

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

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In the Matter of the Arbitration Between:

Frank Szazi, Beral Inc., Maya C. Likar, Andrew Racz, Quaestor RTS, and Quaestor USA, (Claimants) vs. Raymond Dirks, Jesse Dirks, Dirks & Co., Security Capital Trading Inc., and Milton Netcher, (Respondents)

Case Number: 00-05558

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimants, Frank Szazi ("Szazi"), Beral Inc. ("Beral"), Maya C. Likar ("Likar"), Andrew Racz ("Racz"), Quaestor RTS ("Q. RTS"), and Quaestor USA ("Q. USA"), hereinafter collectively referred to as "Claimants": Maya C. Likar, Esq., a sole practitioner, New York, NY.

Respondent, Raymond Dirks ("R. Dirks"): A. Joseph Tandet, Esq., a sole practitioner, New York, NY.

Respondent, Jesse Dirks ("J. Dirks"), appeared *pro se*.

Respondent, Dirks & Co. ("D&C"): Thomas L. Woodall, Dirks & Co., New York, NY.  
Previously represented by: Robert L. Goss, President, Dirks & Co., New York, NY.

Respondent, Security Capital Trading, Inc. ("SCT"): Martin Siegel, Esq., Brown Rudnick Berlack Israels, LLP, New York, NY.

Respondent, Milton Netcher ("Netcher"), appeared *pro se*.

**CASE INFORMATION**

Statement of Claim filed on or about: December 15, 2000.  
Amended Statement of Claim filed on or about: March 5, 2001.  
Reply to Respondents' Answers filed by Claimants on or about: March 5, 2001.  
Reply to Respondents' Answers to Amended Statement of Claim filed by Claimants on or about: March 21, 2001.  
Szazi signed the Uniform Submission Agreement: December 28, 2000.  
Beral signed the Uniform Submission Agreement: December 12, 2000.  
Likar signed the Uniform Submission Agreement: December 13, 2000.  
Racz signed the Uniform Submission Agreement: December 12, 2000.  
Q. RTS signed the Uniform Submission Agreement: December 10, 2001.  
Q. USA signed the Uniform Submission Agreement: December 10, 2001.

Statement of Answer filed by R. Dirks on or about: February 22, 2001.  
R. Dirks signed the Uniform Submission Agreement: March 7, 2001.

Statement of Answer filed by J. Dirks on or about: February 14, 2001.  
Statement of Answer filed by D&C on or about: February 14, 2001.  
Joint Statement of Answer to Amended Statement of Claim filed by J. Dirks and D&C on or about: March 13, 2001.  
J. Dirks signed the Uniform Submission Agreement: March 20, 2001.  
D&C signed the Uniform Submission Agreement: February 15, 2001.

Statement of Answer filed by SCT on or about: February 23, 2001.  
Statement of Answer to Amended Statement of Claim filed by SCT on or about: March 22, 2001.  
SCT signed the Uniform Submission Agreement: February 21, 2001.

Statement of Answer filed by Netcher on or about: February 21, 2001.  
Netcher signed the Uniform Submission Agreement: February 20, 2001.

## CASE SUMMARY

Claimants asserted the following causes of action: unauthorized trading; fraud; tortious interference with business; libelous accusations; churning; and margin rule violations. Claimants' claim involved the stocks of Log On America and Town-Pages Net.com.

Unless specifically admitted in his Answer, R. Dirks denied the allegations made in the Statement of Claim and asserted the following defenses: no claim has been articulated against R. Dirks which is actionable or, indeed, understandable; the irrelevance contained in the Statement of Claim substantiates the emptiness and lack of jurisdiction for the Statement of Claim; and the allegations contained in the Statement of Claim are totally without merit and have no basis in fact or in law.

Unless specifically admitted in her Answers, J. Dirks denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted the following defenses: J. Dirks did not have any involvement in any of Claimants' allegations concerning events that allegedly caused Claimant Racz to be fired by Quaestor & Co.; Quaestor was not a client of J. Dirks or anyone else at D&C, and at no time has Quaestor filed a complaint against J. Dirks or D&C; R. Dirks was not an employee, investor, or in any way associated with D&C prior to February 2000; and at no time did J. Dirks have a relationship with the President and owner of SCT that would suggest that the two firms "operated as One" as alleged in the Statement of Claim.

