

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Wyatt Lee, Claimant v. Royal Hutton Securities Corp., Clark Street Capital, Inc., and Steven J. Simone, Respondents

Clark Street Capital, Inc., Counter-Claimant v. Wyatt Lee, Counter-Respondent

Case Number: 00-04779

Hearing Site: Seattle, Washington

REPRESENTATION OF PARTIES

For Claimant/Counter-Respondent:

John A. Bender, Esq.
Holland & Knight LLP
Seattle, Washington

For Respondents
Royal Hutton Securities Corp.
and Steven J. Simone:

Michael Utila, Esq.
Law Offices of Michael Utila, Esq.
New York, New York

For Respondent/Counter-Claimant
Clark Street Capital, Inc.:

M. David Sayid, Esq.
Sayid and Associates LLP
New York, New York

CASE INFORMATION

Statement of Claim filed: October 27, 2000

Claimant/Counter-Respondent's Uniform Submission Agreement signed: September 8, 1999

First Amended Statement of Claim filed: November 6, 2000

Second Amended Statement of Claim filed: February 24, 2002

Statement of Answer to First Amended Statement of Claim filed by Respondents Royal Hutton Securities Corp. and Steven J. Simon: January 9, 2001

Statement of Answer and Counterclaim filed by Respondent/Counter-Claimant Clark Street Capital, Inc.: April 16, 2002

Statement of Answer to Counterclaim filed by Claimant/Counter-Respondent Wyatt Lee: April 29, 2003

Respondent Royal Hutton Securities Corp.'s Uniform Submission Agreement signed: Not signed

Respondent/Counter-Claimant Clark Street Capital, Inc.'s Uniform Submission Agreement signed: Not signed

Respondent Steven J. Simon's Uniform Submission Agreement signed: Not signed

CASE SUMMARY

In his Second Amended Statement of Claim, Claimant/Counter-Respondent alleged breach of contract, breach of fiduciary duty, unauthorized trading, misrepresentations, and negligence in the purchase and sale of Infoseek and Penn Octane common stock.

Respondents Royal Hutton Securities Corp. and Steven J. Simon denied the allegations of wrongdoing set forth in the Claimant/Counter-Respondent's Original and Second Amended Statement of Claim and asserted several affirmative defenses.

Respondent/Counter-Claimant Clark Street Capital, Inc. denies the allegations of wrongdoing set forth in the Claimant/Counter-Respondent's Second Amended Statement of Claim and asserted several affirmative defenses.

Respondent/Counter-Claimant Clark Street Capital, Inc. submitted a Counterclaim alleging that Claimant/Counter-Respondent's Statement of Claim as to Respondent/Counter-Claimant Clark Street Capital, Inc. was a frivolous filing and that Claimant/Counter-Respondent was abusing the arbitration process.

Claimant/Counter-Respondent denied the allegations set for in Respondent/Counter-Claimant Clark Street Capital, Inc.'s Counterclaim and asserted several affirmative defenses.

RELIEF REQUESTED

In his Original and First Amended Statement of Claim, Claimant/Counter-Respondent requested at least \$79,871.63 in rescissory damages, unspecified lost opportunity damages, interest at eight percent per annum, unspecified attorney's fees and costs.

Respondents Royal Hutton Securities Corp. and Steven J. Simon requested dismissal of the Claimant's Original and First Amended Statement of Claim in their entirety.

In his Second Amended Statement of Claim, Claimant/Counter-Respondent requested \$182,756.25 in rescissory damages, unspecified lost opportunity damages, interest at eight percent per annum, unspecified attorney's fees, and costs.

Respondent/Counter-Claimant Clark Street Capital, Inc. requested dismissal of the Claimant/Counter-Respondent's Second Amended Statement of Claim in its entirety and award of costs, fees, and expenses.

In its Counterclaim, Respondent/Counter-Claimant Clark Street Capital, Inc. requested \$25,000.00 in attorney's fees.

