

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Elias Schonberger, Estate of Lois Schonberger, Schoolhouse 1891 Associates, and  
Schonberger Family Partnership (Claimants) v. Chase Investment Services Corp. and  
Malcolm Elliott Katt (Respondents)

Case Number: 00-05387

Hearing Site: New York, New York

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Nature of the Dispute: Customers v. Member and Associated Person.

**REPRESENTATION OF PARTIES**

Claimants Elias Schonberger ("E. Schonberger"), Estate of Lois Schonberger ("Estate of Lois Schonberger"), Schoolhouse 1891 Associates ("Schoolhouse 1891"), and Schonberger Family Partnership ("Schonberger Family Partnership") hereinafter collectively referred to as "Claimants": Theodore G. Eppenstein, Esq., and Matthew W. Woodruff, Esq., Eppenstein & Eppenstein, New York, NY.

Respondents Chase Investment Services Corp. ("CISC") and Malcolm Elliott Katt ("Katt") hereinafter collectively referred to as "Respondents": Edwin A. Zipf, Esq., and Matthew C. Plant, Esq., Bressler, Amery & Ross, P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: December 4, 2000.

Claimants signed the Uniform Submission Agreement: November 30, 2000.

Joint Statement of Answer filed by Respondents on or about: March 2, 2001.

Respondent CISC signed the Uniform Submission Agreement: April 11, 2001.

Respondent Katt did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: misrepresentations and omissions; breach of fiduciary obligations; unsuitability; excessive trading; failure to supervise; breach of customer agreement; negligence and gross negligence, negligent misrepresentation; respondeat superior; and fraud. Claimants' claim involved Freddie Macs, and unspecified common stock.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory and other damages; disgorgement of Respondents' compensation; punitive damages; interest from the date of loss to the date of the award; reasonable attorneys' fees; costs, disbursements, expert and witness fees and administrative expenses; and any other and further relief the Arbitration Panel finds just and equitable.

Respondents requested that Claimants' Statement of Claim be dismissed with prejudice in its entirety and that the Panel assess costs against Claimants and other further relief the Panel deems just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Katt 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, and appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

Claimants' made a motion to admit certain evidence. After due consideration, the Panel denied the motion.

Respondents made a motion to dismiss Claimants' claims. After due consideration, the Panel denied the motion.

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, and 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. Respondents are jointly and severally liable for and shall pay to Claimants compensatory damages in the amount of \$255,210.04, plus interest at the rate of 9% per annum from July 8, 2004 through the date of payment of the Award or a judgment is made on this Award, whichever shall first occur.
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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 = \$250.00

**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. Accordingly, Chase Investment Services Corp.

Member surcharge = \$1,200.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$2,000.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

January 16 and 17, 2003, joint adjournment request = Waived

June 17, 2003, adjournment by Claimants = \$1,000.00

February 5, 2004, adjournment by Respondents = \$1,000.00

**Forum Fees and Assessments**

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

Three (3) Pre-hearing sessions with a single arbitrator @ \$450.00 = \$ 1,350.00

Pre-hearing conferences: September 13, 2002 1 session  
November 12, 2002 1 session  
May 17, 2004 1 session

Five (5) Pre-hearing sessions with Panel @ \$1,000.00 = \$ 5,000.00

Pre-hearing conferences: August 5, 2002 1 session  
February 28, 2003 2 sessions  
September 18, 2003 1 session  
February 5, 2004 1 session

Thirty-three (33) Hearing sessions @ \$1,000.00 = \$33,000.00

Hearing Dates: March 6, 2003 1 session  
June 18, 2003 2 sessions  
June 19, 2003 2 sessions  
July 1, 2003 2 sessions

July 2, 2003	2 sessions
July 3, 2003	2 sessions
July 8, 2003	2 sessions
July 9, 2003	2 sessions
July 10, 2003	2 sessions
December 8, 2003	2 sessions
December 9, 2003	2 sessions
December 10, 2003	2 sessions
December 11, 2003	2 sessions
May 10, 2004	2 sessions
May 11, 2004	2 sessions
May 12, 2004	2 sessions
July 7, 2004	2 sessions

Total Forum Fees = \$39,350.00

1. The Panel has assessed \$19,675.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$19,675.00 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 250.00
Adjournment Fee	= \$ 1,000.00
<u>Forum Fees</u>	= \$19,675.00
Total Fees	= \$20,925.00
<u>Less payments</u>	= \$ 1,250.00
Balance Due NASD Dispute Resolution	= \$19,675.00

2. Respondent CISC is solely liable for:

<u>Member Fees</u>	= \$ 3,800.00
Total Fees	= \$ 3,800.00
<u>Less payments</u>	= \$ 3,800.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

Adjournment Fee	= \$ 1,000.00
<u>Forum Fees</u>	= \$19,675.00
Total Fees	= \$20,675.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$20,675.00

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

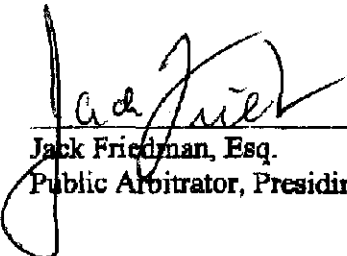
**ARBITRATION PANEL**

Jack Friedman, Esq.  
Arnold O. Flicker, Esq.  
Romaine L. Gardner, Esq.

- Public Arbitrator, Presiding Chairperson  
- Public Arbitrator  
- 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 in which is my award.

  
\_\_\_\_\_  
Jack Friedman, Esq.  
Public Arbitrator, Presiding Chairperson

August 4, 2004  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Arnold O. Flicker, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Romaine L. Gardner, Esq.  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

August 19, 2004  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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Signature Date

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*Arnold O. Flicker, Esq.*  
Arnold O. Flicker, Esq.  
Public Arbitrator

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*August 4, 2004*  
Signature Date

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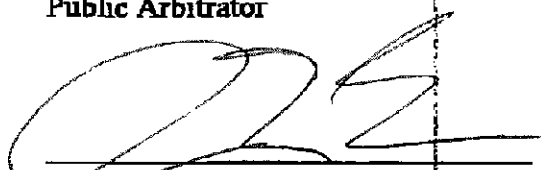
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Public Arbitrator, Presiding Chairperson

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Arnold O. Flicker, Esq.  
Public Arbitrator

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Signature Date

  
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Romaine L. Gardner, Esq.  
Non-Public Arbitrator

8/6/04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
August 19, 2004

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Date of Service (For NASD Dispute Resolution use only)