Unless specifically admitted in its Answers, D&C denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted the following defenses: D&C did not have any involvement in any of Claimant's allegations concerning events that may have caused Claimant Racz to be fired by Quaestor & Co.; Quaestor was not a customer of D&C; R. Dirks did not control the operation of both SCT and D&C as alleged in the Statement of Claim; and this arbitration as presented by Claimants has no merit as it applies to D&C.

Unless specifically admitted in its Answers, SCT denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted the following defenses: the Statement of Claim fails to state any cause of action or other grounds to justify any Award against SCT; the Statement of Claim is pleaded in such an incomprehensible manner as to render specific responses impracticable; the Statement of Claim lacks the specificity required to provide SCT with notice of the specific claims being made against it; the claim alleged by Likar is not allegedly based upon her account with SCT or any alleged wrongdoing in connection therewith; neither Racz nor Szazi were ever clients of SCT, and Racz was never an employee of SCT; even though Beral had an account with SCT, the transactions described in the Statement of Claim in connection with Beral occurred after Beral's account was no longer with SCT; pursuant to the letter of May 2000 from Quaestor to Racz, Quaestor sought to have Racz return to previous terms of his employment, and did not state that Racz was being fired; the Statement of Claim is barred by the equitable doctrine of laches; Claimants approved of, consented to, ratified, or requested each of the actions complained of in the Statement of Claim, and they are estopped and otherwise barred from asserting claims arising therefrom; Claimants are barred by their own unclean hands, and the doctrine of in pari delicto, from prevailing on their claims against SCT; no act or conduct of SCT caused any damages to Claimants; any damages suffered by Claimants were due in whole or part to their own negligence, recklessness, or intentional conduct; Claimants have failed to mitigate any damages they allegedly suffered; at all relevant times, SCT acted in compliance with all statutory and regulatory rules, laws, and regulations in the conduct of its business; all of the activities of SCT were in accord with applicable rules and regulations; and SCT engaged in the appropriate compliance activities required of it.

Unless specifically admitted in his Answer, Netcher denied the allegations made in the Statement of Claim and asserted the following defenses: Netcher did not have any involvement in any of Claimant's allegations concerning events that may have caused Racz to have the terms of his employment contract changed; any complaint concerning Q. USA, Log On America, or any issue dated February, April, or any other date in 1999 does not involve Netcher; Netcher has never spoken to personally or communicated in writing with any of the Claimants about any matter; at no time did Netcher receive any part of the sales commissions for the transactions in question; and this arbitration has no merit as it applies to Netcher.

### **RELIEF REQUESTED**

Claimants requested:

- a. Compensatory damages in the amount of \$250,000.00 for Racz and Likar;
- b. Compensatory damages in the amount of \$5,000.00 for Szazi;
- c. Punitive damages in the amount of \$10,000.00 for Beral;
- d. Compensatory damages totaling \$219,500.00 for Q. RTS and Q. USA; and
- e. Interest and any other damages that the Panel deems just and proper, including legal fees.

R. Dirks requested that the Statement of Claim be dismissed, together with disbursements and reasonable attorneys' fees.

J. Dirks requested that the claims against her be dismissed.

D&C requested that the claims against it be dismissed.

SCT requested that an Award be entered dismissing the Statement of Claim with prejudice, awarding SCT the costs and expenses of defending against the Statement of Claim, including reasonable attorneys' fees, and granting SCT such other and further relief as is deemed just and proper.

Netcher requested that the Claims against him be dismissed.

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

By letter dated March 5, 2001, Claimants' counsel advised NASD Dispute Resolution that Claimant Szazi was withdrawing his claims in this arbitration, with prejudice.

During the hearings in this matter, J. Dirks and D&C made Motions to Dismiss. The Panel granted said Motions.

During the hearings in this matter, the Panel dismissed the claims of Claimant Likar.

