$2,281.25

Respondent Johnson be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 250.00	
Adjournment Fee	= \$1,125.00	
Forum Fees	= \$2,418.75	
Total Fees	= \$3,793.75	
<u>Less payments</u>	<u>= \$1,000.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$2,793.75

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/_____
Leonard Landsman
Public Arbitrator, Presiding Chair

Signature Date

_____/s/_____
Frank J. Tepper, Esq.
Public Arbitrator

Signature Date

_____/s/_____
Daniel W. Desmond, VP
Industry Arbitrator

Signature Date

March 22, 2001
Date of Service (For NASD-DR office use only)

Balance Due NASD Dispute Resolution, Inc. = \$0.00

Respondent Hilliard be and hereby is solely liable for:

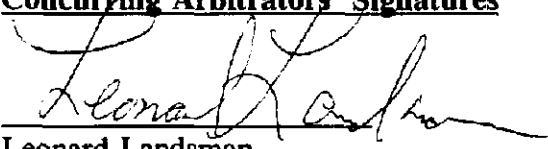
Counterclaim/Cross Claim Filing Fee	= \$1,000.00	
Member Fees	= \$4,600.00	
Forum Fees	= \$ 281.25	
Total Fees	= \$5,881.25	
<u>Less payments</u>	<u>= \$3,600.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$2,281.25

Respondent Johnson be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 250.00	
Adjournment Fee	= \$1,125.00	
Forum Fees	= \$2,418.75	
Total Fees	= \$3,793.75	
<u>Less payments</u>	<u>= \$1,000.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$2,793.75

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

Concurring Arbitrators' Signatures


Leonard Landsman
Public Arbitrator, Presiding Chair

3/16/01
Signature Date

Frank J. Tepper, Esq.
Public Arbitrator

Signature Date

Daniel W. Desmond, VP
Industry Arbitrator

Signature Date

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

Balance Due NASD Dispute Resolution, Inc. = \$0.00

Respondent Hilliard be and hereby is solely liable for:

Counterclaim/Cross Claim Filing Fee	= \$1,000.00
Member Fees	= \$4,600.00
Forum Fees	= \$ 281.25
Total Fees	= \$5,881.25
<u>Less payments</u>	<u>= \$3,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,281.25

Respondent Johnson be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 250.00
Adjournment Fee	= \$1,125.00
Forum Fees	= \$2,418.75
Total Fees	= \$3,793.75
<u>Less payments</u>	<u>= \$1,000.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,793.75

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

Concurring Arbitrators' Signatures

Leonard Landsman
Public Arbitrator, Presiding Chair

Signature Date



Frank J. Tepper, Esq.
Public Arbitrator

3-28-01

Signature Date

Daniel W. Desmond, VP
Industry Arbitrator

Signature Date

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

Balance Due NASD Dispute Resolution, Inc. = \$0.00

Respondent Hilliard be and hereby is solely liable for:

Counterclaim/Cross Claim Filing Fee	= \$1,000.00
Member Fees	= \$4,600.00
Forum Fees	= \$ 281.25
Total Fees	= \$5,881.25
<u>Less payments</u>	<u>= \$3,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,281.25

Respondent Johnson be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 250.00
Adjournment Fee	= \$1,125.00
Forum Fees	= \$2,418.75
Total Fees	= \$3,793.75
<u>Less payments</u>	<u>= \$1,000.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,793.75

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

Consenting Arbitrators' Signatures

Leonard Landsman
Public Arbitrator, Presiding Chair

Signature Date

Frank J. Tepper, Esq.
Public Arbitrator

Signature Date



Daniel W. Desmond, VP
Industry Arbitrator

3/16/01

Signature Date

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