
Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Kathy Phelps and David H. Gaskin,
Richard Coomer,
Lola M. and George A. Coomer,
Lisa S. and Dennis R. Loy,
Terry P. Harvey,
Judy and James E. Watson,
Mary B. and William R. Phelps, and
Eula Loy,
Claimants

Case Number: 99-04206

Hearing Site: Louisville, Kentucky

Vs.

Danny L. Coomer,
Fortis Investors, Inc., and
CUNA Brokerage Services, Inc.,
Respondents

REPRESENTATION OF PARTIES

Claimants, Kathy Phelps ("K. Phelps"), David H. Gaskin ("Gaskin"), Richard Coomer ("R. Coomer"), Lola M. and George A. Coomer, ("L. and G. Coomer"), Lisa S. and Dennis R. Loy ("L. and D. Loy"), Terry P. Harvey ("Harvey"), Judy and James E. Watson ("Judy and James Watson"), Mary B. and William R. Phelps ("M. and W. Phelps"), and Eula Loy, ("E. Loy") were represented by Wesley A. Gersh, Esquire, of Morris, Garlove, Waterman & Johnson, PLLC, located in Louisville, Kentucky.

Respondent, Danny L. Coomer ("D. Coomer") was not represented by counsel and did not appear at the hearing.

Respondent, Fortis Investors, Inc. ("Fortis") was represented by James B. Lynch, Esquire, of Dorsey & Whitney, LLP, located in Minneapolis, Minnesota.

Respondent, CUNA Brokerage Services, Inc. ("CUNA") was represented by Paul R. Norman, Esquire, of Boardman Law Firm, located in Madison, Wisconsin.

CASE INFORMATION

The Statement of Claim was filed on or about December 1, 1999.

Claimants, Kathy Phelps and David Gaskin, both signed the Uniform Submission Agreement on June 17, 1999.

Betty Sue Glasson, daughter of and Power of Attorney for Claimant Eula Loy, signed the Uniform Submission Agreement on her behalf on August 23, 1999.

Claimants, Mary and William Phelps, signed the Uniform Submission Agreement on June 3, 1999.

Claimant Terry P. Harvey signed the Uniform Submission Agreement on June 3, 1999.

Claimants, Judy and James Watson, signed the Uniform Submission Agreement on August 21, 1999.

Claimants, Lisa and Dennis Loy, filed a signed Uniform Submission Agreement on or about May 30, 2001.

Claimants, Lola and George Coomer, signed the Uniform Submission Agreement on June 3, 1999.

Claimant Richard Coomer signed the Uniform Submission Agreement on June 3, 1999.

Respondent Danny Coomer did not file a Statement of Answer or a signed Uniform Submission Agreement.

Respondent Fortis filed a Statement of Answer on January 24, 2000.

John Eric Hite, Vice President and Chief Legal Counsel for Respondent, Fortis Investors, Inc., signed the Uniform Submission Agreement on its behalf on January 19, 2000.

Respondent CUNA filed a Statement of Answer on January 20, 2000.

Paul R. Norman signed the Uniform Submission Agreement on behalf of the Respondent CUNA on January 19, 2000.

CASE SUMMARY

Claimants alleged the following in their Joint Statement of Claim: breach of fiduciary duty, fraud in connection with the purchase and sale of securities, control person liability, breach of contract and negligence. These allegations were related to the fraudulent sales of non-existent tax-free Canadian water bonds.

