

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Names of Claimants

James D. Mitchell, John W. Mitchell and
James D. Mitchell, Joint Tenants with Rights
of Survivorship, and the Special Needs Trust
for John W. Mitchell, Jr.

and

Case Number: 01-00014
Hearing Site: Southfield, Michigan

Names of Respondents

Cantone Research, Inc.
Sharpe Capital, Inc. and
Robert E. Ainbinder

NATURE OF DISPUTE

Customers v. Member, Terminated Member and Associated Person

REPRESENTATION OF PARTIES

James D. Mitchell, John W. Mitchell and James D. Mitchell, Joint Tenants with Rights of Survivorship, and the Special Needs Trust for John W. Mitchell, Jr. ("Claimants") were represented by Stuart H. Deming, Esq., Deming PLLC, Kalamazoo, Michigan.

Cantone Research, Inc. ("Cantone") was represented by Walter L. Baumgardner, Esq., St. Clair Shores, Michigan.

Sharpe Capital, Inc. ("Sharpe") was represented by Michael C. Simon, Esq., Sharpe Capital, Inc., New York, New York.

Robert E. Ainbinder, Jr. a/k/a Robert Ainbinder ("Ainbinder") was represented by Jack J. Mazzara, Esq., The Mazzara Law Firm, Troy, Michigan. Respondent Ainbinder was represented by Irwin Weltz, Esq., Brunelle & Hadjickow, New York, New York, until on or about October 11, 2002.

CASE INFORMATION

The Statement of Claim was filed on or about January 2, 2001. The Submission Agreement of Claimant James D. Mitchell was signed on or about December 29, 2000. The Submission Agreement of Claimants, John W. Mitchell and James D. Mitchell, Joint

Tenants with Rights of Survivorship, was signed on or about December 28, 2000, by John W. Mitchell and James D. Mitchell, respectively. The Submission Agreement of The Special Needs Trust for John W. Mitchell, Jr. was signed on or about December 28, 2000, by James D. Mitchell, Trustee.

Statement of Answer was filed by Respondent Cantone Research, Inc. on or about April 2, 2001.

Statement of Answer was filed by Respondent Sharpe Capital, Inc. on or about March 12, 2001.

Statement of Answer and Counterclaim was filed by Respondent Robert E. Ainbinder, on or about February 28, 2001.

James D. Mitchell, John W. Mitchell and James D. Mitchell, Joint Tenants with Rights of Survivorship, and the Special Needs Trust for John W. Mitchell, Jr. filed their Answer to Robert E. Ainbinder, Jr.'s Counterclaim on or about March 10, 2001.

Claimants filed a Motion Pursuant to Rule 10314(b)(2)(C) to Bar Cantone for its failure to Answer on or about March 19, 2001. Respondent Cantone filed a Response to Motion on or about March 26, 2001. Claimants withdrew their Motion on or about January 22, 2002.

Claimants filed a Motion for Sanctions against Respondent Cantone on or about May 28, 2002. Respondent Cantone filed its Response to Motion on or about June 4, 2002.

Respondent Cantone filed a Motion to Bar Transcript on or about January 5, 2004. Claimants filed their Response to Motion to Bar on or about January 26, 2004.

CASE SUMMARY

Claimants asserted causes of action including the following: excessive trading/churning, unsuitable trading, unauthorized trading, failure to supervise, violation of the Michigan Uniform Securities Act, common law fraud, breach of fiduciary duty, innocent misrepresentation, violations of New Jersey law, and violations of federal law. The causes of action relate to the recommendation and sale of various securities including Credence Systems Corporation, Prism Solutions, Bio Technology General, Information Architects Corp., and PHP Healthcare. Claimants alleged that Respondents inappropriately engaged in a pattern of buying and selling the same security within a short period in Claimants' accounts, as well as inappropriate margin and options trading.

Unless specifically admitted in its Answer, Respondent Cantone denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: failure to state a claim upon which relief can be granted; laches; acceptance and waiver; collateral estoppel; statute of limitations; and assumption of risk.

Unless specifically admitted in its Answer, Respondent Sharpe denied the allegations made in the Statement of Claim and asserted defenses including the following: Sharpe acted reasonably, in good faith, and with the skill, prudence and diligence exercised by others in their profession; the statement of claim fails to state a direct or derivative claim against Sharpe upon which relief can be granted; and Claimant cannot recover damages that are speculative and not susceptible of proof.

