

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

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In the Matter of the Arbitration Between:

Dr. Leslie Schaffer, as Managing Agent; Suzanne Schaffer, as Trustee; Schaffer Family Partnership Limited Partnerships; and Neurological Professionals Ltd. Purchase Plan Trust (Claimants) v. Neuberger Berman, LLC, Brian E. Hahn, Jennifer K. Silver, Daniel Rosenblatt, John J. Barker, Robert J. Appel, Mike Maluf, and Mark Kleinman (Respondents)

Case Number: 00-04695

Hearing Site: Chicago, Illinois

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**REPRESENTATION OF PARTIES**

Claimants Dr. Leslie Schaffer, as Managing Agent ("L. Schaffer"); Suzanne Schaffer, as Trustee ("S. Schaffer"); Schaffer Family Partnership Limited Partnerships ("Family Partnerships"); and Neurological Professionals Ltd. Purchase Plan Trust ("Purchase Plan"), hereinafter collectively referred to as "Claimants": Paul J. Sussman, Esq. of the Law Offices of Paul J. Sussman located in Chicago, Illinois.

Respondent Neuberger Berman, LLC ("Neuberger Berman"), Brian E. Hahn ("Hahn"), Jennifer K. Silver ("Silver"), Daniel Rosenblatt ("Rosenblatt"), John J. Barker ("Barker"), Robert J. Appel ("Appel"), Mike Maluf ("Maluf"), and Mark Kleinman ("Kleinman"), hereinafter collectively referred to as "Respondents": Edwin G. Schallert, Esq. of the firm Debevoise & Plimpton located in New York City, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: October 23, 2000

Amendment to Statement of Claim filed on or about: November 06, 2000

Claimant L. Schaffer signed the Uniform Submission Agreement: October 12, 2000

Claimant S. Schaffer signed the Uniform Submission Agreement: October 06, 2000

Statement of Answer filed by Respondents on or about: January 19, 2001

Respondent Neuberger Berman signed the Uniform Submission Agreement: January 18, 2001

Respondent Silver signed the Uniform Submission Agreement: January 17, 2001

Respondent Rosenblatt signed the Uniform Submission Agreement: January 18, 2001

Respondent Barker signed the Uniform Submission Agreement: January 18, 2001  
Respondent Maluf signed the Uniform Submission Agreement: January 17, 2001  
Respondent Kleinman signed the Uniform Submission Agreement: January 18, 2001

### **CASE SUMMARY**

Claimant Leslie Schaffer and Suzanne Schaffer asserted the following causes of action:

1. Unauthorized Trading;
2. Material Misrepresentation;
3. Failure to Disclose Material Information;
4. Violation of the anti-fraud provisions of the Federal Securities Act, Investment Advisors Act of 1940;
5. Common Law Fraud;
6. Breach of Fiduciary Obligation;
7. Breach of Contract;
8. Violation of the Illinois State Securities Act;
9. Violation of the Illinois Deceptive Practices Act;
10. Violation of ERISA;
11. Unsuitability; and
12. Failure to Supervise on the part of Respondent Neuberger.

The causes of action relate to the investment decisions made in the four accounts Claimants held with Neuberger that included the purchase of Artisan Components, Allscripts, Inc., Actuate Corp., About.com, BindView Development, Active Software, CAIS Internet, CyberGold, E Speed, Inc., Helix Technology, Mypoints.Com, Netegrity, Inc., Netopia, Inc., Osicom Technologies, Inc., Visual Networks, Inc., Sierra Cities.Com, Official Payments Corp., Digital Island, Bea System, Citrix System, Conexant Systems, Efficient Networks, Safeguard Scientific, Priceline.Com, Doubleclick, Tiffany Company, Capital One Financial Corp., Compaq Computer, Enron Corp., Estee Lauder, American Home Products, IBM, America Online, Best Buy, Calpine Corp., Coastal Corp., Hewlett Packard, Johnson & Johnson, Cisco, Intel, Apple Computer, and Brocade Communications, Kopin, Analog Devices, Gemstar, and Intersil Holding Corp., among others.

Unless specifically admitted in its Answer, Respondents Neuberger Berman, LLC, Brian E. Hahn, Jennifer K. Silver, Daniel Rosenblatt, John J. Barker, Robert J. Appel, Mike Maluf, and Mark Kleinman denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Assumption of Risk;
2. Claimants not entitled to a Windfall;
3. Accounts were managed with Due Diligence; and
4. Market Conditions beyond the Control of Respondents.

### **RELIEF REQUESTED**

**Claimants requested:**

Compensatory Damages	\$ 921,624.65
Punitive Damages	\$1,000,000.00
Interest	at the Legal Rate
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	reimbursement of filing fee

**Respondents requested:**

Other Monetary/Non-Monetary Relief if any:	denial and dismissal
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### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents Hahn and Appel did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

Due to a last minute occurrence the second public arbitrator acting as chair was unable to serve. The case proceeded pursuant to 10313 of the Code of Arbitration Procedure.