Unless specifically admitted in its Statement of Answer, Respondent CUNA denied the allegations set forth in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim fails to state a claim against Respondent CUNA upon which relief may be granted.
2. The Statement of Claim fails to state with particularity the circumstances constituting alleged fraud toward any Claimants.
3. Under the facts and circumstances of this case, Respondent CUNA owed no duty to the Claimants.
4. Each of the Claimants' claims against CUNA is barred because there is no privity of contract between Respondent CUNA and any of the Claimants.
5. The Claimants' claims against Respondent CUNA are barred by the economic loss doctrine because they seek to make CUNA liable in tort for purely economic losses suffered by the Claimants.
6. Any damages sustained by the Claimants with regard to monies paid to Respondent Danny Coomer or his company, DLC Financial Services, Inc. (DLC), were caused by the Claimants' own contributory negligence.
7. Any damages sustained by the Claimants with regard to monies paid to Respondent Danny Coomer or DLC were caused by the acts or omissions of third persons over which Respondent CUNA had no control.
8. Claimants' claims are barred because they failed to exercise reasonable diligence in their dealings with Respondent Danny Coomer and DLC.
9. Claimants' claims are barred because they assumed the risk of the loss of their money in making payments to Respondent Danny Coomer and/or DLC.
10. Claimants' claims are barred in whole or in part by the doctrine(s) of waiver and/or estoppel.
11. The Claimants have failed to mitigate any damages to which they otherwise may have been entitled.
12. Some or all of the Claimants' claims are barred by applicable statutes of limitations. In addition, some of the payments that Claimants made to Respondent Danny Coomer and or/DLC Financial are ineligible for consideration in this arbitration because they were made more than six years before the filing of the Statement of the Claim.
13. Some or all of the Claimants' claims are barred by the doctrine of *laches*.
14. Some or all of the Claimants' claims are improperly joined.
15. Upon information and belief, some or all of the Claimants' claims are barred under the doctrine of *in pari delicto*.
16. Upon information and belief, some or all of the Claimants have received partial payment of the claims alleged in the Statement of Claim.
17. No fiduciary relationship existed between Respondent CUNA and any of the Claimants with respect to monies paid by Claimants to Respondent Danny Coomer or DLC.
18. Upon information and belief, the Claimants' claims are for the return of monies paid to DLC in exchange for promissory notes from DLC under which DLC was obligated to repay the monies received from the Claimants with interest ranging from 15% to 72% per annum. DLC was a corporation wholly owned and controlled by Respondent Danny Coomer. Respondent CUNA had no relationship with DLC and no power to control its actions.

19. Upon information and belief, the Claimants' claims are for return of monies that they paid to DLC with the knowledge or belief that it would be used to make investments in the name of Respondent Danny Coomer and/or DLC and that Claimants would have no interest in such investments and would be relying solely upon DLC's promise to repay the monies received from Claimants with interest under the promissory notes given to the Claimants in exchange for the payments received from them.
20. Upon information and belief, none of the Claimants ever received any documents from any source that represented or implied that Respondent CUNA was responsible for or in any way connected to the monies paid to DLC, which are the subject of the Claimants' claims.
21. Upon information and belief, the untrue statements of fact that Respondent Danny Coomer made to Claimants to in connection with their payments to DLC in exchange for DLC promissory notes were not material in that Claimants would have been willing to make the payments to DLC in exchange for DLC's promise to repay the amounts of such payments upon demand with interest ranging from 15% to 72% per annum, even in the absence of such statements.
22. Upon information and belief, Claimants did not reasonably rely upon the untrue statements of facts that Respondent Danny Coomer made to them in connection with their payments to DLC in exchange for promissory notes.
23. An award of Punitive damages against Respondent, CUNA under the circumstances of this case would violate CUNA's rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution.
24. There is no private right of action for the alleged rule violations set forth in the Statement of Claim.

Unless specifically admitted in its Statement of Answer, Respondent Fortis denied the allegations set forth in the Statement of Claim and asserted the following defenses.

1. The Statement of Claim fails to state a claim against Respondent Fortis upon which relief may be granted.
2. At all times, Respondent Fortis acted in good faith with respect to the matters alleged in the Statement of Claim.
3. Respondent Fortis did not directly or indirectly induce or aid or have knowledge of the acts and omissions of Respondent Danny Coomer, which are the subject of the Statement of Claim.
4. Any damages sustained by any of the Claimants with regard to monies paid to Respondent Danny Coomer and/or DLC were caused by the Claimants' own contributory negligence and or by the acts of third persons over whom Respondent Fortis had no control.
5. Claimants' claims are barred because Claimants failed to exercise reasonable diligence in their dealings with Respondent Danny Coomer and/or DLC.
6. In making their investments in the manner they did with Respondent Danny Coomer and/or DLC, Claimants assumed the risk of the loss of their money.

