

**Award**  
**NASD Regulation, Inc.**

In the Matter of the Arbitration Between

Names of Claimants

Igor Tsiperfal

Case No. 00-01040

Name of Respondent

Ohio Savings Securities, Inc.  
d/b/a Amtrust Investment Services  
and Amtrust Securities

Name of Third-Party Respondent

Salomon Smith Barney, Inc.

**REPRESENTATION OF PARTIES**

For Igor Tsiperfal, hereinafter referred to as "Claimant", and Third-Party Respondent Salomon Smith Barney, Inc. ("SSB"): Lonnie K. Martens, Esq. of Kelley & Warren, P.A., West Palm Beach, Florida

For Ohio Savings Securities, Inc., d/b/a Amtrust Investment Services and Amtrust Securities ("Amtrust"), hereinafter referred to as "Respondent": Ivan J. Reich, Esq. of Becker & Poliakoff, P.A., Fort Lauderdale, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: March 8, 2000.

Amended Statement of Claim filed on or about: March 28, 2000.

Claimant's Uniform Submission Agreement signed on: March 8, 2000.

Respondent's Motion to Dismiss, Statement of Answer, Affirmative Defenses, Counterclaim and Third-Party Claim against Salomon Smith Barney, Inc. filed on: March 13, 2000.

Respondent's Uniform Submission Agreement signed on: March 10, 2000 by Joseph P. Yesko, President, on behalf of the firm.

Claimant's Reply to Motion to Dismiss filed on or about: March 14, 2000.

Claimant's Answer to Counterclaim and Third-Party Respondent's Motion to Dismiss Third Party Claim filed on or about: March 28, 2000.

### **CASE SUMMARY**

Claimant alleged the following: Claimant filed a Statement of Claim to begin the expedited arbitration process since Respondent failed to file its injunctive claim in accordance with NASD Rule 10335. Claimant sent an announcement of his change of employment to a list of people he compiled, more than half of which were not his former customers. Since an ex parte temporary restraining order had been issued by the Court, in his request for temporary equitable relief, Claimant asked the arbitrators to order Respondent to: refrain from misleading Claimant's clients concerning Claimant's ability to continue to serve as their financial advisor or their right to have their accounts transferred to his new employer, Salomon Smith Barney, Inc. ("SSB"); and, refrain from interfering with the rights of the clients of Claimant to receive advice and service from him or his employer. Claimant sought permanent injunctive relief declaring that Claimant and/or SSB are permitted to continue contacting and continuing to do business with the customers Claimant served at Respondent; declare that Claimant is not liable to Respondent in law or in equity in any respect as a result of the termination of his employment with Respondent, or regarding his subsequent employment with SSB; and, to grant Claimant such other and further relief as the Panel deems just and proper, including attorneys' fees and damages. In his Amended Statement of Claim, Claimant asked for a finding that Respondent unjustifiably and intentionally interfered with his ability to compete, without a contractual basis for doing so, and requested economic damages and exemplary (punitive) damages for loss of reputation, humiliation, shame and anguish.

Respondent denied the allegations of wrongdoing contained in the Statement of Claim and asserted the following: There can be no claim for wrongful injunction, simply because it was not wrongful, as evidenced by its claims. Even if true, this panel has no jurisdiction to entertain the same since that is to be determined after final hearing by the court dissolving the injunction. The injunction bond in place of \$10,000.00 caps all of Claimant's damages. Claimant has suffered no damages since Claimant has been paid and received all of his commissions, because Respondent processed every transfer request despite the existence of the injunction. Further, Claimant contractually agreed to be enjoined upon his violation of the confidentiality provision which undisputedly occurred. NASD rules provide no sanction, and clearly not a cause of action, for Respondent's failure to concurrently file NASD arbitration at the same time as filing for injunctive relief. Respondent has filed the appropriate paperwork, has paid the appropriate fees, and Claimant would have had to file the same along with his fees to bring his claims. The issue is now moot, the rules afford no sanction, and the case is presently framed and pending before this panel. Respondent could not be liable for tortious interference by virtue of obtaining an injunction since: (1) Claimant had no legal rights to those customers; (2) Respondent was merely acting to protect its own preexisting financial interest; (3) Respondent, and not Claimant, had that contractual right, it could not interfere with its own contract; and (4) a judicial privilege exists for utilizing the courts to seek an injunction, and Claimant's only remedy is an action for wrongful injunction.

