

**Stipulated Award  
NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

NatCity Investments, Inc.,

Claimant,

Case No. 00-05769

vs.

Sheila Lugibill Carmen  
Thomas Parilla  
Matthew Ristvey  
Conseco Securities, Inc.

Respondents.

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**REPRESENTATION OF PARTIES**

Claimant, NatCity Investments, Inc. ("NatCity") was represented by Robert N. Rapp, Esq., of Calfee, Halter & Griswold LLP, Cleveland, Ohio.

Respondents Sheila Lugibill Carmen ("Carmen") and Mathew Ristvey ("Ristvey") were represented by Charles Casanova, Esq., Corporate Counsel, F.N.B. Corporation, Hermitage, Pennsylvania.

Respondent Conseco Securities, Inc. ("Conseco") was represented by Paul F. Donahue, Esq., and Kenneth R. Landis, Jr., of Seyfarth Shaw, Chicago, Illinois.

Respondent Thomas Parilla ("Parilla") represented himself.

**CASE INFORMATION**

Statement of Claim filed on:	December 28, 2000
Amended Statement of Claim filed on:	February 2, 2001
Claimant signed the Uniform Submission Agreement on:	January 31, 2001

Statement of Answer filed by Conseco:	February 8, 2001
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Respondents did not file Uniform Submission Agreements.

### CASE SUMMARY

Claimant asserted claims for damages and immediate injunctive relief on allegations that each of the individual Respondents breached certain contracts and engaged in acts and conduct in violation of legal duties in connection with terminating their employment at NatCity to become employed by a competing financial services firm. Claimant further asserted that Conseco participated in and benefited by acts and conduct of the individual Respondents.

NatCity requested relief as follows:

1. An injunction restraining the Respondents and all persons acting in active concert or participation with them from engaging in certain activity for a period of twenty-four (24) months;
2. Further injunctive orders regarding proprietary information and materials; and
3. Compensatory damages of \$100,000, along with punitive damages, attorneys fees and costs.

Conseco denied any responsibility or liability for acts and conduct of the individual Respondents as alleged by NatCity. The individual Respondents did not admit any allegations or claims of NatCity, and the entire controversy has been resolved by the individual Respondents' Stipulations and Agreed Orders that are referenced below and which are incorporated by reference.

### OTHER ISSUES CONSIDERED AND DECIDED

Prior to the commencement of the Injunction hearing pursuant to Rule 10335 (d)(2), NASD Code of Arbitration Procedure, each of the individual Respondents entered into a Stipulation and Agreed Order for presentation to the Arbitrator, and further agreed that the terms thereof shall be entered as a Stipulated Award in this matter. A copy of each Stipulation and Agreed Order, as executed by Carmen on February 12, 2001; Parilla on February 9, 2001; and Ristvey on February 20, 2001 is attached hereto as Award Exhibit "A," "B" and "C" respectively.

### AWARD

In lieu of hearing, and upon the Stipulations and Agreed Orders of each of the individual Respondents, the Arbitrator hereby adopts and incorporates each Stipulation and Agreed Order as the Award for NatCity and grants the following relief:

- 1) As to each of the individual Respondents Carmen, Parilla and Ristvey, the Arbitrator orders as the final Award in this matter each of the terms and requirements as set forth in the Respondents respective Stipulations and Agreed

Awards. Subject to fulfillment by each Respondent of all terms and conditions set forth therein, all claims of NatCity against them for other relief, including claims for money damages and costs, are dismissed with prejudice;

2) Claims against Consecro are dismissed with prejudice;

3) Each party shall bear his/her/its own costs and expenses with the exception of fees specified below; and

4) 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, Inc. will retain or collect the non-refundable filing fee and injunctive relief fee:

Initial claim filing fee:	= \$ 1,000.00
Injunctive Relief Fee:	= \$ 2,500.00

#### **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, the member firms are parties.

Member surcharge:	= \$ 1,500.00
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### **Fee Summary**