7. Claimants' claims are barred by the doctrine of *in pari delicto*.
8. Claimants' claims are barred by the doctrine of estoppel.
9. The applicable statutes of limitations bar some or all of the Claimants' claims. In addition, some of the investments are ineligible for consideration in this arbitration because they were made more than six years before the filing of the Statement of Claim.
10. Claimants' claims fail for lack of privity of contract between Claimants and Respondent Fortis.
11. Under the facts and circumstances of this case, Respondent Fortis owed no duty to Claimants, fiduciary or otherwise.
12. Claimants' claims are barred by the economic loss doctrine because they seek to make Respondent Fortis liable in tort for purely economic losses.
13. There is no private right of action for the alleged rules violations set forth in the Statement of Claim.
14. Claimants have failed to allege fraud with sufficient particularity.
15. Upon information and belief, some or all of Claimants have received partial payment of the claims alleged in the Statement of Claim.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$ 626,576
Punitive Damages	\$ 2,506,304
Attorney's Fees	unspecified
Costs	unspecified
Interest	unspecified

Respondent CUNA requested that the Statement of Claim be dismissed in its entirety with prejudice, and that it be awarded its costs and any such other relief as the arbitration panel should determine to be just and equitable.

Respondent Fortis requested that the Statement of Claim be dismissed in its entirety with prejudice and that it be awarded costs and attorney's fees to the extent allowed by law.

OTHER ISSUES CONSIDERED AND DECIDED

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

Upon review of the file and the representations made by/on behalf of the Claimants, the undersigned arbitrators determined that Respondent Danny Coomer had been properly served with 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").

Prior to the hearing, Claimants Kathy Phelps, David Gaskin, Lisa and Dennis Loy, Terry Harvey, Judy and James Watson, Mary and William R. Phelps and Eula Loy settled their claims with one or more Respondents and dismissed all claims against all Respondents named herein.

Prior to the hearing, each and every Claimant settled with and dismissed his/her claims against Respondent Fortis Investors, Inc. The only claims that were not dismissed prior to the hearing were those filed by Claimants Lola and George Coomer and Richard Coomer against Respondents Danny Coomer and CUNA Brokerage Services, Inc.

A Post-hearing Brief for Claimants Lola and George Coomer and Richard Coomer was submitted on or about May 15, 2001.

A Post-hearing Brief for Respondent, CUNA Brokerage Services, Inc. was submitted on May 14, 2001.

AWARD

After considering the pleadings and the evidence presented at the hearing, and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondent CUNA Brokerage Services, Inc. be and hereby are dismissed in their entirety.
2. Respondent Danny L. Coomer is solely liable for and shall pay to Claimants, Lola M. and George A. Coomer, \$200,000 (Two Hundred Thousand Dollars) as Compensatory Damages.
3. Respondent Danny L. Coomer is solely liable for and shall pay to Claimants, Lola M. and George A. Coomer, Interest in the amount of 12% per annum, the maximum rate permitted in the Commonwealth of Kentucky, on the Damages awarded in Paragraph 1 above. This Interest shall accrue from June 28, 1995 as to \$100,000 (One Hundred Thousand Dollars) of the Damages, and from August 23, 1995, as to the other \$100,000 (One Hundred Thousand Dollars) of the Damages. These two dates are the respective dates of the purported sale of bonds to Claimants from Respondent Danny L. Coomer. The Interest shall accrue until the date of service of this Award.
4. Respondent Danny L. Coomer is solely liable for and shall pay Claimant Richard Coomer \$153,786.81 (One Hundred Fifty-three Thousand Seven Hundred Eighty-six Dollars and Eighty-one Cents) as Compensatory Damages.

5. Respondent Danny L. Coomer is solely liable for and shall pay Claimant Richard Coomer Interest in the amount of 12% per annum, the maximum rate permitted in the Commonwealth of Kentucky, on the Damages awarded in Paragraph 4 above. This Interest shall accrue from January 1, 1996, the date of the execution of a promissory note in the amount of \$154,586.81. This Interest shall accrue until the date of service of this Award.
6. Respondent Danny L. Coomer is solely liable for and shall pay to Claimants Lola M. and George A. Coomer and Richard Coomer Attorney's Fees in the amount of \$10,500 (Ten Thousand Five Hundred Dollars and No Cents). This is the total amount of Attorney's Fees awarded and not the amount awarded to each Claimant. This money shall be in addition to amounts awarded in Paragraphs 1-5 above.
7. Except as otherwise specified herein, each party shall bear its own costs and attorneys' fees.
8. Any and all relief not specifically addressed herein is 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	= \$ 600
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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 firms are Fortis Investors, Inc. and CUNA Brokerage Services, Inc.