Respondent further asserted a Counterclaim against Claimant and a Third-Party claim against SSB, and alleged the following: Respondent is entitled on its Counterclaim and Third-Party claim to monetary and injunctive relief against Claimant for breach of his employment

agreement and duty of loyalty, good faith and fair dealing he owed to Respondent, and against both Claimant and SSB for violation of the Uniform Trade Secrets Act, unfair competition, professional standards, conversion and tortious interference with Amtrust's customer relationships. This relief includes actual and punitive damages, an accounting, future royalties, attorneys' fees and costs.

In response to the Counterclaim and Third-Party Claim of Respondent, Claimant denied all material allegations, including breach of contract and confidentiality and wrongful solicitation of customers.

Third-Party Respondent SSB requested a dismissal of the claim against it for failure to state a cause of action, claiming that no factual or legal basis exists for Respondent's claims against it for injunctive and monetary relief, unfair competition, violation of professional standards, conversion and tortious interference.

#### **RELIEF REQUESTED**

Claimant requested an injunctive order requiring Respondent:

- a. To notify Claimant's clients that Claimant has obtained injunctive relief and that Respondent is responsible for any losses which occur from customers not being able to access their account and/or make transactions through SSB;
- b. To refrain from misleading Claimant's clients concerning Claimant's ability to continue to serve as their financial advisor or their right to have their accounts transferred to SSB;
- c. To pay Claimant all earned and unpaid compensation and/or benefits;
- d. To comply with Rule 11870 of the NASD Uniform Practice Code and NYSE Rule 412 (which require member firms to cooperate in processing account transfer forms, also known as "ACAT" forms) to effect transfer of accounts in compliance with client instructions within three business days; and,
- e. To refrain from interfering with the rights of the clients of Claimant to receive advice and service from Claimant or his employer.

Claimant further requested the following: that the panel enter a finding that Respondent unjustifiably and intentionally interfered with Claimant's ability to compete, without a contractual basis for doing so; dismissal of the counterclaim; damages; and, attorneys' fees.

Third-Party Respondent SSB requested a dismissal of the Third-Party Claim.

Respondent requested that Claimant's requests be denied and that it be awarded relief on its Counterclaim and Third-Party Claim as follows:

- (a) Award permanent injunctive relief for a period of two years from the date of the preliminary injunction entered February 25, 2000 restraining Claimant, directly or indirectly, whether alone or in concert with others, including any officer, agent, employee and/or representative of SSB from:
  - (i) soliciting any business from any client of Amtrust whom Claimant serviced, or whose name became known to Claimant while in the employ of Amtrust;
  - (ii) from using, disclosing or transmitting any of Amtrust's confidential trade secret information, including names, addresses, telephone numbers and account numbers;
  - (iii) requiring Claimant and SSB to return any and all records of Amtrust, including but not limited to customer lists and trade secrets, including copies thereof, removed from Amtrust's offices by Claimant;
  - (iv) prohibiting Claimant and SSB from accepting the transfer of any client of Amtrust previously serviced or solicited by Claimant or from servicing the account of any such client;
  - (v) restraining Claimant from contacting Amtrust's customers,
  - (vi) ordering the destruction of any copies of those trade secrets and customer lists in Claimant's or SSB's possession;
- (b) Award Amtrust compensatory and punitive damages against Claimant and SSB in excess of \$1,000,000.00;
- (c) Award Amtrust costs and attorneys' fees incurred in this action pursuant to C.688, Fla. Stat., against Claimant and SSB; and,
- (d) Grant such other relief deemed equitable and just by the panel.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

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, 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:

