

10/27/00

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:
Helen Crooks, Claimant vs. Hilliard Lyons and Suzanne T. Stavros,
Respondents.

Case Number: 99-05493 **Hearing Site:** Louisville, Kentucky

REPRESENTATION OF PARTIES

Claimant, Helen Crooks, was represented by Andrew J. Stoltmann, Esq., of Maddox, Koeller, Hargett & Caruso, Indianapolis, Indiana.

Respondents, Hilliard Lyons, Inc. ("Hilliard Lyons") and Suzanne T. Stavros ("Stavros"), hereinafter collectively referred to as "Respondents," were represented by Matthew S. Hardin, Esq., of PNC Bank Corp., Pittsburgh, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on or about: December 8, 1999
Claimant, Helen Crooks, signed the Uniform Submission Agreement: November 23, 1999
Joint Statement of Answer filed by Respondents, Hilliard Lyons and Stavros, on or about: February 25, 2000
Respondent, Hilliard Lyons (Matthew S. Hardin, Legal Counsel), signed the Uniform Submission Agreement: February 24, 2000
Respondent, Suzanne T. Stavros, did not sign the Uniform Submission Agreement.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$13,252
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified

Respondents, Hilliard Lyons and Stavros, requested that all Claims be dismissed in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent, Suzanne T. Stavros, 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 of Arbitration Procedure. Having been served with the Statement of Claim, having filed an Answer, and having been represented by counsel at the hearing, she is bound by the determination of the Panel on all issues submitted.

AWARD

An arbitrator may make an award without explanation, but some summary and analysis of these proceedings and what transpired with these Parties can be of value to them. For the Claimant and the Respondents not to learn from their experiences here, and from this dispute, would be unfortunate for all of them, especially for Hilliard Lyons and its officers and parent company.

The Claimant has charged Respondents (and this is a very brief partial summary) with recommending a security, SmarTalk, which was unsuitable for this investor and for this investor's stated objectives, failure to disclose material information, failure to adequately diversify the portfolio of this particular investor, not reasonably supervising this account and not having reasonable supervisory and account auditing procedures in place.

The Respondents answered that the Claimant was a purchaser of individual stocks, approved all of the transactions, wanted to make money fast, had an appetite for risk, did not mitigate losses, the portfolio was properly diversified, the particular stock, SmarTalk, subject of this action, was suitable for this investor and her goals, and that there was a reasonable basis for the SmarTalk recommendation.

The Parties made opening and closing arguments, Ms. Crooks, Ms. Stavros and Mr. Reames each testified and were questioned at length, almost without limit. Claimant Helen Crooks is an extremely unsophisticated investor. She accepted every recommendation of her friend and advisor Suzanne Stavros. Never did she say, "No" to a recommendation, be it to buy or to sell.

From all the testimony, it is obvious that she has almost no knowledge or understanding of markets, securities or financial statements. She did want to make more money and repeatedly expressed this to Ms. Stavros.

Respondent Suzanne Stavros is a well-meaning, honest, hard-working, customer interested, Registered Representative who has been in the investment industry for 25 years. She meant to serve Ms. Crooks well. Ms. Stavros really liked SmarTalk; she placed it in many of her accounts including her personal account and her husband's and his retirement account.

SmarTalk had been publicly held for three years, lost money in all years (first year revenues less than a million dollars, second year revenues several million, third year revenues \$71.8 million with losses of \$61.5 million). In order, losses of \$.23 per share, \$.34 per share and over \$4.00 per share! Ms. Stavros mentioned none of this to Ms. Crooks, only that it was highly recommended as a buy by two reliable services. Almost one-fifth of Ms. Crooks small portfolio was put in SmarTalk! In September 1997, all of the cash account was in REITs or similar real estate securities. In November, 1997, 70% of the total equity portion of the IRA account was in financial industry equities. After 25 years in the industry, after years with Hilliard Lyons, Ms. Stavros believes SmarTalk was suitable for Ms. Crooks and that Ms. Crooks accounts were adequately diversified, for this unsophisticated investor, with these limited assets and combined income with her husband of low five figures.

