
**Award
NASD**

In the Matter of the Arbitration Between:

Name of Claimant

The Estate of Stephen Lysk, Deceased,
By Sharon Weldon, Personal Representative

Case Number: 01-03572

Names of Respondents

J.B. Hanauer & Co.
James J. Phelps

Hearing Site: Tampa, Florida

REPRESENTATION OF PARTIES

For The Estate of Stephen Lysk, Deceased, By Sharon Weldon, Personal Representative, hereinafter referred to as "Claimant": Jeffrey P. Coleman, Esq., Coleman Law Firm, Clearwater, FL.

For J.B. Hanauer & Co. ("JBH") and James J. Phelps ("Phelps"), hereinafter collectively referred to as "Respondents": David H. Lichter, Esq., Kenny Nachwalter Seymour Arnold Critchlow & Spector, P.A., Miami, FL.

CASE INFORMATION

Statement of Claim filed on or about: July 5, 2001.

Claimant signed the Uniform Submission Agreement on: May 11, 2001.

Statement of Answer filed by Respondents on or about: September 6, 2001.

Respondent JBH signed the Uniform Submission Agreement on: July 23, 2001.

Respondent Phelps signed the Uniform Submission Agreement on: August 29, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: violations of state and federal securities law and the common law of Florida; negligent supervision; violations of section 517.301, Florida Statutes; gross negligence; breach of fiduciary duty; and, unauthorized trading. The causes of action relate to the purchase and sale of various securities products in Claimant's accounts.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant requested compensatory damages of between \$100,000.00 and \$500,000.00, disgorgement of commissions, punitive damages, costs, attorneys' fees, and any such other relief as is deemed just and proper by

the undersigned arbitrators (the "Panel").

Respondents requested dismissal of the Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

On or about September 6, 2001, Respondents filed a third party claim against an individual who is not a member of the NASD and did not voluntarily submit to arbitration in this forum. Accordingly, said individual is not a party to this case.

The parties 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:

The actions of Respondent JBH and their registered representative, Respondent Phelps, violate NASD Conduct Rule 2310 governing suitability and fair dealing and the standards set forth in NASD Notice to Members 96-86 pertaining to the sale of variable annuity contracts. Respondents breached their fiduciary duties to exercise care and loyalty and act with honesty and good faith toward Mr. Lysk. Credible evidence demonstrates that Mr. Lysk suffered from dementia during the final year of his life and was not able fully to appreciate the complexities and financial impact of multiple surrenders, sales of stock, and purchases of variable annuity products. The manipulation of Mr. Lysk's investments resulted in the financial enrichment of Respondents at the expense of Mr. Lysk who incurred significant surrender penalties, commissions, and taxes for the various sales and switches.

Respondents are liable, jointly and severally, and shall pay to Claimant compensatory damages, including disgorgement of commissions, in the sum of \$152,372.00 plus pre-judgment interest at the Florida statutory rate in the amount of \$40,134.00 for a total award of \$192,506.00. In addition, Respondents are jointly and severally liable for reimbursement of Claimant's costs in the amount of \$15,979.48.

Respondents are liable, jointly and severally, and shall pay to Claimant the sum of \$300.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD.

Claimant's claims for relief pursuant to Florida Statutes section 517.301 are denied.

Claimant's demands for attorneys' fees and punitive damages are denied.

Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300.00
Third Party claim filing fee	= \$ 1,000.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent JBH is a party to this proceeding.

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$ 2,500.00</u>
Total Member Fees	= \$ 4,600.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

September 9 – 12, 2002, adjournment request by Claimant	= \$ 1,125.00
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The Panel assessed the adjournment fee, jointly and severally, against Respondents.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were assessed during these proceedings.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: August 5, 2002 1 session	
One (1) Pre-hearing session with Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: February 25, 2002 1 session	
Nine (9) Hearing sessions @ \$1,125.00	= \$10,125.00

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Hearing Dates:	February 25, 2003	3 sessions
	February 26, 2003	2 sessions
	February 27, 2003	2 sessions
	February 28, 2003	2 sessions

Total Forum Fees = \$11,700.00

The Panel has assessed the total forum fees of \$11,700.00 jointly and severally to Respondents.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 300.00
<u>Balance Due NASD</u>	= \$ 0.00

Respondent JBH is solely liable for:

Third Party claim filing fee	= \$ 1,000.00
<u>Member Fees</u>	= \$ 4,600.00
<u>Total Fees</u>	= \$ 5,600.00
<u>Less Payments</u>	= \$ 5,600.00
<u>Balance Due NASD</u>	= \$ 0.00

Respondents JBH and Phelps are jointly and severally liable for:

Adjournment Fee	= \$ 1,125.00
<u>Forum Fees</u>	= \$11,700.00
<u>Total Fees</u>	= \$12,825.00
<u>Less Payments</u>	= \$ 1,125.00
<u>Balance Due NASD</u>	= \$11,700.00

All balances are payable to NASD and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Diana A. Weiner, Esq.	-	Public Arbitrator, Presiding Chairperson
Alfred Brunette, Jr., CPA	-	Public Arbitrator
Lori P. Augustyniak	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

 /s/
Diana A. Weiner, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

 /s/
Alfred Brunette, Jr., CPA
Public Arbitrator

Signature Date

 /s/
Lori P. Augustyniak
Non-Public Arbitrator

Signature Date

April 1, 2003
Date of Service (For NASD use only)

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Lori P. Augustyniak

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- Public Arbitrator
- Non-Public Arbitrator

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Diana A. Weiner, Esq.
Public Arbitrator, Presiding Chairperson

3-31-03
Signature Date

Alfred Brunette, Jr., CPA
Public Arbitrator

Signature Date

Lori P. Augustyniak
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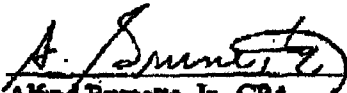
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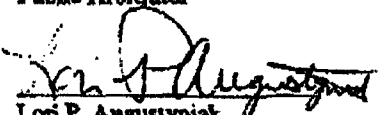
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Signature Date



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