Unless specifically admitted in his Answer, Respondent Ainbinder denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: failure to state a claim; statute of limitations; no private right of action; ratification; waiver; laches; intervening events; non-fiduciary status; contributory conduct; no reliance, causation, scienter; failure to mitigate, assumption of risk, and estoppel. Respondent Ainbinder asserted a counterclaim for the filing of an allegedly frivolous claim.

RELIEF REQUESTED

Claimants requested an award in the amount of \$320,326.29 in compensatory damages, plus \$450,000.00 in exemplary/punitive damages, attorney fees, expenses, and additional relief the panel deemed appropriate.

Respondent Cantone requested that the claims asserted against it be dismissed and that it be awarded its costs and attorneys' fees.

Respondent Sharpe requested that the claims asserted against it be dismissed or delayed until such time as Sharpe is in a position to defend itself, that Claimant indemnify Sharpe for costs of defense, and such other and further relief as the panel deems just.

Respondent Ainbinder requested that the claims asserted against him be denied in their entirety and that he be awarded his costs, disbursements, attorneys' fees, and expungement of this complaint from his CRD records. Respondent requested unspecified damages in his counterclaim and such other relief as the panel deemed just, equitable and proper.

OTHER ISSUES CONSIDERED & DECIDED

Respondents Cantone Research, Inc., Sharpe Capital, Inc., and Robert E. Ainbinder, Jr., did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") having answered the claim, and appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

The parties accepted the composition of the panel on the record at the hearing.

In its Order entered on November 7, 2002, the Panel took Claimants' Motion for Sanctions under advisement.

The Panel denied Respondent Cantone's Motion to Bar Transcript in its Order entered on February 12, 2004.

Claimant, James D. Mitchell, reached a settlement of his claims with Respondent Sharpe Capital, Inc. on or about September 11, 2002. All remaining claims by all Claimants against Respondent Sharpe Capital, Inc., were dismissed with prejudice in the Panel's Order entered on November 7, 2002.

Any motions and requests filed by the parties and not previously ruled on are hereby denied with prejudice.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondents, Cantone Research, Inc., and Robert E. Ainbinder, are not liable to Claimants, James D. Mitchell, John W. Mitchell and James D. Mitchell, Joint Tenants with Rights of Survivorship, and the Special Needs Trust for John W. Mitchell, Jr. Accordingly, Claimants shall not recover any amounts against the Respondents for compensatory, punitive, exemplary, special or statutory damages;
- 2.) Claimants are not liable to Respondents Robert E. Ainbinder, Jr., for the claims made in Respondent Ainbinder's counterclaim. Accordingly, Respondent Ainbinder shall not recover any amounts against the claimants for compensatory, punitive, exemplary, special or statutory damages;
- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Robert E. Ainbinder, Jr.'s registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Robert E. Ainbinder, Jr. must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;

- 4.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 5.) That any relief not specifically enumerated, including attorney fees, is hereby denied with prejudice.

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	= \$ 375.00
Counterclaim 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 firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firms are Cantone Research, Inc. and Sharpe Capital, Inc.

Member surcharge	= \$ 2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 3,500.00

Adjournment Fees

Adjournments requested during these proceedings:

July 8-12, 2002, adjournment by Respondent Ainbinder (waived by panel)	= \$ 1,200.00
November 4-8, 2002, adjournment by Claimants	= \$ 1,200.00

The Panel assessed to both sides 50% to Claimants jointly and severally and 50% to Respondents Ainbinder and Cantone, jointly and severally

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

Two (2) Pre-hearing sessions with a single arbitrator x \$450.00 = \$ 900.00

Pre-hearing conferences: February 5, 2002 1 session
October 25, 2002 1 session

Seven (7) Pre-hearing sessions with Panel x \$1,200.00 = \$ 8,400.00

Pre-hearing conferences: August 6, 2001 1 session
August 15, 2001 1 session
January 11, 2002 1 session
June 25, 2002 1 session
January 10, 2003 1 session
May 29, 2003 1 session
January 9, 2004 1 session

Nineteen (19) Hearing sessions x \$1,200.00 = \$22,800.00

Hearing Dates: June 10, 2003 2 sessions
June 11, 2003 2 sessions
June 12, 2003 2 sessions
June 13, 2003 2 sessions
September 29, 2003 2 sessions
September 30, 2003 2 sessions
October 2, 2003 2 sessions
April 5, 2004 1 session
April 6, 2004 2 sessions
April 7, 2004 2 sessions

Total Forum Fees = \$32,100.00

The Arbitration Panel has assessed \$16,050.00 of the forum fees jointly and severally to James D. Mitchell, John W. Mitchell and James D. Mitchell, Joint Tenants with Rights of Survivorship, and the Special Needs Trust for John W. Mitchell, Jr.