Even Mr. Reames testified more than once that "on hindsight" the accounts were not adequately diversified, but that at the time, placing almost one-fifth of Ms. Crook's funds in SmarTalk was a proper recommendation. At the conclusion, he forthrightly stated that he never looked at this account, and that if he had, he would not have considered this placement appropriate.

Mr. Reames testified of his pride in his office and his employees and in their ethical manner. He insists that his brokers deal forthrightly and ethically with their customers.

He says that, and he means it.

What occurred here is result of the omissions and commissions of Hilliard Lyons and— even with his diligence and good faith—of the Manager and Vice-president Reames, for not requiring that Ms. Stavros and every registered representative be fully trained and continually educated so as to be knowledgeable and familiar with sound investment principles, including diversification and suitability, and that they then adhere to those principles.

Hilliard Lyons did not insist on this of Ms. Stavros and Mr. Reames. Hilliard Lyons did not have in place a system to prevent or detect the types of improprieties which occurred here. Not once was a letter sent to this obviously naive investor notifying her that she had purchased a highly speculative security, one that did not fit her stated investment objectives, and that she should confirm to the manager her understanding of the risk.

She was never advised of the risk which accompanies placing such a large portion of her small portfolio in a single high risk venture.

At the conclusion of the hearing, the arbitrator advised the parties of his findings, and advised them to settle the matter, and explained the difficulty of his arriving at the appropriate remedy to be awarded. Respondents had violated Conduct

Rules of NASD Section 2310 and others, Section 10(B) of the Securities Exchange Act and Kentucky Administrative Regulations 808 KAR 10:030. The Claimant, however, had approved the transactions and had failed to exercise care in her own behalf. As the arbitrator reviewed the testimony and the entire record, he remained convinced of the breaches of duty, the responsibility and the accountability of Hilliard Lyons for what transpired, and that remedial action should be effected by it and its officers and parent company. Ms. Crooks did make one sound, prudent decision: she placed her confidence and trust in an established investment firm of many years experience and excellent reputation.

Unfortunately, here that was not sufficient.

The Claimant should recover the entire loss she sustained as the result of the SmarTalk purchase, \$15,853.46. The Claimant has been affected negatively in addition to her loss of funds invested in SmarTalk, such as loss of return on those funds. There is equity in her sustaining some cost for her recklessness.

Having reviewed and considered all of the evidence, arguments and record, IT IS HEREBY ORDERED AND AWARDED that the Claimant Helen Crooks recover from the Respondent Hilliard Lyons the sum of \$15,853.46, without interest, recover any costs charged her by NASD Dispute Resolution for these proceedings, \$5,300 attorneys fees and \$1,000 toward her attorney's expenses including travel, printing, etc. Payment of these amounts to be completed by November 10, 2000, and thereafter will accrue interest at the rate of 12% per annum.

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 = \$ 125

The Panel, as noted in the Award section above, directs Respondent, Hilliard Lyons, to reimburse this \$125 to Claimant.

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 event(s) giving rise to the dispute. In this matter, the member firm is Hilliard Lyons.

Member surcharge = \$ 400

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, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session x \$450	= \$ 450
Pre-hearing conference: June 14, 2000	1 session
Two (2) Hearing sessions x \$450	= \$ 900
Hearing Date: September 13, 2000	2 sessions
Total Forum Fees	= \$1,350

The Panel has assessed all \$1,350 of the forum fees solely to Respondent, Hilliard Lyons.

Fee Summary

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 125
<u>Total Fees</u>	= \$ 125
<u>Less payments</u>	= \$ 575
Balance Due NASD Dispute Resolution, Inc.	= \$(450)

NASD Dispute Resolution, Inc., will refund this \$450 (submitted as a Hearing Session Deposit) to Claimant.

2. Respondent, Hilliard Lyons, be and hereby is solely liable for:

Member Surcharge	= \$ 400
<u>Forum Fees</u>	= \$1,350
<u>Total Fees</u>	= \$1,750
<u>Less payments</u>	= \$ 400
Balance Due NASD Dispute Resolution, Inc.	= \$1,350

All balances are due to NASD Dispute Resolution, Inc.

Sole Arbitrator's Signature

David L. Gittleman
David L. Gittleman, Esq.
Public Arbitrator

October 27, 2000
Signature Date

October 27, 2000
Date of Service (For NASD office use only)