NatCity is assessed the following fees:

Member Fees	= \$ 1,500.00
Filing Fee	= \$ 1,000.00
Injunctive Fee	= \$ 2,500.00

Total Fees	= \$ 5,000.00
Less Payments	= \$ 4,625.00

Balance Due NASD Dispute Resolution, Inc.	= \$ 375.00
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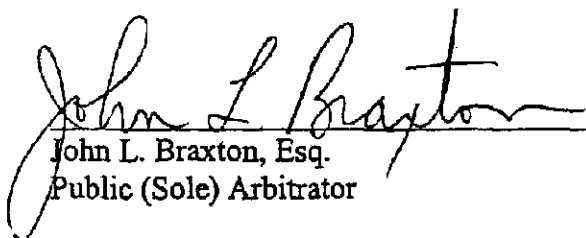
Conseco is assessed the following:

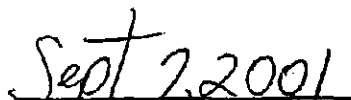
Member Fees	= \$ 1,500.00
Less Payments	= \$ -0-

Balance Due NASD Dispute Resolution, Inc.	= \$ 1,500.00
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All balances are due and payable to NASD Dispute Resolution, Inc.

Arbitrator - Signature

  
John L. Braxton, Esq.  
Public (Sole) Arbitrator

  
Signature Date

9/19/01.  
Date Stipulated Award Served by NASD-DR

**NASD DISPUTE RESOLUTION, INC.**

**NATCITY INVESTMENTS, INC.**

**Claimant,**

**vs.**

**No. 005769**

**SHEILA LUGIBILL CARMEN  
THOMAS PARILLA  
MATTHEW RISTVEY and  
CONSECO SECURITIES, INC.**

**Respondents.**

**STIPULATION AND AGREED ORDER BETWEEN NATCITY  
INVESTMENTS, INC. AND THOMAS J. PARILLA**

The Claimant, NatCity Investments, Inc. ("NatCity") and Respondent Thomas J. Parilla ("Parilla"), by way of Stipulation, and with the understanding that this Stipulation will be entered as an Agreed Order by the Arbitrator, resolving the dispute between them that is set forth in the Statement of Claim and Amended Statement of Claim in this matter, state as follows:

1. For a period of one year from December 4, 2000, Parilla agrees not to solicit, or cause or knowingly permit any other person, including but not limited to Emily Geiger, to solicit on his behalf or for his benefit or the benefit of any firm employing Parilla, any customers of NatCity which were previously serviced by Parilla at NatCity, or whose names became known to Parilla only through his previous affiliation with NatCity. Parilla further agrees that he will not provide or disclose to any person or firm the identities of, or any information concerning, any current customers of NatCity. Without limiting the generality of the foregoing, Parilla agrees that the prohibition provided for above shall be applicable to any and all sales assistants, staff, or associates with whom he acts in concert and combination in connection with any current or subsequent employment in the financial services industry. The above prohibition on solicitation notwithstanding, Parilla may, without restriction, solicit those persons specifically identified on Attachment "A" to this Stipulation and Agreed Order who are or were customers of Parilla previously serviced at NatCity.

2. Parilla, on behalf of himself and all those who may act in concert and combination with him in the course of his employment in the financial services industry, agrees that he will not use, cause to be used, or knowingly permit the use of any proprietary information of NatCity, or any information contained in NatCity materials or customer records that were available to Parilla prior to December 4, 2000.

3. Nothing in this Stipulation and Agreed Order shall be deemed to restrict the free transfer of property, to restrain commerce, or otherwise be deemed to prohibit the transfer of an account by any person whose decision to do so is reasonably shown to be a matter of trade, business or personal necessity, and not to be proximately connected to any prior specific communication and/or solicitation by Parilla or any person acting on behalf of Parilla. In the event of any apparent breach of this provision, NatCity shall provide written notice to Parilla and/or his firm, who shall have seventy-two (72) hours to respond by: (a) rejecting the account transfer, or (b) presenting sufficient evidence of independent basis for such transfer. Damages for breach of this paragraph (3) shall be fixed at an amount equal to 100% of the gross commissions generated by the transferred account or accounts for a period of one year from the date of transfer.