The Arbitration Panel has assessed \$16,050.00 of the forum fees jointly and severally to Cantone Research, Inc. and Robert E. Ainbinder.

Fee Summary

Claimants, James D. Mitchell, John W. Mitchell and James D. Mitchell, Joint Tenants with Rights of Survivorship, and the Special Needs Trust for John W. Mitchell, Jr., are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Adjournment Fee	= \$ 600.00
Forum Fees	= \$16,050.00
Total Fees	= \$17,025.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$15,450.00

Respondent, Cantone Research, Inc., is liable for:

<u>Member Fees</u>	= \$ 6,100.00
<u>Total Fees</u>	= \$ 6,100.00
<u>Less payments</u>	= \$ 5,100.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 1,000.00

Respondent, Sharpe Capital, Inc., is liable for:

<u>Member Fees</u>	= \$ 6,100.00
<u>Total Fees</u>	= \$ 6,100.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 6,100.00

Respondent, Robert E. Ainbinder, is liable for:

<u>Counterclaim Filing Fee</u>	= \$ 250.00
<u>Total Fees</u>	= \$ 250.00
<u>Less payments</u>	= \$ 250.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondents, Cantone Research, Inc. and Robert E. Ainbinder, are jointly and severally liable for:

<u>Adjournment Fee</u>	= \$ 600.00
<u>Forum Fees</u>	= \$16,050.00
<u>Total Fees</u>	= \$16,650.00
<u>Less payments</u>	= \$ 1,000.00
<u>Balance Due NASD Dispute Resolution</u>	= \$15,650.00

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

ARBITRATION PANEL

Stephen P. Ormond, Esq. - Public Arbitrator, Presiding Chair
Jerome D. Sobczak - Public Arbitrator
Douglas H. McDonald - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Stephen P. Ormond, Esq.
Stephen P. Ormond, Esq.
Public Arbitrator, Presiding Chair

04/20/04
Signature Date

/s/ Jerome D. Sobczak
Jerome D. Sobczak
Public Arbitrator

04/29/04
Signature Date

/s/ Douglas H. McDonald
Douglas H. McDonald
Non-Public Arbitrator

05/03/04
Signature Date

05/03/04
Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 01-00014
Award Page 8 of 8

ARBITRATION PANEL

Stephen P. Ormond, Esq. - Public Arbitrator, Presiding Chair
Jerome D. Sobczak - Public Arbitrator
Douglas H. McDonald - Non-Public Arbitrator

Concurring Arbitrators:

Stephen P. Ormond, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Jerome D. Sobczak
Jerome D. Sobczak
Public Arbitrator

4-29-04
Signature Date

Douglas H. McDonald
Non-Public Arbitrator

Signature Date

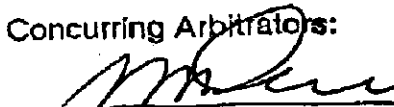
Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 01-00014
Award Page 6 of 8

ARBITRATION PANEL

Stephen P. Ormond, Esq. - Public Arbitrator, Presiding Chair
Jerome D. Sobczak - Public Arbitrator
Douglas H. McDonald - Non-Public Arbitrator

Concurring Arbitrators:



Stephen P. Ormond, Esq.
Public Arbitrator, Presiding Chair

4/30/04
Signature Date

Jerome D. Sobczak
Public Arbitrator

Signature Date

Douglas H. McDonald
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

ARBITRATION PANEL

Stephen P. Ormond, Esq. - Public Arbitrator, Presiding Chair
Jerome D. Sobczak - Public Arbitrator
Douglas H. McDonald - Non-Public Arbitrator

Concurring Arbitrators:

Stephen P. Ormond, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Jerome D. Sobczak
Public Arbitrator

Signature Date



Douglas H. McDonald
Non-Public Arbitrator

5/3/04

Signature Date

Date of Service (For NASD office use only)