

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Aida M. Conkey
Frank Potera
James Van Houten
(Claimants)

Case Number: 00-04941

George Riccio, Jr.
Gaines Berland, Inc.
Bear Stearns & Company
First American Equities, Inc.
Fiserv Correspondent Services, Inc.
Eisner Securities, Inc.
National Financial Services Corporation
Sunpointe Securities, Inc.
Raiké Financial Group, Inc.
Southwest Securities, Inc.
(Respondents)

Hearing Site: Buffalo, New York

REPRESENTATION OF PARTIES

Claimants, Aida M. Conkey ("Conkey"), Frank Potera ("Potera"), and James Van Houten ("Van Houten"), hereinafter collectively referred to as "Claimants": Karl Essler, Esq., Fix Spindelman Brovitz & Goldman, PC, Rochester, NY.

Respondent George Riccio, Jr. ("Riccio"): Joseph D'Elia, Esq., The Law Offices of Joseph D'Elia, Huntington, NY.

Respondent Gaines Berland, Inc. ("GBI"): Eric Miller, Gaines Berland, Inc., Bethpage, NY.

Respondent Bear Stearns Securities Corp. ("Bear Stearns"): Mark E. Lehman, Esq., Bear Stearns & Company, New York, NY.

Respondent First American Equities, Inc. ("First American"): M. David Sayid, Esq., Sayid and Associates, LLP, New York, NY.

Respondent Fiserv Correspondent Services ("Fiserv"): Steven D. Plissey, Esq., Williams, Youle & Koenigs, PC, Denver, CO.

Respondent Eisner Securities, Inc. ("Eisner"): Alan Gerson, Esq., Blumenfeld, Kaplan & Sandweiss, PC, Clayton, MO.

Respondent National Financial Services LLC ("NFS"): Michael G. Shannon, Esq., Phillips, Lytle, Hitchcock, Blaine & Huber, LLP, New York, NY.

Respondent Sunpointe Securities, Inc. ("Sunpointe") did not enter an appearance in this matter.

Respondent Raike Financial Group, Inc. ("Raike"): Ruthann G. Niosi, Esq., New York, NY.

Respondent Southwest Securities, Inc., ("Southwest"): Will S. Montgomery, Esq., Jenkins & Gilchrist, PC, Dallas, TX.

CASE INFORMATION

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

Response to Motion to Dismiss filed by Southwest on or about: March 22, 2001.

Response to Motion to Sever filed by Raike on or about: April 5, 2001.

Statement of Answer to Counterclaim filed by Eisner on or about: April 16, 2001.

Statement of Answer to Counterclaim filed by Raike on or about: March 26, 2002.

Conkey signed the Uniform Submission Agreement: November 1, 2000.

Potera signed the Uniform Submission Agreement: November 1, 2000.

Van Houten signed the Uniform Submission Agreement: November 1, 2000.

Statement of Answer filed by Riccio on or about: March 19, 2001.

Crossclaim against Raike filed by Riccio on or about: March 19, 2001.

Crossclaim against Southwest filed by Riccio on or about: March 19, 2001.

Riccio signed the Uniform Submission Agreement.

GBI did not file a Statement of Answer or sign the Uniform Submission Agreement.

Bear Stearns did not file a Statement of Answer or sign the Uniform Submission Agreement.

Statement of Answer filed by First American on or about: February 27, 2001.

First American signed the Uniform Submission Agreement: February 8, 2001.

Fiserv did not file a Statement of Answer or sign the Uniform Submission Agreement.

Statement of Answer filed by Eisner on or about: March 14, 2001.

Counterclaim against Claimants filed by Eisner on or about: March 14, 2001
Eisner signed the Uniform Submission Agreement: March 12, 2001.

NFS did not file a Statement of Answer or sign the Uniform Submission Agreement.

Sunpointe did not file a Statement of Answer or sign the Uniform Submission Agreement.

Statement of Answer filed by Raike on or about: February 10, 2001.
Counterclaim against Claimants filed by Raike on or about: February 10, 2001
Crossclaim against Riccio filed by Raike on or about: February 10, 2001.
Motion to Sever filed by Raike on or about: March 17, 2001.
Statement of Answer to Crossclaim filed by Riccio on or about: February 24, 2002.
Raike did not sign the Uniform Submission Agreement.