4. Parilla represents that he does not have in his possession, custody, or under his control, any originals, copies duplicates, reproductions or excerpts of any written reports, records, documents or other NatCity information as particularly described in paragraph 5 of the Employment Agreement between Parilla and NatCity dated May 16, 1997. NatCity represents that as of the date of this Stipulation and Agreed Order, it has no knowledge that, or reason to believe that, Parilla has removed from NatCity any items or materials referenced hereinabove.

5. The parties agree that all other provisions of the above-identified employment agreement set forth in paragraphs 4, 5, 6, 7 and 10 shall remain in full force and effect, and further that this Stipulation and Agreed Order shall be enforceable by NASD Regulation, Inc. (NASDR) as an arbitration award, or as a judgment in any court of competent jurisdiction.

6. Parilla and NatCity agree that by entering into this Stipulation and Agreed Order, Parilla does not admit any wrongdoing or any allegations contained in the Statement of Claim or Amended Statement of Claim, and that the Agreed Order is entered into to resolve all claims as set forth therein. Subject to provisions for enforcement and for the continued obligations as set forth in the identified employment agreement, NatCity shall cause the arbitration to be dismissed as to all claims against Parilla.

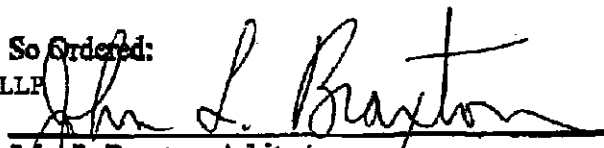
Dated: February 9, 2001

  
Thomas J. Parilla

NatCity Investments, Inc.

By 

Its: Attorney  
Robert N. Rapp, Esq.  
Calfee, Halter & Griswold, LLP  
800 Superior Ave.  
Suite 1400  
Cleveland, Ohio 44114  
(216) 622-8288

So Ordered:  
  
John L. Braxton, Arbitrator

## ATTACHMENT A

Rosemary Parilla	-my mother
Patrik & Marda Heuman	-girlfriend's family
Lana Mattocks	-ex-NCC employee
John Frey	-NCC employee
Jun Nemitz	-ex-NCC employee
Scott Calhoun	-NCC employee
Scott Emling	-coached his son at Harborcreek H.S.
Lev Kubiak & Lana Brilhart	-friends from Mercyhurst College - now living in Michigan
Patricia Reed	-mother of ex-NCC employee
John & Patty Saxon	-friends from Mercyhurst College
Ron Nutting	-worked for John Saxon @ TIMCO
Dawn Johnson	-referred to me from her boss & my personal friend, Kelly Buck
Betty Young	-Transferred account from Cleveland, so I could handle account for her.
Brent Doolittle	-my Dean Witter client that came with me
Sam & Susan Greenaway	-referred to me by an ex-NCC employee
Marty & Michelle Stepnoski	-played football with their son & brother at Mercyhurst College
Al Steinbaugh	-NatCity sold the branch that he dealt with in Union City; he asked me to come out and transfer account here.
Paul Bretz	-was referred to me by an ex-NCC employee; wants to consolidate accounts
Jamie Mead	-was referred to me by his cousin
Al Knight	-called me to transfer account
Tom Tushak	-told Girard Branch of First National Bank that he probably wants to transfer here; does not like Ron Zimmerman
Rich King & Dave Heth	-both referred to me by an ex-NCC employee
Gary Luke	-friend with First National Bank branch manager; told him to tell me he wants to transfer here.
Dave Lilly	-saw Dave at the eye doctor's; told me he thought he'd like to come with me.
Martha Kwiatowski	-friend of mine from the Erie Club
Cheryl Weber	-personal friend
George Clark	-tracked us down; said he wanted to transfer
Guy & Mike Euliano	-told a lender at First National that they wanted to consolidate everything and to have us call them
Joanne & Peter Lyons	-told me they thought they would like to stay with us
Ray Brothers	-referred to me by an ex-NCC employee
Deana Lasher	-transfer in progress now
Dale Massing	-referred to me by ex-NCC employee

## NASD DISPUTE RESOLUTION, INC.

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NATCITY INVESTMENTS, INC.

