

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 01-00199

Marvin R. Willis

Name of the Respondents

Hearing Site: Richmond, Virginia

Russo Securities Inc.,  
William G. Brown, Alex Korik,  
Ferdinand Russo, and  
Richard Anthony Russo

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REPRESENTATION OF PARTIES

Claimant Marvin R. Willis, hereinafter referred to as "Claimant", was represented by James C. Cosby, Esq., Cantor Arkema & Edmonds, P.C., Richmond, Virginia.

Respondents Russo Securities Inc. ("Russo Securities"), Ferdinand Russo ("F. Russo"), and Richard Anthony Russo ("R. Russo"), hereinafter collectively referred to as "Russo Respondents", were represented by Marc S. Gottlieb, Esq., Law Offices of Marc S. Gottlieb, New York, New York.

Respondent William G. Brown ("Brown") was initially represented by Jerome Olitt, Arbitration and Mediation Specialist, Inc. Stamford, Connecticut, who later withdrew. Respondent Brown was represented at the hearing by Marc S. Gottlieb, Esq., Law Offices of Marc S. Gottlieb, New York, New York.

Respondent Alex Korik ("Korik") appeared pro se at part of the hearing via telephonic conference.

CASE INFORMATION

Statement of Claim filed on or about January 16, 2001.

Amended Statement of Claim filed on February 26, 2001.

Claimant signed the Uniform Submission Agreement on January 18, 2001 and March 20, 2002.

Statement of Answer filed by Respondent Russo Securities on July 23, 2001.

Statement of Answer to Amended Statement of Claim file Russo Respondents on October 11, 2002.

Russo Respondents did not file Uniform Submission Agreements with NASD Dispute Resolution.

Statement of Answer filed by Respondent Brown on July 18, 2001.

Respondent Brown signed the Uniform Submission Agreement on July 18, 2001.

Respondent Korik did not file a Statement of Answer or a Uniform Submission Agreement with

NASD Dispute Resolution.

Motion to Dismiss filed by Respondent Brown on July 18, 2001.

Motion to Dismiss filed by Respondent Russo Securities on July 23, 2001.

Claimant's Response to Respondents' Motions to Dismiss was filed on November 2, 2001.

Claimant filed a Motion to Amend Statement of Claim on March 6, 2002.

Objection to Motion to Amend the Statement of Claim filed by Respondent F. Russo and R. Russo on March 22, 2002.

Memorandum of Law in Support of Respondents' Motion for a Directed Verdict on Claimant's Control Person Liability Claims Against Ferdinand Russo and Richard Russo was filed on January 22, 2003.

Claimant's Memorandum in Opposition to Respondents' Motion for "Directed Verdict" to Dismiss Respondents Ferdinand and Richard Russo from Claimant's Control Person Liability Claims on January 29, 2003.

#### CASE SUMMARY

Claimant asserted the following causes of action, among others: unauthorized trading; suitability; fraudulent misrepresentation; churning; violation of the Virginia Securities Act; violation of section 10b of the Securities Exchange Act and Rule 10b-5 promulgated thereunder; breach of contract; and, negligence. The causes of action relate to purchase and sale of unspecified securities.

Unless specifically admitted in their Answers, Russo Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: assumption of risk; all securities transactions were authorized; failure to state of cause of action upon which relief may be granted; waiver; estoppel; any losses were the result of market forces; contributory negligence; failure to mitigate; the investments in Claimant's account were suitable; statute of limitations; Respondents exercised reasonable care; and, Respondents acted in good faith.

Unless specifically admitted in his Answer, Respondent Brown denied the allegations made in the Statement of Claim and asserted the following defenses: assumption of risk; all securities purchased were authorized; failure to state of cause of action; waiver; estoppel; any losses were the result of market forces; contributory negligence; failure to mitigate; offset; and, Respondents acted in good faith.

#### RELIEF REQUESTED

Claimant in his Statement of Claim requested:

Compensatory Damages	\$ 75,000.00
Punitive Damages	\$ 75,000.00
Interest	unspecified
Attorneys' Fees	unspecified

Other Costs

unspecified

Russo Respondents in their Statement of Answers requested that all claims asserted against them be dismissed together with an assessment of hearing fees, costs and expenses incurred by reason of the filing of this case be chargeable against Claimant.

Respondent Brown in his Statement of Answer requested that all claims asserted against him be dismissed together with an assessment of hearing fees, costs and expenses incurred by reason of the filing of this case be chargeable against Claimant.

#### OTHER ISSUES CONSIDERED AND DECIDED

Russo Respondents and Respondent Korik did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

Respondent Korik appeared via telephonic conference during the December 10, 2002 hearing session, but did not attend any other hearing sessions.