Statement of Answer filed by Southwest on or about: February 26, 2001.
Motion to Dismiss filed by Southwest on or about: February 26, 2001.
Reply to Claimants' Response to Motion to Dismiss filed by Southwest on or about: May 2, 2001.
Southwest signed the Uniform Submission Agreement: January 17, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; violation of margin requirements; unauthorized and irregular trading on both the margin and cash accounts; fraud; negligence; unsuitability; excessive transactions; and failure to supervise. Claimants' claims involved the following stocks, BNYR, NAVR, DLIA, MALL, THNK, TCTV, ELCO, AZTC, MZON, CNRS, as well as other unspecified financial products.

Unless specifically admitted in its Answer, Riccio denied the allegations made in the Statement of Claim and asserted various affirmative defenses. Riccio asserted Crossclaims against Raike and Southwest, for any award found in favor of Claimants.

Unless specifically admitted in its Answer, First American denied all allegations made in the Statement of Claim.

Unless specifically admitted in its Answer, Raike denied all allegations made in the Statement of Claim and asserted various affirmative defenses. Raike asserted Counterclaims against Claimants for debit balances in their respective margin accounts; and it asserted a Crossclaim against Riccio for indemnification.

Unless specifically admitted in its Answer, Southwest denied all allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant Conkey requested:

- a. Trading losses in the amount of \$316,105.92;
- b. Margin interest charges in the amount of \$13,430.71;
- c. Out of pocket margin call payments in the amount of \$25,000.00;
- d. Excessive markup, commissions, and fees in the amount of \$32,447.39;
- e. Loss profits on ELCO stock in the amount of \$701,939.06; and
- f. Margin deficit losses in the amount of \$42,363.29

Claimant Potera requested:

- a. Trading losses in the amount of \$289,471.00;
- b. Margin interest charges in the amount of \$10,854.76;
- c. Out of pocket margin call payments in the amount of \$25,000.00;
- d. Excessive markup, commissions, and fees in the amount of \$34,907.79;
- e. Loss profits on ELCO stock in the amount of \$724,353.12; and
- f. Margin deficit losses in the amount of \$33,069.52.

Claimant Van Houten requested:

- a. Trading losses in the amount of \$184,820.00;
- b. Margin interest charges in the amount of \$7,040.95;
- c. Out of pocket margin call payments in the amount of \$25,000.00;
- d. Excessive markups, commissions, and fees in the amount of \$25,400.41;
- e. Lost profits on ELCO stock in the amount of \$436,884.37; and
- f. Margin deficit losses in the amount of \$34,810.57.

Claimants also requested punitive damages in the amount of \$2,000,000.00, attorneys' fees, and costs.

Respondent Riccio requested that all claims be dismissed in their entirety and an award of filing and forum fees. In his Crossclaims against Raike and Southwest, Riccio requested indemnification of any award that may be found in favor of Claimants.

Respondent First American requested entry of an award dismissing the claims, costs and disbursements of the proceeding, and other and further relief as the arbitrators may deem just and proper.

Respondent Raike requested dismissal of all claims. In its Counterclaims, Raike requested amount of \$33,069.52 plus interest from Potera; \$34,810.57 plus interest from Van Houten; and \$42,363.29 plus interest from Conkey, together with attorneys' fees and costs of the hearing. In its Crossclaim against Riccio, Raike requested indemnification of any award found against Riccio and costs and attorneys' fees for defending this action.

Respondent Southwest requested dismissal of all claims against Southwest and an award of costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, all claims between Claimants and GBI and between Claimants and Bear Stearns were settled.

Claimant and Fiserv entered into a Stipulation of Dismissal With Prejudice on March 1, 2001.

An Order for Liquidation Proceeding under Securities Investor Protection Act ("SIPA") was entered against Eisner on October 30, 2001. This Order stayed all claims against Eisner.

Claimant and NFS entered into a Stipulation on February 26, 2001, whereby Claimant withdrew all claims against NFS without prejudice.

Sunpointe filed for protection under the bankruptcy law prior to the service of the Statement of Claim, which stayed all claims against Sunpointe.

