

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

**The Lee Family Trust, Lawrence Lee and Marilyn Lee, Claimants v. Securities America, Inc.
and Michael R. Klein, Respondents**

Case Number: 00-04894

Hearing Site: Salt Lake City, UT

REPRESENTATION OF PARTIES

For Claimants:

**A. Robert Thorup, Esq.
Ray, Quinney & Nebeker
79 South Main Street
P.O. Box 45385
Salt Lake City, UT 84145**

For Respondents:

**Mark J. Appleton, Esq.
Robinson, Waters & O'Dorisio
1099 18th Street
Suite 2600
Denver, CO 80202**

CASE INFORMATION

Statement of Claim filed: November 6, 2000

Claimants' Uniform Submission Agreement signed: November 14, 2000

Statement of Answer filed by Respondents: January 31, 2001

Respondent Securities America, Inc.'s Uniform Submission Agreement signed: January 18, 2001

Respondent Michael R. Klein's Uniform Submission Agreement signed: January 21, 2001

CASE SUMMARY

Claimants alleged breach of fiduciary duty, lack of suitability and violation of Utah Uniform Securities Act. The claims arose from losses Claimants allegedly incurred as a result of transactions involving variable annuity contracts with Allstate Life Insurance Company and units of the Altel Capital Equipment Fund VIII, LLC.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim. Respondents further alleged that Claimants have no legal basis for the alleged claims; the investments were suitable based upon the Claimants' stated objectives and disclosed

NASD Dispute Resolution, Inc.

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circumstances; Claimants failed to state a claim upon which relief could be granted; the Claimants knowingly assumed the risk; the claims are barred by the doctrines of estoppel, ratification, waiver and comparative negligence; Claimants failed to mitigate the alleged damages and the damages were caused by market forces or forces other than Respondents.

RELIEF REQUESTED

Claimants requested rescission of investments of approximately \$176,000; interest at 12% from the date of the investments; attorneys' fees pursuant to Section 61-1-22 of the Utah Code and for all other relief as the Panel deems just and reasonable, including the referral of Respondents for disciplinary proceedings before the NASD for violation of Rule 2310 of the NASD rules of Conduct.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety and an award of costs, expenses and reasonable attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

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 evidence presented at the hearing, and the post-hearing submissions (if any), the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims against Respondents are dismissed in their entirety.
- 2) Each party shall bear its own costs, including attorney's fees.
- 3) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee

= \$ 300

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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. Accordingly, the member firm is a party and the following fees are assessed:

Member Surcharge	= \$1500
Pre-Hearing Process Fee	= \$ 600
<u>Hearing Process Fee</u>	<u>= \$2500</u>
Total Member Fees	= \$4600

Forum Fees and Assessments

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

1 Pre-hearing conference session with the Panel @ \$1125/session	= \$1125
Pre-hearing conference: May 8, 2001 1 session	
4 Hearing sessions @ \$1125/session	= \$4500
Hearings: August 28, 2001 2 sessions	
August 29, 2001 2 sessions	
<u>Total Forum Fees</u>	<u>= \$5625</u>

1. The Panel assessed \$2812.50 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$2812.50 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimants are jointly and severally charged with the following fees and costs:

Initial Filing Fee	= \$ 300
Forum Fees	= \$2812.50
Total Fees	= \$3112.50
<u>Less Payments</u>	<u>= \$(1425)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1687.50

2. Respondent Securities America, Inc. is charged with the following fees and costs:

Member Fees	= \$4600
Total Fees	= \$4600
<u>Less Payments</u>	<u>= \$(4600)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0

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3. Respondents Securities America, Inc. and Michael R. Klein are jointly and severally charged with the following fees and costs:

<u>Forum Fees</u>	= \$2812.50
<u>Total Fees</u>	= \$2812.50
<u>Less Payments</u>	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$2812.50

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

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ARBITRATION PANEL

William E. Winfield, Esq. -

Chair, Public Arbitrator


Kathy A. F. Davis -

Public Arbitrator

Clifford N. Coury -

Non-Public Arbitrator

Concurring Arbitrators' Signatures


William E. Winfield, Esq.
Chair, Public Arbitrator

9/10/01
Signature Date

Kathy A. F. Davis
Public Arbitrator

Signature Date

Clifford N. Coury
Non-Public Arbitrator

Signature Date

Date Served:

SEP 18 2001

Date of Service

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William E. Winfield, Esq.	-	Chair, Public Arbitrator
Kathy A. F. Davis	-	Public Arbitrator
Clifford N. Coury	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

William E. Winfield, Esq.
Chair, Public Arbitrator

Signature Date



Kathy A. F. Davis
Public Arbitrator

9/11/01

Signature Date

Clifford N. Coury
Non-Public Arbitrator

Signature Date

Date Served:

SEP 18 2001

Date of Service

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Kathy A. F. Davis

-

Public Arbitrator

Clifford N. Coury

-

Non-Public Arbitrator

Concurring Arbitrators' Signatures

William E. Winfield, Esq.

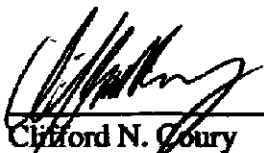
Chair, Public Arbitrator

Signature Date

Kathy A. F. Davis

Public Arbitrator

Signature Date


Clifford N. Coury

Non-Public Arbitrator

9/17/2001

Signature Date

Date of Service