Claimant,

vs.

SHEILA LUGIBILL CARMEN  
 THOMAS PARILLA  
 MATTHEW RISTVEY and  
 CONSECO SECURITIES, INC.

Respondents.

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x

No. 005769

x

**STIPULATION AND AGREED ORDER BETWEEN NATCITY  
 INVESTMENTS, INC. AND SHEILA LUGIBILL CARMEN**

The Claimant, NatCity Investments, Inc. ("NatCity") and Respondent Sheila Lugibill Carmen ("Carmen"), by way of Stipulation, and with the understanding that the Stipulation will be entered as an Agreed Order by the Arbitrator, as part of resolving the dispute between them that is set forth in the Statement of Claim and Amended Statement of Claim in this matter, state as follows:

1. For a period of one year from October 20, 2000, Carmen agrees not to solicit, or cause or knowingly permit any other person, including but not limited to Emily Geiger, to solicit on her behalf or for her benefit or the benefit of any firm employing Carmen, any customers of NatCity which were previously serviced by Carmen at NatCity, or whose names became known to Carmen only through her previous affiliation with NatCity. Carmen further agrees that she will not provide or disclose to any person or firm the identities of, or any information concerning, any current customers of NatCity. Without limiting the generality of the foregoing, Carmen agrees that the prohibition provided for above shall be applicable to any and all sales assistants, staff, or associates with whom she acts in concert and combination in connection with any current or subsequent employment in the financial services industry. The above prohibition on solicitation notwithstanding, Carmen may, without restriction, solicit those persons specifically identified on Attachment "A," if any, to this Stipulation and Agreed Order who are or were customers of Carmen previously serviced at NatCity.

2. Carmen, on behalf of herself and all those who may act in concert and combination with her in the course of her employment in the financial services industry, agrees that she will not use, cause to be used, or knowingly permit the use of any proprietary information of NatCity, or any information contained in NatCity materials or customer records that were available to Carmen prior to October 20, 2000.

(RNR0659.DOC:1)

(RNR0659.DOC:1)

3. Nothing in this Stipulation and Agreed Order shall be deemed to restrict the free transfer of property, to restrain commerce, or otherwise be deemed to prohibit the transfer of an account by any person whose decision to do so is reasonably shown to be a matter of trade, business or personal necessity, and not to be proximately connected to any prior specific communication and/or solicitation by Carmen or any person acting on behalf of Carmen. In the event NatCity has evidence that Carmen has violated the provisions of this order NatCity shall provide written notice to Carmen and/or her firm, who shall have seventy-two (72) hours to respond by: (a) rejecting the account transfer, or (b) presenting sufficient evidence of independent basis for such transfer. Damages for breach of this paragraph (3) shall be fixed at an amount equal to 100% of the gross commissions generated by the transferred account or accounts for a period of one year from the date of transfer.

4. Carmen represents that she does not have in her possession, custody, or under her control, any originals, copies duplicates, reproductions or excerpts of any written reports, records, documents or other NatCity information as particularly described in paragraph 5 of the Employment Agreement between Carmen and NatCity dated December 29, 1997. NatCity represents that as of the date of this Stipulation and Agreed Order, it has no knowledge that, or reason to believe that, Carmen has removed from NatCity any items or materials referenced hereinabove.

