

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Richard Swaffer, (Claimant) vs. Providential Securities, Inc., Henry Fahman, Southwest Securities, Inc., and Penson Financial Services, Inc., (Respondents)

Case Number: 00-05474

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant Richard Swaffer, hereinafter referred to as "Claimant": James A. McGurk, Esq., Law Office of James A. McGurk, Chicago, IL.

Respondents Providential Securities, Inc. ("Providential") and Henry Fahman ("Fahman"): Henry D. Fahman, President, Providential Securities, Inc., Fountain Valley, CA.

Respondent Southwest Securities, Inc. ("Southwest"), did not appear at the hearing in this matter. Previously represented by: Timothy J. Goodwin, Esq., Jenkins & Gilchrist, Dallas, TX.

Respondent Penson Financial Services, Inc. ("Penson"), did not appear at the hearing in this matter. Previously represented by: Thomas W. Craddock, Esq., McGuire, Craddock & Strother, P.C., Dallas, TX.

CASE INFORMATION

Statement of Claim filed on or about: December 8, 2000.

Claimant signed the Uniform Submission Agreement: October 24, 2000.

Joint Statement of Answer filed by Providential and Fahman on or about: September 24, 2001.

Providential did not sign a Uniform Submission Agreement.

Fahman did not sign a Uniform Submission Agreement.

Statement of Answer and Motion to Dismiss filed by Southwest on or about: February 1, 2001.

Southwest signed the Uniform Submission Agreement: December 26, 2000.

Statement of Answer and Motion to Dismiss filed by Penson on or about: February 6, 2001.

Penson signed the Uniform Submission Agreement: February 1, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; negligence; and violations of the NASD Rules of Fair Practice. Claimant's claim involved the stocks of

Amazon.com and Dr. Koop.com.

Unless specifically admitted in their Answer, Providential and Fahman denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant was a sophisticated investor who maintained a day trading account with Providential starting in the middle of 1999; Claimant was aware of the risks of day trading and agreed to assume such risks; Claimant agreed to release and indemnify Providential, its management, and its employees, and hold said persons harmless from and against any claims, liabilities, or damages that may arise in connection with his trading activities through Providential; and as far as Claimant's account was concerned, Providential and its management performed their duties diligently during the course of its business.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$100,000.00, plus interest, costs, filing fees, and such other and further relief as the Panel deems just and equitable.

Providential and Fahman requested that the Panel deny Claimant's Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On September 28, 2001, Penson filed a Motion for Sanctions wherein it requested that this matter be dismissed in its entirety as to Penson. Claimant filed a Response to said Motion on December 12, 2001. After due consideration, the Panel granted Penson's Motion for Sanctions, thereby dismissing all claims against Penson in their entirety.

By letter dated January 25, 2002, Claimant advised NASD Dispute Resolution, Inc. that he had entered into a settlement agreement with Southwest.

Providential and Fahman did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, are 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. Claimant's claims are hereby denied in their entirety.

2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Fahman'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 Fahman must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

3. 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 firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, Southwest Securities, Inc. and Penson Financial Services, Inc. are parties.

Southwest Securities, Inc.

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

Penson Financial Services, Inc.

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

Providential Securities, Inc.

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

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:	August 22, 2001	1 session	
Two (2) Hearing sessions x \$750.00			= \$1,500.00
<u>Hearing Date:</u>	<u>January 30, 2002</u>	<u>2 sessions</u>	
Total Forum Fees			= \$2,250.00

1. The Panel has assessed \$1,125.00 of the forum fees against Claimant.
2. The Panel has assessed \$1,125.00 of the forum fees jointly and severally against Providential and Fahman.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Penson, requested copies of Awards, \$70.00.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$1,125.00</u>
Total Fees	= \$1,350.00
<u>Less payments</u>	<u>= \$1,750.00</u>
Refund Due Claimant	= \$ 400.00
2. Prudential and Fahman be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$1,125.00</u>
Total Fees	= \$1,125.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,125.00

3. Southwest be and hereby is solely liable for:

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

4. Penson be and hereby is solely liable for:

Member Fees	= \$3,100.00
<u>Administrative Costs</u>	<u>= \$ 70.00</u>
Total Fees	= \$3,170.00

<u>Less payments</u>	= \$3,170.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

5. Providential be and hereby is solely liable for:

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


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

ARBITRATION PANEL

Michael H. DuBoff, Esq.	-	Public Arbitrator, Presiding Chair
Philip R. Lochner, Jr.	-	Public Arbitrator
George H. Howard, III	-	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.



Michael H. DuBoff, Esq.
Public Arbitrator, Presiding Chair



Signature Date

Philip R. Lochner, Jr.
Public Arbitrator

Signature Date

George H. Howard, III
Industry Arbitrator

Signature Date

March 11, 2002
Date of Service (For NASD office use only)

ARBITRATION PANEL

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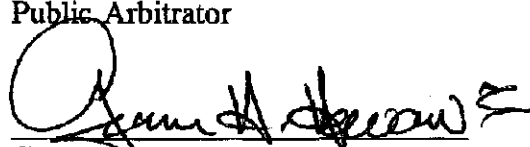
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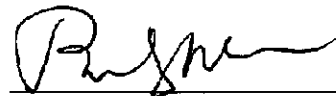
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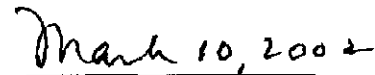
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Philip R. Lochner, Jr.
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