

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

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In the Matter of the Arbitration Between:

Robert A. Audette, (Claimant) vs. Sharpe Capital, Inc., Lanny T. Fried, and James Pepio,  
(Respondents)

Case Number: 00-04736

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Robert A. Audette, hereinafter referred to as "Claimant": Earle Giovanniello, Esq.,  
Law Offices of Earle Giovanniello, New Haven, CT.

Respondent, Sharpe Capital, Inc. ("Sharpe"), did not appear at the hearing in this matter.  
Previously represented by: Michael C. Simon, Esq., General Counsel, Sharpe Capital, Inc.,  
New York, NY.

Respondents, Lanny T. Fried ("Fried") and James Pepio ("Pepio"), did not appear at the  
hearing in this matter. Previously represented by: M. David Sayid, Esq., Sayid and  
Associates LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: October 19, 2000.  
Claimant signed the Uniform Submission Agreement: October 17, 2000.

Statement of Answer filed by Sharpe on or about: March 7, 2001.  
Sharpe did not sign a Uniform Submission Agreement.

Joint Statement of Answer filed by Fried and Pepio on or about: January 24, 2000.  
Fried did not sign a Uniform Submission Agreement.  
Pepio did not sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: churning; unauthorized trades; unsuitability;  
and fraud. Claimant's claim involved unspecified financial products.

Unless specifically admitted in their Answer, Fried and Pepio denied the allegations made in the Statement of Claim and asserted the following defenses: Fried and Pepio violated no written contract, no statute, no law, no rule, and no regulation in connection with the allegations set forth in the Statement of Claim; Claimant assumed the risk of his transactions, and authorized the purchase and sale of all said transactions maintained with the Respondents; Claimant had or should have had full knowledge of all material facts concerning his securities accounts maintained with the Respondents; the Statement of Claim fails to state a cause of action upon which relief can be granted; Claimant waived any and all claims for relief he may otherwise have had against the Respondents; Claimant is estopped from asserting the purported claims set forth in the Statement of Claim; Claimant ratified and approved each and every transaction on which Claimant's claims purport to be based; the claims are barred by Claimant's contributory fault, comparative fault, recklessness, and failure to exercise due diligence; Claimant cannot reasonably have relied upon any alleged representations set forth in the Statement of Claim; Claimant has failed to mitigate his damages; Claimant had knowledge of and assumed the risks of each of the investments on which his Statement of Claim is based; and any and all relief sought by Claimant is barred by the doctrine of unclean hands.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages totaling \$79,206.81, plus punitive damages, attorneys' fees, expert witness fees, and costs.

Fried and Pepio requested that the Statement of Claim be denied in its entirety, and that they be awarded costs, fees, expenses, and attorneys' fees in the approximate amount of \$25,000.00, plus such other and further relief as justice and equity require.

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

Prior to the hearing in this matter, Claimant entered into settlement agreements with Respondents Sharpe and Pepio.

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Fried has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Fried present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Sharpe, Fried, and Pepio 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, are bound by the determination of the Panel on all issues submitted.

The Claimant agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

The Claimant agreed to proceed with the hearing in the absence of arbitrator Harry Walters.

### **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. Fried be and hereby is solely liable for and shall pay to Claimant the sum of \$10,000.00 as compensatory damages.
2. Claimant's request for punitive damages is hereby denied.
3. All other requests for relief are hereby 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	= \$ 225.00
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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, Sharpe Capital, Inc. is a party.

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

**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) Pre-hearing session with Panel x \$750.00 = \$ 750.00  
Pre-hearing conference: July 16, 2001 1 session

One (1) Hearing session x \$750.00 = \$ 750.00  
Hearing Date: December 11, 2001 1 session

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Total Forum Fees = \$1,500.00

1. The Panel has assessed \$750.00 of the forum fees against Claimant.
2. The Panel has assessed \$750.00 of the forum fees against Fried.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= \$ 750.00
Total Fees	= \$ 975.00
<u>Less payments</u>	= \$ 975.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

2. Sharpe be and hereby is solely liable for:

<u>Member Fees</u>	= \$3,100.00
Total Fees	= \$3,100.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,100.00

3. Fried be and hereby is solely liable for:

<u>Forum Fees</u>	= \$ 750.00
Total Fees	= \$ 750.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 750.00

All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Annette B. Meyers	-	Public Arbitrator, Presiding Chair
Dorri Jacobs	-	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.

Annette B. Meyers  
Annette B. Meyers  
Public Arbitrator, Presiding Chair

1/8/02  
Signature Date

Dorri Jacobs  
Dorri Jacobs  
Public Arbitrator

Jan. 11, 2002  
Signature Date

January 18, 2002  
Date of Service (For NASD office use only)