The Panel denied the Motion to Dismiss filed by Respondent Brown.

The Panel denied the Motion to Dismiss file by Respondent Russo Securities.

The Panel granted Claimant's Motion to Amend Statement of Claim.

The Panel denied Respondents F. Russo and R. Russo's Motion for A Directed Verdict.

#### 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. Respondent Russo Securities, R. Russo, F. Russo and Brown are jointly and severally liable to and shall pay to Claimant compensatory damages of \$50,000.00. No pre-judgment interest is awarded on this amount.
2. All claims against Respondent Korik are denied in their entirety;
3. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and,
4. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

### 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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Russo Securities is a party.

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 2,500.00
Total Member Fees	= \$ 4,600.00

#### Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: March 28, 2002 1 session	

Two (2) Pre-hearing session with Panel @ \$1,125.00	= \$ 2,250.00
Pre-hearing conferences: November 29, 2001 1 session	
September 17, 2002 1 session	

Eight (8) Hearing sessions @ \$1,125.00	= \$ 9,000.00
Hearing Dates: December 10, 2002 2 sessions	
December 11, 2002 2 sessions	
December 12, 2002 2 sessions	
March 10, 2002 2 sessions	

Total Forum Fees = \$11,700.00

1. The Panel has assessed \$5,850.00 of the forum fees to Claimant.
2. The Panel has assessed \$5,850.00 of the forum fees jointly and severally to Russo Respondent and Respondent Brown.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

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|---|-------------|
| 1. Claimant requested copies of tapes                               | = \$ 45.00  |
| 2. Respondent Korik requested use of a speaker phone at the hearing | = \$ 156.69 |

FEE SUMMARY

- |  |               |
|--|---------------|
| 1. Claimant is assessed the following fees:  |               |
| Initial Filing Fee   | = \$ 300.00   |
| Forum Fees   | = \$ 5,850.00 |
| <u>Administrative Costs</u>  | = \$ 45.00    |
| Total Fees   | = \$ 6,195.00 |
| <u>Less payments</u>   | = \$ 1,470.00 |
| Balance Due NASD Dispute Resolution  | = \$ 4,725.00 |
| 2. Respondent Russo Securities is assessed the following fees:                                   |               |
| <u>Member Fees</u>   | = \$ 4,600.00 |
| Total Fees   | = \$ 4,600.00 |
| <u>Less payments</u>   | = \$ 0.00     |
| Balance Due NASD Dispute Resolution  | = \$ 4,600.00 |
| 3. Respondent Korik is assessed the following fees:  |               |
| <u>Administrative Costs</u>  | = \$ 156.69   |
| Total Fees   | = \$ 156.69   |
| <u>Less payments</u>   | = \$ 0.00     |
| Balance Due NASD Dispute Resolution  | = \$ 156.69   |
| 4. Russo Respondents and Respondent Brown are jointly and severally assessed the following fees: |               |
| <u>Forum Fees</u>  | = \$ 5,850.00 |
| Balance Due NASD Dispute Resolution  | = \$ 5,850.00 |

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

ARBITRATION PANEL

- |                         |   |  |
|-------------------------|---|--|
| Ellen S. Saltzman, Esq. | - | Public Arbitrator, Presiding Chairperson |
| Edward A. Dragon, Esq.  | - | Public Arbitrator, Panelist              |
| Wayne J. Thiemert       | - | Non-Public Arbitrator, Panelist          |

Arbitration No. 01-00199

Award Page 6

Concurring Arbitrators' Signatures



Ellen S. Saltzman, Esq.  
Public Arbitrator, Presiding Chairperson

4-15-03

Signature Date

Edward A. Dragon, Esq.  
Public Arbitrator, Panelist

Signature Date

Wayne J. Thacmert  
Non-Public Arbitrator, Panelist

Signature Date

April 17, 2003  
Date of Service (For NASD Dispute Resolution office use only)

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\_\_\_\_\_  
Ellen S. Saltzman, Esq.  
Public Arbitrator, Presiding Chairperson

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

*Edward A. Dragon*  
Edward A. Dragon, Esq.  
Public Arbitrator, Panelist

*April 17, 2003*  
Signature Date

\_\_\_\_\_  
Wayne J. Thacmert  
Non-Public Arbitrator, Panelist

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Signature Date

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Edward A. Dragon, Esq.  
Public Arbitrator, Panelist

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Signature Date

Wayne J. Thamer  
Wayne J. Thamer  
Non-Public Arbitrator, Panelist

4/17/03  
Signature Date

April 17, 2003  
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