

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Leap Funding LLC, (Claimant) vs. Refco Securities, LLC, Paul A. Basile, and Anthony V. Scianna, (Respondents)

Case Number: 00-04466

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Leap Funding LLC, hereinafter referred to as "Claimant": Laurie A. Stanziale, Esq., Kramer Roth & Rosenbaum LLP, New York, NY (Ms. Stanziale was with the Law Offices of Allen Bodner, New York, NY, when she first appeared in this matter).

Respondents, Refco Securities, LLC ("Refco"), Paul A. Basile ("Basile"), and Anthony V. Scianna ("Scianna"), hereinafter collectively referred to as "Respondents": Therese M. Doherty, Esq., Herrick, Feinstein LLP, New York, NY (Ms. Doherty was with the law firm of Graubard Mollen & Miller, New York, NY, when she first appeared in this matter).

**CASE INFORMATION**

Statement of Claim filed on or about: October 6, 2000.

Reply to Counterclaim filed by Claimant on or about: December 27, 2000.

Claimant signed the Uniform Submission Agreement: October 4, 2000.

Joint Statement of Answer and Counterclaim filed by Respondents on or about: December 12, 2000.

Refco signed the Uniform Submission Agreement: November 9, 2000.

Basile signed the Uniform Submission Agreement: November 9, 2000.

Scianna signed the Uniform Submission Agreement: November 9, 2000.

**CASE SUMMARY**

Claimant asserted the following causes of action: material misrepresentations; breach of contract; breach of fiduciary duty; negligence; fraud under state and federal law; respondeat superior; control person liability; and failure to reasonably supervise. Claimant's claim involved unspecified financial products.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state causes of action for fraud, negligence, breach of contract, or breach of fiduciary duty against Respondents upon which relief may be granted; Claimant's negligence claim is barred, in whole or in part, by Claimant's own negligence; Claimant has failed to mitigate its damages; and Claimant's claims are barred, in whole or in part, by the doctrines of unclean hands and estoppel.

In their Counterclaim, Respondents asserted the following causes of action: prima facie tort; assertion of allegations without any basis in fact; malicious naming of Basile and Scianna as Respondents; and gross deviations from good and accepted standards in the securities industry.

Unless specifically admitted in its Reply, Claimant denied the allegations made in the Counterclaim.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

- a. Compensatory damages in the amount of \$2,000,000.00 representing the account losses sustained due to Refco depriving Claimant of its opportunity to trade, the SMA cash balance that Claimant lost due to the failure to transfer the account, and the increased maintenance requirement charged to Claimant;
- b. Compensatory damages in the amount of \$246,000.00 representing money transferred into the Refco account that was lost due to the inability to trade and Refco's improper trading of the account;
- c. Punitive damages in an amount to be determined by the Panel;
- d. Attorneys' fees, experts' fees, NASD filing fees, and NASD forum fees;
- e. Pre-judgement interest at a rate of 9% per annum; and
- f. All other relief that the Panel deems just and proper.

During the hearings in this matter, the Panel allowed Claimant to make a verbal amendment increasing the total amount of compensatory damages requested to \$7,900,000.00.

In their Answer and Counterclaim, Respondents requested an Award as follows:

- a. Against Claimant and in favor of Respondents dismissing each of the claims asserted in the Statement of Claim, with prejudice;
- b. Against Claimant and in favor of Basile and Scianna on the Counterclaim, awarding compensatory damages in an amount to be determined at the hearing, together with punitive damages in an amount to be determined at the hearing, but in an amount of at least \$2,000,000.00;
- c. Awarding Respondents their attorneys' fees, costs, and expenses incurred in this arbitration pursuant to paragraph 17 of the Client's Agreement/Margin Agreement duly executed by Claimant on or about March 30, 2000; and
- d. Awarding Respondents such further relief as the Panel deems just.

In its Reply, Claimant requested an Award dismissing the Counterclaim with prejudice, together with such other and further relief as to the Panel seems just and proper.

