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

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In the Matter of the Arbitration Between:

Name of the Claimant

SII Investments, Inc. f/k/a Secura Investments, Inc.

Case Number: 01-00352

Name of the Respondent/ Counter Claimant / Third Party Claimant

Donald E. Wallace

Hearing Site: Tampa, FL

Names of the Third Party Respondents

Mark M. Oswald

Peter M. Johnson

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Nature of the Dispute: Member vs. Associated Person.

**REPRESENTATION OF PARTIES**

For SII Investments, Inc. f/k/a Secura Investments, Inc. ("SII"), hereinafter referred to as "Claimant" and Third Party Respondents Mark M. Oswald ("Oswald") and Peter M. Johnson ("Johnson"), hereinafter collectively referred to as "Third Party Respondents": Dale T. Golden, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, Tampa, FL.

For Donald E. Wallace ("Wallace"), hereinafter referred to as "Respondent": Ernest J. Marquart, Esq., Shumaker, Loop & Kendrick, LLP, Tampa, FL.

**CASE INFORMATION**

Statement of Claim filed on or about: January 22, 2001.

Claimant's and Third Party Respondents' Answer to Respondent's Counterclaim/Third Party claim filed on or about: May 16, 2001.

Claimant signed the Uniform Submission Agreement on: January 22, 2001.

Motion to Dismiss ("First Motion to Dismiss"), Statement of Answer and Counterclaim/Third Party claim filed by Respondent on or about: April 30, 2001.

Claimant's Response to the First Motion to Dismiss filed on or about: May 16, 2001.

Respondent signed the Uniform Submission Agreement on: April 25, 2001.

Third party Respondents Oswald and Johnson did not file executed Uniform Submission Agreements.

Motion to Dismiss ("Second Motion to Dismiss") filed by Respondent on or about: May 1, 2001.

Response to Second Motion to Dismiss filed by Claimant on or about: May 8, 2001.

Claimant's Motion to Transfer Venue filed on or about: June 8, 2001.

Respondent's Response to Claimant's Motion to Transfer Venue filed on or about: June 12, 2001.

Respondent's Motion for Leave to Amend Answer ("Motion to Amend") filed on or about: November 13, 2002.

Claimant's response to the Motion to Amend filed on or about: November 18, 2002.

Respondent's reply in support of the Motion to Amend filed on or about: November 25, 2002.  
Claimant's surreply to the Motion to Amend filed on or about: November 29, 2002.  
Respondent's further reply in support of the Motion to Amend filed on or about: December 9, 2002.  
Claimant's further surreply to Respondent's reply filed on or about: December 11, 2002.  
Respondent's final reply in support of the Motion to Amend filed on or about: December 19, 2002.  
Claimant's Motion to Re-Open Proceedings ("Motion to Re-Open") filed on or about: October 2, 2003.  
Respondent's Response to Motion to Re-Open filed on or about: October 9, 2003.  
Reply to Respondent's Response to Motion to Re-Open Proceedings filed on or about: October 17, 2003.  
Respondent's Response to Claimant's Reply to Respondent's Response to Motion to Re-Open Proceedings filed on or about: October 17, 2003.

### CASE SUMMARY

Claimant asserted that Respondent breached his employment contract with Claimant by failing to repay two promissory notes.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In his Counterclaim/Third Party claim, Respondent asserted the following causes of action: common law fraud; negligence; common law gross negligence; breach of contract; negligent supervision; and tortious interference with advantageous business relationship. The causes of action relate to Claimant's alleged misconduct during Respondent's employment with Claimant.

Unless specifically admitted in their Answer, Claimant and the Third Party Respondents denied the allegations made in Respondent's Counterclaim/Third Party claim and asserted various affirmative defenses.

### RELIEF REQUESTED

Claimant requested compensatory damages of \$302,271.84 plus pre-judgment interest, costs, attorneys' fees, and dismissal of Respondent's Counterclaim.