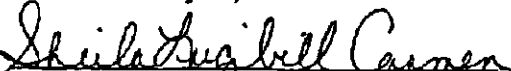
5. The parties agree that all other provisions of the above-identified employment agreement set forth in paragraphs 4, 5, 6, 7 and 10 shall remain in full force and effect, and further that this Stipulation and Agreed Order shall be enforceable by NASD Regulation, Inc. (NASDR) as an arbitration award, or as a judgment in any court of competent jurisdiction.

6. This Stipulation and Agreed Order is part of a further agreement between the parties and involves other good and valuable consideration, receipt of which by NatCity is a condition precedent to the entire agreement between them.

7. Carmen and NatCity agree that by entering into this Stipulation and Agreed Order, Carmen does not admit any wrongdoing or any allegations contained in the Statement of Claim or Amended Statement of Claim. Subject to provisions for enforcement and for the continued obligations as set forth in the identified employment agreement, and the separate agreement for further consideration, NatCity shall cause the arbitration to be dismissed as to all claims against Carmen.

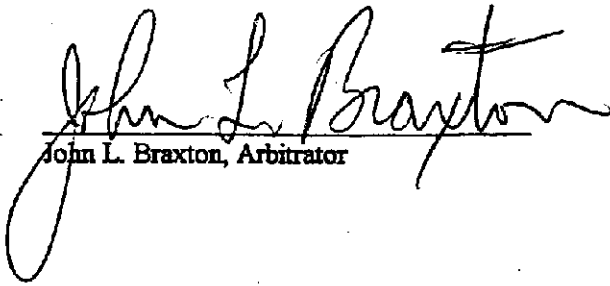
Dated: February 12, 2001

NatCity Investments, Inc.

  
Sheila Lugibill Carmen

By: \_\_\_\_\_  
Itsy

So Ordered:

  
John L. Braxton, Arbitrator

## **ATTACHMENT A**

**Roland and Sandra Wood**

**Ann & Robert Russell**

**Conneaut Lake Presbyterian Church**

**Gerald Carless & Fellow's Club Fire Hall**

**Roger Brown**

**Susan Kay**

**Michelle Ray**

**Robert & Lois Miller**

NASD DISPUTE RESOLUTION, INC.

NATCITY INVESTMENTS, INC.

Claimant,

vs.

No. 00-5769

SHEILA LUGIBILL CARMEN  
THOMAS PARILLA  
MATTHEW RISTVEY and  
CONSECO SECURITIES, INC.

Respondents.

**STIPULATION AND AGREED ORDER BETWEEN NATCITY  
INVESTMENTS, INC. AND MATTHEW RISTVEY**

The Claimant, NatCity Investments, Inc. ("NatCity") and Respondent Matthew Ristvey ("Ristvey"), by way of Stipulation, and with the understanding that the Stipulation will be entered as an Agreed Order by the Arbitrator, as part of resolving the dispute between them that is set forth in the Statement of Claim and Amended Statement of Claim in this matter, state as follows:

1. For a period of one year from December 5, 2000, Ristvey agrees not to solicit, or cause or knowingly permit any other person, including but not limited to Emily Geiger, to solicit on his behalf or for his benefit or the benefit of any firm employing Ristvey, any customers of NatCity which were previously serviced by Ristvey at NatCity, or whose names became known to Ristvey only through his previous affiliation with NatCity. Ristvey further agrees that he will not provide or disclose to any person or firm the identities of, or any information concerning, any current customers of NatCity. Without limiting the generality of the foregoing, Ristvey agrees that the prohibition provided for above shall be applicable to any and all sales assistants, staff, or associates with whom he acts in concert and combination in connection with any current or subsequent employment in the financial services industry. The above prohibition on solicitation notwithstanding, Ristvey may, without restriction, solicit those persons specifically identified on Attachment "A," if any, to this Stipulation and Agreed Order who are or were customers of Ristvey previously serviced at NatCity.

2. Ristvey, on behalf of himself and all those who may act in concert and combination with him in the course of his employment in the financial services industry, agrees that he will not use, cause to be used, or knowingly permit the use of any proprietary information of NatCity, or any information contained in NatCity materials or customer records that were available to Ristvey prior to December 5, 2000.