Member surcharge	= \$2,500
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$4,500
Total Member Fees for each member firm	= \$7,600

Forum Fees and Assessments

The Panel has the authority to assess 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 a single arbitrator x \$450	= \$ 900
Pre-hearing conferences: February 1, 2001	1 session
April 19, 2001	1 session
One (1) Pre-hearing session with Panel x \$1,200	= \$1,200
Pre-hearing conferences: October 13, 2000	1 session
Five (5) Hearing sessions x \$1,200	= \$6,000
Hearing Date(s): April 23, 2001	2 sessions
April 24, 2001	2 sessions
April 25, 2001	1 session
Total Forum Fees	= \$8,100

The Panel has assessed all \$8,100 forum fees to Respondent CUNA Brokerage Services, Inc.

FEE SUMMARY

1. Claimants, Lola M. and George A. Coomer and Richard Coomer, are jointly and severally liable for:

Initial Filing Fee	= \$ 600
Total Fees	= \$ 600
Less payments	= \$ 1,800
Balance Due NASD Dispute Resolution, Inc.	= \$ (1,200)
NASD Dispute Resolution, Inc. will refund this \$1,200 to Claimants.	

2. Respondent CUNA Brokerage Services, Inc. be and hereby is solely liable for:

Member Fees	= \$ 7,600
Forum Fees	= \$ 8,100
Total Fees	= \$15,700
Less payments	= \$ 7,600
Balance Due NASD Dispute Resolution, Inc.	= \$ 8,100

3. Respondent Fortis Investors, Inc. be and hereby is solely liable for:

Member Fees	= \$ 7,600
Total Fees	= \$ 7,600
Less payments	= \$ 7,600
Balance Due NASD Dispute Resolution, Inc.	= \$ 0

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

<i>Leah M. Balk, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>R. Van Young, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Denise H. McClelland, Esq.</i>	-	<i>Non-Public Arbitrator</i>

Leah M. Balk
Leah M. Balk, Esq.
Public Arbitrator, Presiding Chair

July 16, 2001
Signature Date

R. Van Young
R. Van Young, Esq.
Public Arbitrator, Panelist

July 16, 2001
Signature Date

Denise H. McClelland
Denise H. McClelland, Esq.
Non-Public Arbitrator, Panelist

July 14, 2001
Signature Date

July 19, 2001
Date of Service

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All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Leah M. Balk, Esq.

R. Van Young, Esq.

Denise H. McClelland, Esq.

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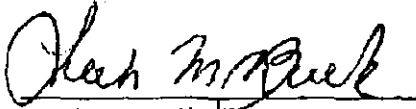
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Public Arbitrator, Presiding Chair

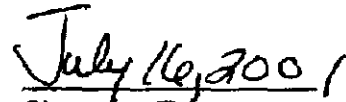
Public Arbitrator

Non-Public Arbitrator



Leah M. Balk, Esq.

Public Arbitrator, Presiding Chair



Signature Date

R. Van Young, Esq.

Public Arbitrator, Panelist

Signature Date

Denise H. McClelland, Esq.

Non-Public Arbitrator, Panelist

Signature Date

Date of Service

(For NASD-Dispute Resolution office use only)

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All balances are due to NASD Dispute Resolution, Inc.

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R. Van Young, Esq.

Denise H. McClelland, Esq.

Public Arbitrator, Presiding Chair

Public Arbitrator

Non-Public Arbitrator

Leah M. Balk, Esq.

Public Arbitrator, Presiding Chair

R. Van Young
R. Van Young, Esq.
Public Arbitrator, Panelist

Signature Date

7-16-01

Signature Date

Denise H. McClelland, Esq.

Non-Public Arbitrator, Panelist

Signature Date

Date of Service

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All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

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R. Van Young, Esq.
Denise H. McClelland, Esq.

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Leah M. Balk, Esq.
Public Arbitrator, Presiding Chair

Signature Date

R. Van Young, Esq.
Public Arbitrator, Panelist

Signature Date

Denise H. McClelland, Esq.
Non-Public Arbitrator, Panelist

7-14-01
Signature Date

Date of Service
(For NASD-Dispute Resolution office use only)