Claimant/Counter-Respondent requested dismissal of Respondent/Counter-Claimant Clark Street Capital, Inc.'s Counterclaim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Royal Hutton Securities Corp., Steven J. Simon, and Respondent/Counter-Claimant Clark Street Capital, Inc. did not file with the NASD Dispute Resolution, properly executed submission agreements; however, all said Respondents are required to submit to arbitration and Respondents Royal Hutton Securities Corp., Steven J. Simon, and Respondent/Counter-Claimant Clark Street Capital, Inc. having answered the claim are bound by the determination of the Panel on all issues submitted.

On November 6, 2000, Claimant/Counter-Respondent filed an Amended Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(a).

On July 12, 2001, Royal Hutton Securities Corp. withdrew its Broker/Dealer membership from the NASD and ceased operations.

On February 24, 2002, Claimant/Counter-Respondent filed a Motion to file a Second Amended Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(b). The Panel granted the motion on May 22, 2002 and accepted the Proposed Second Amended Statement of Claim submitted on February 24, 2002 as filed. The Claimant/Counter-Respondent's Second Amended Statement of Claim removed Gerald Baker as a Respondent, set forth that Claimant/Counter-Respondent had reached a settlement with Respondent Steven J. Simon and added Jeffery M. Schofield, Richard Scarsello, and Clark Street Capital, Inc. as successors in interest to Respondent Royal Hutton Securities Corp.

To date, Jeffery M. Schofield and Richard Scarsello have not participated in this action and Claimant/Counter-Respondent has not presented proof of service of the Second Amended Statement of Claim.

On July 29, 2002, Respondent/Counter-Claimant Clark Street Capital, Inc. filed a Motion to Dismiss, Motion for Sanctions and Motion for Summary Judgment arguing that it was not a successor in interest to Respondent Royal Hutton Securities Corp. The Claimant/Counter-Respondent submitted an opposition and request that the panel defer ruling on the motion. On October 3, 2002, a telephonic pre-hearing conference was held, attended by Claimant/Counter-Respondent and Respondent/Counter-Claimant Clark Street Capital, Inc. and the Panel. The Panel reconvened by teleconference, without participation of Claimant/Counter-Respondent and Respondent/Counter-Claimant Clark Street Capital, Inc., on October 9, 2002 to further consider said motion and request. After due deliberation the Panel granted Claimant/Counter-Respondent's request to defer ruling on Respondent/Counter-Claimant's Motion to Dismiss and also granted Claimant/Counter-Respondent's request to seek additional discovery.

On January 14, 2003, Respondent/Counter-Claimant Clark Street Capital, Inc. filed a Request for Reconsideration of its previously filed Motion to Dismiss and for Sanctions. On March 7, 2003, a telephonic pre-hearing conference was held, attended by Claimant/Counter-Respondent and Respondent/Counter-Claimant Clark Street Capital, Inc. and the Panel. After due deliberation, the Panel ruled to grant the Motion to Dismiss.

The parties 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, testimony, and arguments presented by the parties, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent/Counter-Claimant Clark Street Capital, Inc.'s Motion to Dismiss is granted and Claimant/Counter Respondent's claims against Respondent/Counter-Claimant Clark Street Capital, Inc. are denied in their entirety.
- 2) Respondent/Counter-Claimant Clark Street Capital, Inc.'s Counterclaims against Claimant/Counter-Respondent are denied in their entirety.
- 3) All of Claimant/Counter-Respondent's claims against Respondent Royal Hutton Securities Corp. are dismissed without prejudice.
- 4) All of Claimant/Counter-Respondent's claims against Respondent Steven J. Simone are dismissed with prejudice.

- 5) The Panel has no jurisdiction over Respondents Jeffery M. Schofield and Richard Scarsello who have not been properly served and therefore all of Claimant/Counter-Respondent's claims against said Respondents are dismissed without prejudice.
- 6) The parties shall bear their respective costs, including attorney's fees.
- 7) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 300.00
Respondent/Counter-Claimant Clark Street Capital Inc.'s counterclaim filing fee	= \$ 750.00

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy.