3. Nothing in this Stipulation and Agreed Order shall be deemed to restrict the free transfer of property, to restrain commerce, or otherwise be deemed to prohibit the transfer of an account by any person whose decision to do so is reasonably shown to be a matter of trade, business or personal necessity, and not to be proximately connected to any prior specific communication and/or solicitation by Ristvey or any person acting on behalf of Ristvey. In the event NatCity has evidence that Ristvey has violated the provisions of this order NatCity shall provide written notice to Ristvey and/or his firm, who shall have seventy-two (72) hours to respond by: (a) rejecting the account transfer; or (b) presenting sufficient evidence of independent basis for such transfer. Damages for breach of this paragraph (3) shall be fixed at an amount equal to 100% of the gross commissions generated by the transferred account or accounts for a period of one year from the date of transfer.

4. Ristvey represents that he does not have in his possession, custody, or under his control, any originals, copies duplicates, reproductions or excerpts of any written reports, records, documents or other NatCity information as particularly described in paragraph 5 of the Employment Agreement between Ristvey and NatCity dated March 23, 1998. NatCity represents that as of the date of this Stipulation and Agreed Order, it has no knowledge that, or reason to believe that, Ristvey has removed from NatCity any items or materials referenced hereinabove.

5. The parties agree that all other provisions of the above-identified employment agreement set forth in paragraphs 4, 5, 6, 7 and 10 shall remain in full force and effect, and further that this Stipulation and Agreed Order shall be enforceable by NASD Regulation, Inc. (NASDR) as an arbitration award, or as a judgment in any court of competent jurisdiction.

6. This Stipulation and Agreed Order is part of a further agreement between the parties and involves other good and valuable consideration, receipt of which by NatCity is a condition precedent to the entire agreement between them.

7. Ristvey and NatCity agree that by entering into this Stipulation and Agreed Order, Ristvey does not admit any wrongdoing or any allegations contained in the Statement of Claim or Amended Statement of Claim. Subject to provisions for enforcement and for the continued obligations as set forth in the identified employment agreement, and the separate agreement for further consideration, NatCity shall cause the arbitration to be dismissed as to all claims against Ristvey.

Dated: February 20, 2001.

NatCity Investments, Inc.

  
Matthew Ristvey

By: \_\_\_\_\_  
Its: \_\_\_\_\_

So Ordered:

  
John L. Braxton, Arbitrator

1. Bader, Brian T. and Kimberly A.
2. Bernard, Charles D. and Brenda S.
3. Blystone, Timothy S. and Denise M.
4. Blystone, Lawrence V. and Mary J.
5. Boger, Ralph C., Jr.
6. Clovesko, George B. and Elsie B.
7. Cole, Ronald A. and Theresa M.
8. Demartinis, Michael J. and Georganne
9. Economides, George N. and Janice
10. Osborne, Jewell Jennings
11. Endicott, Alan and Jeanne
12. Foust, Lois A.
13. Frejik, John M. and Christine S.
14. Gearhart, William S. and Shirley J.
15. George Junior Republic
16. Horstman, Mark V.
17. Hughes, James E. and Louise M.
18. Ko, Yih-Song and Hwan
19. Miller, Jerome
20. Marzolf, Elmer J.
21. Mihalik, Mary E. and Rossi, Diane
22. Misik, Mary E.
23. Mueller, Charles
24. Osborne, James P.
25. Reeher, William G.
26. Repas, Andrew J. and Loretta M.
27. Repasky, Mary Jane and Stephen N.
28. Rossi, Donna J.
29. Senn, George and Marilyn
30. Smith, Dale L.
31. Styn, Michael D.
32. Yager, Kenneth E.
33. Zahmiser, Laverne
34. Farrone, Pat J. and Justine R.
35. Leali, Ladonna C.
36. Jimro, Richard and Estelle
37. Foltz, Carol