

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimants

George C. Hiller and Jayne Hiller, JTWROS

and

Case Number: 00-04810  
Hearing Site: Omaha, Nebraska

Names of Respondents

Russo Securities, Inc.  
Richard Russo, Ferdinand Russo  
William G. Brown, Joseph A.  
Depergola, and Jacob Nihamin

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**REPRESENTATION OF PARTIES**

George C. Hiller and Jayne Hiller, JTWROS ("Claimants") were represented by Guy R. Cook, Esq., Grefe & Sidney, PLC, Des Moines, Iowa.

Russo Securities, Inc. ("RSI") Richard Russo ("R. Russo") and Ferdinand Russo ("F. Russo"), hereinafter collectively referred to as the "Russo Respondents" and William G. Brown ("Brown") were represented by Marc S. Gottlieb, Esq., Law Offices of Marc S. Gottlieb, New York, New York. On or about October 1, 2001, Mr. Gottlieb withdrew from representation of RSI and undertook representation of Brown. Mr. Gottlieb resumed representation of all Russo Respondents on or about October 25, 2002.

Jacob Nihamin was represented by Jerome Olitt, Arbitration and Mediation Specialists, Stamford, Connecticut.

Joseph A. Depergola ("Depergola") acted pro se and did not appear at hearing. Depergola was represented by Ernest Badway, Esq. and Michael Rubas, Esq., of Salber Schlesinger Satz & Goldstein, LLC until on or about November, 2001.

**CASE INFORMATION**

The Statement of Claim was filed on or about November 7, 2001. Claimants filed a Request for Leave to Amend and Substitute Statement of Claim on or about June 18, 2001. Claimants' First Amended and Substituted Statement of Claim (adding new parties) was filed on or about October 29, 2001. The Submission Agreements of Claimant George C. Hiller and Jayne Hiller, JTWROS were signed on or about November 1, 2000, and June 18, 2001, by George C. Hiller and on or about November 1, 2000, and June 20, 2001, by Jayne Hiller.

Statement of Answer was filed by Respondent Russo Securities, Inc. on or about January 2, 2001. RSI filed and Amended Statement of Answer on or about March 13, 2001. The Submission Agreement of Respondent Russo Securities, Inc. was signed on or about January 16, 2001 by Ferdinand Russo.

Statement of Answer and Motion to Dismiss as Improper Parties was filed by Respondents R. Russo and F. Russo. Claimants' filed their Resistance to Respondents' Motion and Claimants' Motion to Strike on or about December 7, 2001. Answer to Claimants' Resistance to Claimants' Motion to Strike and Respondents' Motion to Deny Claimants' Motion to Strike was filed by Respondents R. Russo and F. Russo on or about December 24, 2001.

Respondents F. Russo, R. Russo and RSI filed a Second Request for a Motion to Dismiss on or about April 23, 2002. Claimants filed a Resistance to the Second Request on or about May 8, 2002. The Russo Respondents filed an Answer to Claimants' Resistance and Third Motion to Dismiss on or about May 21, 2002. Claimants filed a Response to Respondents Reply of May 21, 2002, on or about May 23, 2002.

Respondent F. Russo requested permission to testify by telephone on or about October 25, 2002. Claimants' filed their Resistance to the Request on or about October 28, 2002.

No Statement of Answer was filed by Respondent Brown.

Statement of Answer was filed by Respondent Depergola on or about January 25, 2001. Respondent Depergola filed a Motion to Dismiss on or about June 29, 2002. Claimants' filed a Resistance to Respondent Depergola's Motion to Dismiss on or about July 2, 2002.

Statement of Answer was filed by Respondent Nihamin on or about January 15, 2001. Respondent Nihamin submitted an Amendment containing an Additional Affirmative Defense on or about November 26, 2001. The Submission Agreement of Respondent Nihamin was signed on or about January 15, 2001.

Respondent Nihamin filed a Motion to Dismiss on or about June 22, 2001, Claimants filed their Resistance to Respondent Nihamin's Motion on or about July 2, 2002. Respondent Nihamin filed a Reply on or about July 6, 2001.

### CASE SUMMARY

Claimant asserted the following causes of action: violation of federal securities law, violation of Iowa securities law, violation of NASD conduct rules, and breach of fiduciary duties. The causes of action relate to the sale and purchase of America's Senior Financial Services, Inc ("AMSE").

Unless specifically admitted in its Answer, Respondent RSI denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants failed to state a claim against Respondent for which relief can be granted, and Claimants' demand is improper as a matter of law and without foundation as a matter of fact, Claimants fail to allege fraud with particularity and, as such, fail to allege scienter, time, place and the persons involved with the alleged fraud.

Unless specifically admitted in their Answer, Respondents R. Russo and F. Russo denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Statement of Claim fails to set forth statements or facts sufficient to support the claims alleged, Claimants failed to state a claim against Respondents for which relief can be granted, and securities purchased were suitable under the circumstances and the transactions were authorized, approved, confirmed and/or ratified.

Unless specifically admitted in his Answer, Respondent Depergola denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants failed to state a claim against Respondent for which relief can be granted, Claimants' demand is improper as a matter of law and with out foundation as a matter of fact, and Claimants claims are barred by the doctrines of laches and unclean hands.

#### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$99,573.66 in actual and compensatory damages, plus punitive damages, costs, forum fees, attorney fees, interest, and such other and further relief as the panel may deem fair and equitable under the circumstances.

Respondent RSI requested that the claims asserted against it be dismissed.