The panel finds that Respondent Neuberger Berman, LLC demonstrated poor record keeping with respect to investment objectives, particularly with regard to Claimants' account number 86000.

### **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. Respondent Neuberger Berman, LLC is liable to and shall pay to Claimants Dr. Leslie Schaffer, as Managing Agent; Suzanne Schaffer, as Trustee; Schaffer Family Partnership Limited Partnerships; and Neurological Professionals Ltd. Purchase Plan Trust the sum of \$97,500.00 (ninety-seven thousand five hundred dollars and no cents) as compensatory damages.
2. Respondent Neuberger Berman, LLC is liable to and shall pay to Claimants Dr. Leslie Schaffer, as Managing Agent; Suzanne Schaffer, as Trustee; Schaffer Family Partnership Limited Partnerships; and Neurological Professionals Ltd. Purchase Plan Trust the sum of \$6,703.00 (six thousand seven hundred three dollars and no cents) as interest.
3. Any and all claims asserted by Claimants Dr. Leslie Schaffer, as Managing Agent; Suzanne Schaffer, as Trustee; Schaffer Family Partnership Limited Partnerships; and Neurological Professionals Ltd. Purchase Plan Trust against

Respondents Brian E. Hahn, Jennifer K. Silver, Daniel Rosenblatt, John J. Barker, Robert J. Appel, Mike Maluf, and Mark Kleinman are denied.

4. Parties shall bear their own costs, including attorney's fees.
5. 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	= \$500.00
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#### **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. In this matter, the member firm is a party.

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$4,500.00</u>
Total Member Fees	= \$7,600.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

Pursuant to Rule 10319 of the Code of Arbitration Procedure Respondents requested an adjournment of the December 5-7, 2001 hearing dates. On November 29, 2001, the panel granted the postponement.

Adjournment fee	= \$1,200.00.
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#### **Forum Fees and Assessments**

The panel has the authority to assess 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) Pre-hearing session with Panel x \$1,200.00	= \$1,200.00
Pre-hearing conference: July 23, 2001	1 session
Five (5) Hearing sessions x \$1,200.00	= \$6,000.00
Hearing Dates: March 11, 2002	2 sessions

	March 12, 2002	2 sessions
	March 13, 2002	1 session
Total Forum Fees		= \$7,200.00

1. The panel has assessed \$3,600.00 of the forum fees jointly and severally to Claimants Dr. Leslie Schaffer, as Managing Agent; Suzanne Schaffer, as Trustee; Schaffer Family Partnership Limited Partnerships; and Neurological Professionals Ltd. Purchase Plan Trust
2. The panel has assessed \$3,600.00 of the forum fees to Respondent Neuberger Berman, LLC.

#### Fee Summary

1. Claimants Dr. Leslie Schaffer, as Managing Agent; Suzanne Schaffer, as Trustee; Schaffer Family Partnership Limited Partnerships; and Neurological Professionals Ltd. Purchase Plan Trust are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$3,600.00
Total Fees	= \$4,100.00
Less payments	= \$1,700.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,400.00

2. Respondents Neuberger Berman, LLC, Brian E. Hahn, Jennifer K. Silver, Daniel Rosenblatt, John J. Barker, Robert J. Appel, Mike Maluf, and Mark Kleinman are jointly and severally liable for:

Adjournment Fee	= \$1,200.00
Total Fees	= \$1,200.00
Less payments	= \$1,200.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

3. Respondent Neuberger Berman, LLC is solely liable for:

Member Fees	= \$7,600.00
Forum Fees	= \$1,200.00
Balance Due NASD Dispute Resolution, Inc.	= \$8,800.00
Less payments	= \$3,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$5,700.00

All balances are due to NASD Dispute Resolution, Inc.

#### ARBITRATION PANEL

Shepherd G. Pryor	-	Public Arbitrator, Presiding Chair
Doris H. Geck	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Shepherd G. Pryor

04/16/02

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Shepherd G. Pryor  
Public Arbitrator, Presiding Chair

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Signature Date

/s/ Doris H. Geck

04/16/02

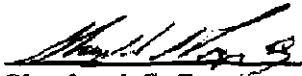
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Doris H. Geck  
Non-Public Arbitrator

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Signature Date

04/18/02

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Date of Service (For NASD-Dispute Resolution office use only)

**Concurring Arbitrators' Signatures**

  
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Shepherd G. Pryor  
Public Arbitrator, Presiding Chair

4/16/02  
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Signature Date

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Doris H. Geck  
Non-Public Arbitrator

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Public Arbitrator, Presiding Chair

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Signature Date

  
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Doris H. Geck  
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