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. R. Dirks and SCT are jointly and severally liable for and shall pay to Q. USA the sum of \$50,000.00 as compensatory damages, plus simple annual interest at the rate of 9% beginning to accrue 30 days from the date of this Award until date of payment.
2. The claims of Beral, Racz, and Q. RTS are hereby dismissed in their entirety.
3. All claims against Netcher are hereby dismissed in their entirety.
4. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent J. Dirks' 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 J. Dirks must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
5. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent D&C'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 D&C must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
6. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Netcher'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 Netcher must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
7. All other requests for relief are hereby 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 = \$ 300.00

#### **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, Dirks & Co. and Security Capital Trading Inc. are parties.

##### **Dirks & Co.**

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 2,500.00

##### **Security Capital Trading Inc.**

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 2,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

May 1, 2 & 3, 2002, adjournment by SCT	= WAIVED
July 9, 10, 11 & 12, 2002, adjournment by Claimants	= WAIVED

#### **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:

Four (4) Pre-hearing sessions with Panel x \$1,125.00	= \$ 4,500.00
Pre-hearing conferences:	
August 13, 2001	1 session
January 28, 2002	1 session
May 1, 2002	1 session
July 11, 2002	1 session

Ten (10) Hearing sessions x \$1,125.00 = \$11,250.00

Hearing Dates:	January 13, 2003	2 sessions
	January 14, 2003	2 sessions
	January 15, 2003	2 sessions
	January 16, 2003	2 sessions
	January 17, 2003	2 sessions

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Total Forum Fees = \$15,750.00

1. The Panel has assessed \$5,250.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$5,250.00 of the forum fees against R. Dirks.
3. The Panel has assessed \$5,250.00 of the forum fees against SCT.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$5,250.00
Total Fees	= \$5,550.00
<u>Less payments</u>	<u>= \$1,575.00</u>
Balance Due NASD Dispute Resolution	= \$3,975.00

2. D&C is solely liable for:

<u>Member Fees</u>	<u>= \$4,600.00</u>
Total Fees	= \$4,600.00
<u>Less payments</u>	<u>= \$4,600.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. SCT is solely liable for:

Member Fees	= \$4,600.00
Forum Fees	= \$5,250.00
Total Fees	= \$9,850.00
<u>Less payments</u>	<u>= \$4,044.00</u>
Balance Due NASD Dispute Resolution	= \$5,806.00

4. R. Dirks is solely liable for:

<u>Forum Fees</u>	= \$5,250.00
<u>Total Fees</u>	= \$5,250.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$5,250.00

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

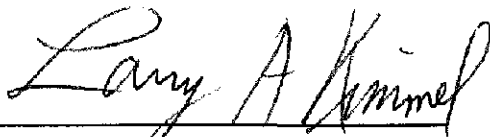


**ARBITRATION PANEL**

Larry A. Kimmel	-	Non-Public Arbitrator, Presiding Chair
Eugene D. McGahren, Jr., Esq.	-	Public Arbitrator
Edward K. Lenci, Esq.	-	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 which is my award.



Larry A. Kimmel  
Non-Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Eugene D. McGahren, Jr., Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Edward K. Lenci, Esq.  
Public Arbitrator

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

February 24, 2003  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Larry A. Kimmel	-	Non-Public Arbitrator, Presiding Chair
Eugene D. McGahren, Jr., Esq.	-	Public Arbitrator
Edward K. Lenci, Esq.	-	Public Arbitrator

**Concurring Arbitrators' Signatures**

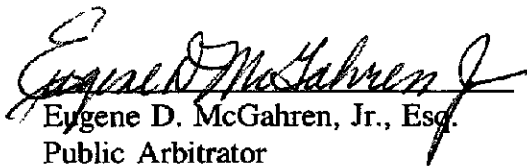
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Larry A. Kimmel  
Non-Public Arbitrator, Presiding Chair

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Signature Date

  
Eugene D. McGahren, Jr., Esq.  
Public Arbitrator

2/11/03  
Signature Date

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Edward K. Lenci, Esq.  
Public Arbitrator

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Signature Date

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Signature Date


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Eugene D. McGahren, Jr., Esq.  
Public Arbitrator

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Signature Date

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Edward K. Lenci, Esq.  
Public Arbitrator

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2/7/03  
Signature Date

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February 24, 2003  
Date of Service (For NASD Dispute Resolution use only)