

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Nicholas J. Cinalli and Tina Cinalli, (Claimants) vs. Platinum Equities, Inc. and Sean Carey, (Respondents)

Case Number: 00-04899

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimants, Nicholas J. Cinalli ("N. Cinalli") and Tina Cinalli ("T. Cinalli"), hereinafter collectively referred to as "Claimants": Adolph D. Seltzer, Esq., a sole practitioner, New York, NY.

Respondent, Platinum Equities, Inc. ("Platinum"), did not appear at the hearings in this matter. Previously represented by: William N. Joseph, Esq., Counsel, Platinum Equities, Inc., New York, NY.

Respondent, Sean Carey ("Carey"): Lawrence R. Gelber, Esq., a sole practitioner, Brooklyn, NY.

CASE INFORMATION

Statement of Claim filed on or about: November 1, 2000.

Response to Carey's Motion to Dismiss filed by Claimants on or about: March 21, 2001.

N. Cinalli signed the Uniform Submission Agreement: October 26, 2000.

T. Cinalli signed the Uniform Submission Agreement: October 26, 2000.

Statement of Answer and Motion to Dismiss filed by Platinum on or about: January 31, 2001.

Platinum did not sign a Uniform Submission Agreement.

Statement of Answer and Motion to Dismiss filed by Carey on or about: January 22, 2001.

Carey signed the Uniform Submission Agreement: January 22, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: unauthorized trading; churning; unsuitability; breach of fiduciary duty; negligence; violations of NASD and NYSE Rules; violation of the Securities Exchange Act of 1934; and failure to properly supervise. Claimants' claim involved a variety of stocks.

Unless specifically admitted in its Answer, Platinum denied the allegations made in the Statement of Claim and asserted the following defenses: Platinum fulfilled its supervisory duties in good faith; Claimants assumed the risk of the trades in question; Claimants' claims are barred by the doctrines of ratification and estoppel; Claimants failed to mitigate their damages; and Claimants' losses were caused by their own negligence.

Unless specifically admitted in his Answer, Carey denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants fail to state a claim upon which relief can be granted; Claimants failed to mitigate their damages; Claimants fail to adequately particularize their claims; Claimants' claims are barred by the doctrines of ratification, waiver, and estoppel; Claimants sustained no compensable damages; Carey did not cause, proximately or otherwise, any damages to Claimants; Claimants' losses, if any, were due solely to market forces and to no other cause; Claimants' claims are barred by the doctrine of unclean hands; Claimants assumed the risk of their investments; and Claimants were contributorily negligent in the conduct of their accounts.

RELIEF REQUESTED

Claimants requested:

- a. Compensatory damages in the amount of \$26,301.59, together with interest from July 14, 2000;
- b. Punitive damages in the amount of \$52,603.18;
- c. The costs and disbursements of this arbitration proceeding, including reasonable attorneys' fees; and
- d. Such other and further relief as may be just and proper.

Platinum requested that the Statement of Claim be dismissed, and that all costs, legal fees, disbursements, and expenses arising from the defense of this claim be assessed against Claimants. Platinum also requested expungement of this claim from any and all records maintained by the NASD and/or NASD Regulation, Inc.

Carey requested that the claims against him be dismissed, and that he be awarded the costs and expenses incurred in responding to this matter, including attorneys' fees in the approximate amount of \$7,500.00, and such other and further relief as justice and equity require. Carey also requested that this matter be expunged from his records with the NASD Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Platinum 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 Platinum present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Platinum did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

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.

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. Claimants' claims are hereby denied in their entirety.
2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Carey's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Carey must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. This decision does not preclude Carey from pursuing Platinum for attorneys' fees incurred in defending this arbitration.
4. 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

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, Platinum Equities, 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: June 11, 2001 1 session

Six (6) Hearing sessions x \$750.00 = \$4,500.00

Hearing Dates: October 15, 2001 2 sessions

December 3, 2001 2 sessions

February 22, 2002 2 sessions

Total Forum Fees = \$5,250.00

1. The Panel has assessed \$1,750.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$1,750.00 of the forum fees against Platinum.
3. The Panel has assessed \$1,750.00 of the forum fees against Carey.

Fee Summary

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= <u>\$1,750.00</u>
Total Fees	= \$1,975.00
<u>Less payments</u>	= <u>\$1,250.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 725.00

2. Platinum be and hereby is solely liable for:

Member Fees	= \$3,100.00
<u>Forum Fees</u>	= <u>\$1,750.00</u>
Total Fees	= \$4,850.00
<u>Less payments</u>	= <u>\$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$4,850.00

3. Carey be and hereby is solely liable for:

<u>Forum Fees</u>	= <u>\$1,750.00</u>
Total Fees	= \$1,750.00
<u>Less payments</u>	= <u>\$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,750.00

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

ARBITRATION PANEL

Ellen S. Saltzman, Esq.	-	Public Arbitrator, Presiding Chair
George H. Wang	-	Public Arbitrator
John W. Thomas, Jr.	-	Industry 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.



Ellen S. Saltzman, Esq.
Public Arbitrator, Presiding Chair

3-23-02

Signature Date

George H. Wang
Public Arbitrator

Signature Date

John W. Thomas, Jr.
Industry Arbitrator

Signature Date

March 26, 2002
Date of Service (For NASD office use only)

ARBITRATION PANEL

Ellen S. Saltzman, Esq.	-	Public Arbitrator, Presiding Chair
George H. Wang	-	Public Arbitrator
John W. Thomas, Jr.	-	Industry 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.

Ellen S. Saltzman, Esq.
Public Arbitrator, Presiding Chair

George H. Wang
Public Arbitrator

John W. Thomas, Jr.
Industry Arbitrator

Signature Date

March 14, 2002
Signature Date

Signature Date

March 26, 2002

Date of Service (For NASD office use only)

ARBITRATION PANEL

Ellen S. Saltzman, Esq.	-	Public Arbitrator, Presiding Chair
George H. Wang	-	Public Arbitrator
John W. Thomas, Jr.	-	Industry Arbitrator

Concurring Arbitrators' Signatures

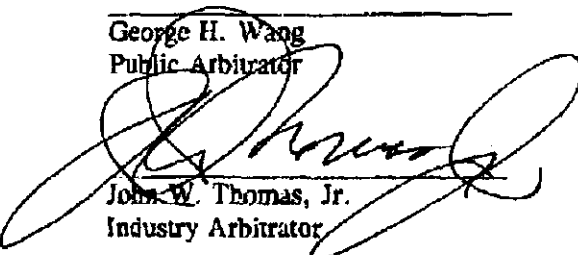
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Ellen S. Saltzman, Esq.
Public Arbitrator, Presiding Chair

Signature Date

George H. Wang
Public Arbitrator

Signature Date



John W. Thomas, Jr.
Industry Arbitrator

Signature Date

March 26, 2002
Date of Service (For NASD office use only)