1. Respondent Amtrust is hereby ordered to cease and desist all efforts to prevent Claimant and SSB from contacting, doing business with, or communicating in any way with individuals or entities who have accounts with Respondent; to cease and desist from any action which in any fashion is an attempt to restrict Claimant or SSB in the conduct of their business with respect to Respondent's customers formerly serviced by Claimant; and, to promptly honor any customer request to transfer an account to SSB, and to process same as any other similar request it might receive.
2. The Third-Party Claim and Counterclaim are hereby denied.
3. Each party shall bear their own attorneys' fees, provided that this decretal paragraph shall have no effect on any indemnification or other agreement, if any, between Claimant and SSB.
4. All other requests for relief not specifically addressed herein are denied.

#### **FEES**

Pursuant to the Code, the following fees are assessed:

##### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 250.00
Third Party Claim filing fee	= \$2,000.00

##### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. In this matter, the member firms Amtrust and SSB are parties.

Member Fees assessed to Amtrust:

Member surcharge	= \$1,200.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,000.00
Injunctive fee	= \$2,500.00

Member Fees assessed to SSB:

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$4,500.00

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

One (1) Injunctive Hearing with a single arbitrator x \$450.00 = \$450.00  
Injunctive hearing date: March 13, 2000 1 session

One (1) Pre-hearing session with a single arbitrator x \$450.00 = \$450.00  
Pre-hearing conference date: March 29, 2000 1 session

Two (2) Pre-hearing sessions with the Panel x \$1,000.00 = \$2,000.00  
Pre-hearing conference dates: April 14, 2000 1 session  
May 5, 2000 1 session

Seven (7) Hearing sessions x \$1,000.00 = \$7,000.00  
Hearing dates: May 15, 2000 2 sessions  
May 18, 2000 2 sessions  
May 22, 2000 2 sessions  
May 23, 2000 1 session

Total Forum Fees = \$9,900.00

The Panel has assessed \$4,950.00 of the forum fees to Claimant.  
The Panel has assessed \$4,950.00 of the forum fees to Respondent.

#### Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$4,950.00
Injunctive Relief Fees	= \$2,500.00
Total Fees	= \$7,700.00
Less payments	= \$3,750.00
Balance Due NASD Regulation, Inc.	= \$3,950.00

Respondent be and hereby is solely liable for:

Third-Party Claim Filing Fee	= \$ 2,000.00
Member Fees	= \$ 6,300.00
Forum Fees	= \$ 4,950.00
Total Fees	= \$13,250.00
Less payments	= \$ 6,900.00
Balance Due NASD Regulation, Inc.	= \$ 6,350.00

Third-Party Respondent SSB be and hereby is solely liable for:

Member Fees	= \$7,600.00
Total Fees	= \$7,600.00
Less payments	= \$ 600.00
Balance Due NASD Regulation, Inc.	= \$7,000.00

All balances are due and payable to NASD Regulation, Inc.

**Concurring Arbitrators' Signature(s)**

/s/  
Stephen H. Lewis, Esq.  
(Public Chairperson)

Signature Date

/s/  
Robert D. Herschman, Esq.  
(Public Panelist)

Signature Date

                    /s/                      
Raymond W. Snow  
(Industry Panelist)

Signature Date

May 25, 2000  
Date of Service (For NASD office use only)

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signature(s)

  
Stephen H. Lewis, Esq.  
(Public Chairperson)

5/25/00  
Signature Date

  
Robert D. Herschman, Esq.  
(Public Panelist)

\_\_\_\_\_  
Signature Date

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Raymond W. Snow  
(Industry Panelist)

\_\_\_\_\_  
Signature Date

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Date of Service (For NASD office use only)



Robert D. Herschman, Esq.  
(Public Panelist)

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Raymond W. Snow  
(Industry Panelist)

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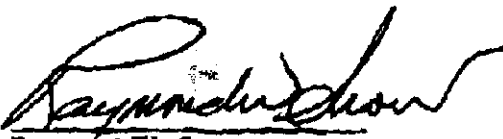
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Raymond W. Snow  
(Industry Panelist)

May 25, 2000  
Signature Date

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