Prior to the hearing, Southwest was dismissed from this proceeding.

The Motion to Sever filed by Raike was denied.

Respondent Raike did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

During the hearing, Claimants orally amended their Statement of Claim to withdraw their claims that margin requirements were violated and that there were excessive markups.

During the hearing, Respondent Raike moved to dismiss the claims for (1) failure to prove violation of Regulation "T" purchase requirements and (2) that George Riccio failed to execute a sell order. All Respondents joined in this request. The Panel reserved decision until the conclusion of the hearing.

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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Riccio and First American are jointly and severally liable for and shall pay to Conkey compensatory damages in the amount \$21,000.00 plus interest at the rate of 9% from

the date of the Award to the date of payment.

2. Riccio and First American shall pay to Conkey punitive damages in the amount of \$21,000.00 pursuant to Mastrobuono v. Shearson Lehman Hutton, Inc.
3. Riccio and First American are jointly and severally liable for and shall pay to Potera compensatory damages in the amount of \$20,000.00 plus interest at the rate of 9% from the date of the Award to the date of payment.
4. Riccio and First American shall pay to Potera punitive damages in the amount of \$20,000.00 pursuant to Mastrobuono v. Shearson Lehman Hutton, Inc.
5. Riccio and First American are jointly and severally liable for and shall pay to Van Houten compensatory damages in the amount of \$14,000.00 plus interest at the rate of 9% from the date of the Award to the date of payment.
6. Riccio and First American shall pay to Van Houten punitive damages in the amount of \$14,000.00 pursuant to Mastrobuono v. Shearson Lehman Hutton, Inc.
7. Riccio and Raike are jointly and severally liable for and shall pay to Conkey compensatory damages in the amount of \$275,000.00, for failure to execute a trade order and unauthorized trading, plus interest at the rate of 9% from the date of the Award to the date of payment.
8. Riccio and Raike are jointly and severally liable for and shall pay to Potera compensatory damages in the amount of \$298,000.00, for failure to execute a trade order and unauthorized trading, plus interest at the rate of 9% from the date of the Award to the date of payment.
9. Riccio and Raike are jointly and severally liable for and shall pay to Van Houten compensatory damages in the amount of \$101,000.00, for failure to execute a trade order and unauthorized trading, plus interest at the rate of 9% from the date of the Award to the date of payment.
10. Counterclaim by Raike against Claimants is denied.
11. All crossclaims are denied.
12. Any and all relief not specifically addressed herein is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 600.00
Counterclaim/Crossclaim filing fee (Raiké)	= \$ 2,000.00
Crossclaim filing fee (Riccio)	= \$ 600.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Gaines Berland, Inc., Bear Stearns & Company, First American Equities, Inc., Fiserv Correspondent Services, Inc., National Financial Services Corporation, Raiké Financial Group, Inc., and Southwest Securities, Inc. are parties.

Gaines Berland, Inc.

Member surcharge	= \$ 2,500.00
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Bear Stearns & Company

Member surcharge	= \$ 2,500.00
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First American Equities, Inc.

Member surcharge	= \$ 2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

Fiserv Correspondent Services, Inc.

Member surcharge	= \$ 2,500.00
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National Financial Services Corporation

Member surcharge	= \$ 2,500.00
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Raiké Financial Group, Inc.

Member surcharge	= \$ 2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

Southwest Securities, Inc.

Member surcharge	= \$ 2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

May 28, 29, 30, 31, and 2002, adjournment by Riccio	= \$ 1,200.00
November 12, 13, 14, and 15, 2002, adjournment by Riccio	= WAIVED
December 3, 4, 5, and 6, 2002, adjournment by Riccio	= WAIVED

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

One (1) Pre-hearing session with Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: October 12, 2001 1 session	

Twelve (12) Hearing sessions @ \$1,200.00	= \$14,400.00
Hearing Dates: March 3, 2003 2 sessions	
March 4, 2003 2 sessions	
March 5, 2003 2 sessions	
May 5, 2003 2 sessions	
May 6, 2003 2 sessions	
May 7, 2003 2 sessions	

