

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

John R. and B. Dian Biddle, Claimants vs. Diversified Capital Markets, a Division of Michael Patterson, Inc., and William L. Johnston, Respondents.

Case Number: 99-04392

Hearing Site: Columbus, Ohio

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**REPRESENTATION OF PARTIES**

Claimants, John R. and B. Dian Biddle ("Biddle"), hereinafter referred to as "Claimants", were represented by Joseph R. Miller, Esquire, of Vorys, Sater, Seymour and Pease, LLP, Columbus, Ohio.

Respondents, Diversified Capital Markets, a/k/a The Hamilton-Shea Group, Inc. ("Diversified"), and William L. Johnston ("Johnston"), hereinafter collectively referred to as "Respondents", were represented by Andrew J. Dorman, Esquire, of Janik & Forbes, Cleveland, Ohio (for Diversified), and Todd H. Neuman, Esquire, of Swedlow, Butler, Levine, Lewis & Dye Co., L.P.A., Columbus, Ohio (for Johnston).

**CASE INFORMATION**

Statement of Claim filed on or about: September 27, 1999

Claimants signed the Uniform Submission Agreement: September 23, 1999

Statement of Answer filed by Respondent Johnston on or about: January 6, 2000

Respondent Johnston signed the Uniform Submission Agreement: January 5, 2000

Statement of Answer filed by Respondent Diversified on or about: March 2, 2000

Andrew J. Dorman, Esquire, for Respondent, Diversified, signed the Uniform Submission Agreement: May 24, 2000

### **CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability; breach of fiduciary duty; false and misleading statements and omissions; and fraud. The causes of action relate to transactions in collateralized mortgage obligations.

Unless specifically admitted its Answer, Respondent Diversified denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief can be granted; contributory negligence; assumption of the risk; ratification; waiver; estoppel; and unclean hands.

Unless specifically admitted his Answer, Respondent Johnston denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief can be granted; contributory negligence; and assumption of the risk.

### **RELIEF REQUESTED**

Claimants requested:

Compensatory Damages	\$ 55,800.00
Punitive Damages	\$55,800.00
Attorney's Fees	unspecified
Interest	unspecified
costs	unspecified

Respondents requested that all claims be dismissed with prejudice, and that they be awarded costs incurred in arbitration.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Panel finds in favor of the Claimants, and awards compensatory damages. Respondents, Diversified Capital Markets, a/k/a The Hamilton-Shea Group, Inc., and William L. Johnston, are jointly and severally liable for, and shall pay to Claimants, John R. and B. Dian Biddle:

**\$45,387.59** (Forty-five Thousand Three Hundred Eighty-seven Dollars and Fifty-nine Cents) in compensatory damages.

**Any and all relief not specifically** addressed herein, including punitive damages, 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 = \$ 300

The Panel directs the reimbursement of Claimants' initial claim filing fee by Respondents, Diversified and Johnston, jointly and severally.

#### **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 Diversified Capital Markets, a/k/a The Hamilton-Shea Group, Inc.

Member surcharge = \$1,500 (Waived\*)

Pre-hearing process fee = \$ 600 (Waived\*)

Hearing process fee = \$2,500 (Waived\*)

\*Membership Terminated

#### **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 chairperson x \$450 = \$ 450  
Pre-hearing conference: October 16, 2000 1 session

One (1) Pre-hearing session with Panel x \$1,125 = \$1,125  
Pre-hearing conference: June 1, 2000 1 session

Six (6) Hearing sessions x \$1,125 = \$6,750  
Hearing Date(s) November 8, 2000 2 sessions  
November 9, 2000 3 sessions  
November 10, 2000 1 session

Total Forum Fees = \$8,325

The Panel has assessed all \$8,325 of the forum fees to Respondents, Diversified Capital Markets, a/k/a The Hamilton-Shea Group, Inc., and William L. Johnston, jointly and severally.

**Fee Summary**

1. Claimants, John R. and B. Dian Biddle, be and hereby are liable for:

<u>Initial Filing Fee</u>	= \$ 300
<u>Total Fees</u>	= \$ 300
<u>Less payments</u>	= \$ 1,450
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$ (1,125)

NASD Dispute Resolution, Inc. will refund this \$1,125 to Claimants. Additionally, Respondents, Diversified and Johnston, will reimburse the \$300 initial filing fee directly to Claimants.

2. Respondents, Diversified Capital Markets, a/k/a The Hamilton-Shea Group, Inc., and William L. Johnston, be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 8,325
<u>Total Fees</u>	= \$ 8,325
<u>Less payments</u>	= \$ 0
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$ 8,325

With the exception of the initial filing fee reimbursement, payable directly to Claimants, all balances are due and payable to NASD Dispute Resolution, Inc.

**Concurring Arbitrators' Signature(s)**

Jeffrey M. Bain

Jeffrey M. Bain, Esq.

Public Arbitrator, Presiding Chair

January 29, 2001

Signature Date

Merle H. Reissig

Merle H. Reissig

Public Arbitrator

February 1, 2001

Signature Date

John B. Glueckert

John B. Glueckert

Industry Arbitrator

January 23, 2001

Signature Date

February 6, 2001

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

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NASD REGULATION

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John R. and B. Dian Biddle v. Diversified Capital Markets and William L. Johnston  
 NASD-DR Arbitration # 99-04392  
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