Respondents R. Russo and F. Russo requested that the claims asserted against them be dismissed and that they be awarded hearing fees, costs, and expenses.

Respondent Depergola requested that the claims asserted against him be denied in their entirety and that they be awarded their costs and attorneys' fees.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Joseph A. Depergola has been properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Joseph A. Depergola had received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondents Richard Russo, Ferdinand Russo, William G. Brown, and Joseph A. Depergola did not file with the NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

The Panel granted Claimants' Motion for Leave to Amend and Substitute Statement of Claim on or about October 23, 2001. The Amended Statement of Claim added Respondents Ferdinand Russo and Richard Russo.

The Panel denied Respondent Nihamin's Motion to Dismiss on or about July 16, 2002.

The Panel Denied Respondent Depergola's Motion to Dismiss on or about July 31, 2001.

The Panel denied the Russo Respondents' Motions to Dismiss including a Request to Change Venue on or about May 23, 2002.

The Panel denied Respondent F. Russo's Request to Testify by Telephone on or about November 11, 2002. Respondent Ferdinand Russo appeared at hearing through counsel.

At hearing, Claimants advised the Panel that they had reached a settlement with Respondent Nihamin. The Panel did not adjudicate any issues claims against Respondent Nihamin.

At hearing, Respondents Richard Russo, Ferdinand Russo, Russo Securities, Inc., and William Brown, moved for a directed verdict. The Panel took the Motion under advisement and it is hereby denied.

Claimant submitted a post-hearing submission regarding choice of law with the permission of the Panel.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

#### AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submission, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) The Statement of Claim and Amended Statement of Claim of George C. Hiller and Jayne Hiller JTWROS are dismissed with prejudice;
- 2.) Respondents Russo Securities, Inc., Richard Russo, Ferdinand Russo, William G. Brown, and Joseph A. Depergola are jointly and severally liable for and shall pay to Claimant, George C. Hiller and Jayne Hiller JTWROS, the sum of \$225.00 in fees retained by NASD;
- 3.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 4.) That any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee = \$225.00

#### **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, the member firm is Russo Securities, Inc.

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

#### **Adjournment Fees**

Adjournments requested during these proceedings:

October 23-25, 2001, adjournment by Panel (fee waived by Panel)	= \$ 0.00
March 19-21, 2002, adjournment by Claimants	= \$ 750.00
June 11-13, 2002, adjournment by Ferdinand Russo	= \$ 750.00

#### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Five (5) Pre-hearing sessions with Panel x \$750.00	= \$3,750.00
Pre-hearing conferences:	
May 14, 2001	2 sessions
May 21, 2001	2 sessions
September 21, 2001	2 sessions
October 23, 2001	2 sessions
November 20, 2001	2 sessions
Four (4) Hearing sessions x \$750.00	= \$3,000.00
Hearing Dates:	
November 12, 2002	2 sessions
November 13, 2002	2 sessions
Total Forum Fees	= \$6,750.00

The Arbitration Panel has assessed \$6,750.00 of the forum fees jointly and severally to Russo Securities, Inc., Richard Russo, Ferdinand Russo, William G. Brown, and Joseph A. Depergola.

### Fee Summary

Claimants, George C. Hiller and Jayne Hiller, JTWROS, are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Adjournment Fee	= \$ 750.00
Total Fees	= \$ 975.00
Less payments	= \$ 1,950.00
Balance refunded by NASD Dispute Resolution	= \$ 975.00

Respondent, Russo Securities, Inc., is liable for:

Member Fees	= \$ 3,100.00
Total Fees	= \$ 3,100.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,100.00

Respondent, Ferdinand Russo, is liable for:

Adjournment Fee	= \$ 750.00
Total Fees	= \$ 750.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 750.00

Respondents, Russo Securities, Inc., Richard Russo, Ferdinand Russo, William G. Brown Joseph A. Depergola, are jointly and severally liable for:

Forum Fees	= \$ 6,750.00
Total Fees	= \$ 6,750.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 6,750.00

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

### ARBITRATION PANEL

Sam Brower, Esq. - Public Arbitrator, Presiding Chair  
W. Russell Bowie, Esq. - Public Arbitrator  
Douglas A. Spier - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Sam Brower, Esq.  
Sam Brower, Esq.  
Public Arbitrator, Presiding Chair

12/19/02  
Signature Date

/s/ W. Russell Bowie, Esq.  
W. Russell Bowie, Esq.  
Public Arbitrator

12/18/02  
Signature Date

/s/ Douglas A. Spier  
Douglas A. Spier  
Non-Public Arbitrator

12/19/02  
Signature Date

12/19/02

Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 00-04610  
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### Fee Summary

Claimants, George C. Hiller and Jayne Hiller, JTWROS, are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Adjournment Fee	= \$ 750.00
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Respondent, Russo Securities, Inc., is liable for:

Member Fees	= \$ 3,100.00
Total Fees	= \$ 3,100.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,100.00

Respondent, Ferdinand Russo, is liable for:

Adjournment Fee	= \$ 750.00
Total Fees	= \$ 750.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 750.00

Respondents, Russo Securities, Inc., Richard Russo, Ferdinand Russo, William G. Brown, Joseph A. Depergoia, are jointly and severally liable for:

Forum Fees	= \$ 6,750.00
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NASD Dispute Resolution  
Arbitration No. 00-04810  
Award Page 6 of 8

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Adjournment Fee	= \$ 750.00
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