The participating former member firm Royal Hutton Securities, Corp. is a Party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 2,500.00</u>
Total Member Fees	= \$ 4,600.00

The member firm Clark Street Capital, Inc. is a Party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
<u>Pre-Hearing Process Fee</u>	<u>= \$ 600.00</u>
Total Member Fees	= \$ 2,100.00

Adjournment Fees

The following adjournment fees are assessed:

November 27-29, 2001, adjournment requested by Claimant/Counter-Respondent	= \$ 750.00
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The Panel assessed the entire amount of the adjournment fee to Claimant/Counter-Respondent.

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference session conducted. A pre-hearing conference is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

Three (3) Pre-hearing conference sessions with the Panel @ \$1,125.00/session = \$ 3,375.00
Pre-hearing conferences: June 29, 2001 1 session
October 3, 2002 1 session
March 7, 2003 1 session

Total Forum Fees = \$ 3,375.00

1. The Panel assessed \$2,812.50 of the forum fees to Claimant/Counter-Respondent Wyatt Lee.
2. The Panel assessed \$562.50 of the forum fees jointly and severally to Respondents Royal Hutton Securities, Corp. and Steven J. Simone.

Fee Summary

1. Claimant/Counter-Respondent, Wyatt Lee, is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 750.00
<u>Forum Fees</u>	= \$ 2,812.50
<u>Total Fees</u>	= \$ 3,862.50
<u>Less payments</u>	= \$ (975.00)
Balance Due NASD Dispute Resolution	= \$2,887.50

2. Respondent/Counter-Claimant, Clark Street Capital, Inc., is charged with the following fees and costs:

Counterclaim Filing Fee	= \$ 750.00
<u>Member Fees</u>	= \$ 2,100.00
<u>Total Fees</u>	= \$ 2,850.00
<u>Less payments</u>	= \$ (0.00)
Balance Due NASD Dispute Resolution	= \$ 2,850.00

3. Respondent, Royal Hutton Securities, Corp. is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
<u>Less payments</u>	= \$(1,000.00)
Balance Due NASD Dispute Resolution	= \$ 3,600.00

4. Respondents, Royal Hutton Securities, Corp. and Steven J. Simone are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 562.50
<u>Less payments</u>	= \$ (0.00)
Balance Due NASD Dispute Resolution	= \$ 562.50

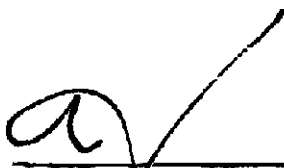
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

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ARBITRATION PANEL

<i>Joseph C. Roberts</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Ernest D. Greco</i>	-	<i>Public Arbitrator</i>
<i>Thomas E. Rausch</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures



JOSEPH C. ROBERTS
 Chair, Public Arbitrator

5/27/03

Signature Date

ERNEST D. GRECO
 Public Arbitrator

Signature Date

THOMAS E. RAUSCH
 Non-Public Arbitrator

Signature Date

5/30/03

Date of Service

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<i>Ernest D. Greco</i>	-	<i>Public Arbitrator</i>
<i>Thomas E. Rausch</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

JOSEPH C. ROBERTS
Chair, Public Arbitrator

Signature Date



ERNEST D. GRECO
Public Arbitrator

5-27-03

Signature Date

THOMAS E. RAUSCH
Non-Public Arbitrator

Signature Date

5/30/03

Date of Service

ARBITRATION PANEL

<i>Joseph C. Roberts</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Ernest D. Greco</i>	-	<i>Public Arbitrator</i>
<i>Thomas E. Rausch</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

JOSEPH C. ROBERTS
Chair, Public Arbitrator

Signature Date

ERNEST D. GRECO
Public Arbitrator

Signature Date



THOMAS E. RAUSCH
Non-Public Arbitrator

05/27/2003
Signature Date

5/30/03
Date of Service