Total Forum Fees	= \$15,600.00
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1. The Panel has assessed \$7,800.00 of the forum fees jointly and severally against Riccio and First American.
2. The Panel has assessed \$7,800.00 of the forum fees jointly and severally against Riccio and Raike.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Total Fees	= \$ 600.00
<u>Less payments</u>	= \$ 1,800.00
Refund Due Claimants	= \$ 1,200.00

2. Riccio is solely liable for:

Crossclaim Filing Fee	= \$ 600.00
<u>Adjournment Fees</u>	= \$ 1,200.00
Total Fees	= \$ 1,800.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,800.00

3. GBI is solely liable for:

<u>Member Fees</u>	= \$ 2,500.00
<u>Total Fees</u>	= \$ 2,500.00
<u>Less payments</u>	= \$ 2,500.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Bear Stearns is solely liable for:

<u>Member Fees</u>	= \$ 2,500.00
<u>Total Fees</u>	= \$ 2,500.00
<u>Less payments</u>	= \$ 2,500.00
Balance Due NASD Dispute Resolution	= \$ 0.00

4. First American is solely liable for:

<u>Member Fees</u>	= \$ 7,600.00
<u>Administrative Cost</u>	= \$ 12.00
<u>Total Fees</u>	= \$ 7,612.00
<u>Less payments</u>	= \$ 7,600.00
Balance Due NASD Dispute Resolution	= \$ 12.00

5. Fiserv is solely liable for:

<u>Member Fees</u>	= \$ 2,500.00
<u>Total Fees</u>	= \$ 2,500.00
<u>Less payments</u>	= \$ 2,500.00
Balance Due NASD Dispute Resolution	= \$ 0.00

6. NFS is solely liable for:

<u>Member Fees</u>	= \$ 2,500.00
<u>Total Fees</u>	= \$ 2,500.00
<u>Less payments</u>	= \$ 2,500.00
Balance Due NASD Dispute Resolution	= \$ 0.00

7. Raike is solely liable for:

<u>Counterclaim Filing Fee</u>	= \$ 2,000.00
<u>Member Fees</u>	= \$ 7,600.00
<u>Total Fees</u>	= \$ 9,600.00
<u>Less payments</u>	= \$ 9,600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

8. Southwest is solely liable for:

<u>Member Fees</u>	= \$ 7,600.00
<u>Total Fees</u>	= \$ 7,600.00
<u>Less payments</u>	= \$ 7,600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

9. Riccio and First American are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 7,800.00
<u>Total Fees</u>	= \$ 7,800.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 7,800.00

10. Riccio and Raike are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 7,800.00
<u>Total Fees</u>	= \$ 7,800.00
<u>Less payments</u>	= \$ 1,200.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 6,600.00

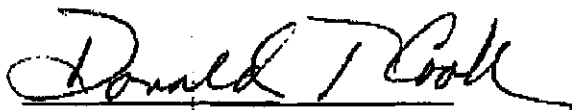
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Donald T. Cook, Esq.	-	Public, Presiding Chair
Steven C. Bender, CPA	-	Public Arbitrator
Lawrence J. Gallick	-	Non-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 is which is my award.



Donald T. Cook, Esq.
Public Arbitrator, Presiding Chairperson

June 26, 2003

Signature Date

Steven C. Bender, CPA
Public Arbitrator

Signature Date

Lawrence J. Gallick
Non-Public Arbitrator

Signature Date

July 1, 2003
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Donald T. Cook, Esq.	-	Public, Presiding Chair
Steven C. Bender, CPA	-	Public Arbitrator
Lawrence J. Gallick	-	Non-Public Arbitrator

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Donald T. Cook, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Steven C. Bender, CPA
Steven C. Bender, CPA
Public Arbitrator

6-27-03
Signature Date

Lawrence J. Gallick
Non-Public Arbitrator

Signature Date

July 1, 2003
Date of Service: (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Donald T. Cook, Esq.	-	Public, Presiding Chair
Steven C. Bender, CPA	-	Public Arbitrator
Lawrence J. Gallick	-	Non-Public Arbitrator

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Donald T. Cook, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Steven C. Bender, CPA
Public Arbitrator

Signature Date



Lawrence J. Gallick
Non-Public Arbitrator



Signature Date

July 1, 2003
Date of Service (For NASD Dispute Resolution use only)