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

During the hearings in this matter, Respondents made a Motion to Dismiss. The Panel denied said Motion.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are hereby dismissed in their entirety.
2. Claimant be and hereby is liable for and shall pay to Basile the sum of \$500.00 as punitive damages.
3. Claimant be and hereby is liable for and shall pay to Scianna the sum of \$1,000.00 as punitive damages.

4. Claimant be and hereby is liable for and shall pay to Respondents the sum of \$10,000.00 as attorneys' fees. The Panel awarded attorneys' fees pursuant to the terms of the Client's Agreement/Margin Agreement signed by Claimant.
5. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 500.00
Counterclaim 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 firm that employed the associated persons at the time of the events giving rise to the dispute. In this matter, Refco Securities, LLC is a party.

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:

Five (5) Pre-hearing sessions with Panel x \$1,200.00 = \$ 6,000.00

Pre-hearing conferences:	April 16, 2001	1 session
	May 30, 2001	1 session
	June 29, 2001	1 session
	October 19, 2001	1 session
	May 3, 2002	1 session

Twenty-three (23) Hearing sessions x \$1,200.00 = \$27,600.00

Hearing Dates:	October 29, 2001	2 sessions
	October 30, 2001	2 sessions
	October 31, 2001	1 session
	November 28, 2001	2 sessions
	November 29, 2001	2 sessions

November 30, 2001	1 session
March 19, 2002	2 sessions
March 20, 2002	2 sessions
March 21, 2002	2 sessions
March 25, 2002	2 sessions
March 26, 2002	2 sessions
May 3, 2002	1 session
July 8, 2002	2 sessions
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Total Forum Fees	= \$33,600.00

The Panel has assessed all of the forum fees against Claimant.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimant, requested tapes, \$90.00.
2. Respondents, requested tapes, \$90.00.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$33,600.00
Administrative Costs	= \$ 90.00
Total Fees	= \$34,190.00
<u>Less payments</u>	= \$ 1,790.00
Balance Due NASD Dispute Resolution	= \$32,400.00

2. Refco be and hereby is solely liable for:

Member Fees	= \$ 7,600.00
Total Fees	= \$ 7,600.00
<u>Less payments</u>	= \$ 8,800.00
Refund Due Refco	= \$ 1,200.00

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March 19, 2002	2 sessions
March 20, 2002	2 sessions
March 21, 2002	2 sessions
March 25, 2002	2 sessions
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Refund Due Refco	= \$ 1,200.00

3. Respondents be and hereby are jointly and severally liable for:

Counterclaim Filing Fee	= \$ 2,000.00
<u>Administrative Costs</u>	= \$ 90.00
Total Fees	= \$ 2,090.00
<u>Less payments</u>	= \$ 2,090.00
Balance Due NASD Dispute Resolution	= \$ 0.00

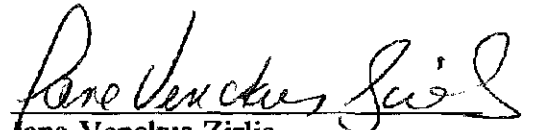
All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

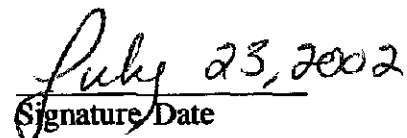
**ARBITRATION PANEL**

Jane Venckus Zirlis	-	Non-Public Arbitrator, Presiding Chair
Robert Pincus, Esq.	-	Public Arbitrator
Marilyn J. Salzman, Esq.	-	Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
Jane Venckus Zirlis  
Non-Public Arbitrator, Presiding Chair

  
Signature Date

\_\_\_\_\_  
Robert Pincus, Esq.  
Public Arbitrator

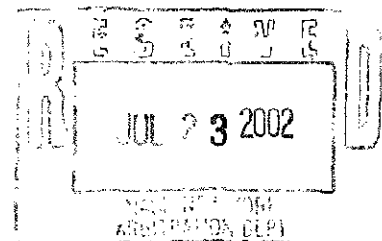
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August 1, 2002  
Date of Service (For NASD Dispute Resolution use only)





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