Respondent requested compensatory damages of approximately \$5,000,000.00, attorneys' fees, punitive damages, costs, dismissal of the Statement of Claim, expungement of all references to the above-referenced matter from the NASD Central Registration Depository ("CRD") records of Respondent Wallace, and such other relief as is just and proper.

Third Party Respondents requested dismissal of Respondent's Third Party claim, costs, and attorneys' fees.

### OTHER ISSUES CONSIDERED AND DECIDED

On or about December 10, 2001, the undersigned arbitrators (the "Panel") issued an order which denied Respondent's First and Second Motions to Dismiss and Claimant's Motion to Transfer Venue.

During the evidentiary hearing, the Panel denied Respondent's Motion to Amend.

On or about November 6, 2003, the Panel issued an order which granted Claimant's Motion to Re-Open.

Third Party Respondents Oswald and Johnson 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 Procedure (the "Code") 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 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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent Wallace is liable and shall pay to Claimant compensatory damages in the sum of \$90,709.00 plus interest at the Florida statutory rate accruing from the date of the Award until the date of payment of the Award.

Respondent's Counterclaim/Third Party claim is dismissed, with prejudice.

Any and all claims for relief not specifically addressed herein, including Claimant's and Respondent's requests for attorneys' fees and Respondent's request for punitive damages and expungement, are 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	= \$ 1,000.00
Counterclaim/Third Party Claim filing fee	= \$ 600.00

#### 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. Accordingly, Claimant SII is a member firm and a party.

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$ 4,500.00</u>
Total Member Fees	= \$ 6,600.00

#### Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were granted during these proceedings for which fees were assessed.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were assessed during these proceedings.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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 @ \$1,200.00		= \$ 1,200.00
Pre-hearing conference:	August 16, 2001	1 session
Twenty-two (22) Hearing sessions @ \$1,200.00		= \$26,400.00
Hearing Dates:	February 4, 2003	2 sessions
	February 5, 2003	2 sessions
	February 6, 2003	2 sessions
	April 9, 2003	2 sessions
	April 10, 2003	2 sessions
	June 11, 2003	2 sessions
	June 12, 2003	2 sessions
	June 13, 2003	2 sessions
	September 11, 2003	2 sessions
	September 12, 2003	2 sessions
	May 10, 2004	2 sessions
<hr/> Total Forum Fees		= \$27,600.00

The Panel has assessed \$13,800.00 of the forum fees to Claimant.

The Panel has assessed \$13,800.00 of the forum fees to Respondent Wallace.

**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 are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 6,600.00
Forum Fees	= \$13,800.00
Total Fees	= \$21,400.00
Less payments	= \$ 9,681.25
Balance Due NASD Dispute Resolution	= \$11,718.75

Respondent Wallace is solely liable for:

Counterclaim/Third Party Claim Filing Fee	= \$ 600.00
Forum Fees	= \$13,800.00
Total Fees	= \$14,400.00
Less Payments	= \$ 2,056.25
Balance Due NASD Dispute Resolution	= \$12,343.75

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

**ARBITRATION PANEL**

Alison Hardage	-	Non-Public Arbitrator, Presiding Chairperson
Norman R. Gohr	-	Non-Public Arbitrator
Howard L. Hill	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/  
Alison Hardage  
Non-Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_/s/  
Norman R. Gohr  
Non-Public Arbitrator

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

\_\_\_\_\_/s/  
Howard L. Hill  
Non-Public Arbitrator

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

June 4, 2004  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No. 01-00352  
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Alison Hardage  
Non-Public Arbitrator, Presiding Chairperson

6-4-04

Signature Date

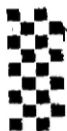
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Non-Public Arbitrator, Presiding Chairperson

Signature Date

  
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Non-Public Arbitrator

6-3-04  
Signature Date

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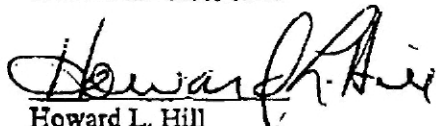
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