

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Elmer D. Carlson, Diann M. Carlson, and Super Sound Tapes, Inc., (Claimants) vs. Security Capital Trading, Inc., Dirks & Company, Inc., Katherine Kierce Bader, Jessy Dirks, Robert Goss, and Vincent Piazza, (Respondents)

Case Number: 01-00926

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimants, Elmer D. Carlson ("E. Carlson"), Diann M. Carlson ("D. Carlson"), and Super Sound Tapes, Inc. ("SST"), hereinafter collectively referred to as "Claimants": Anthony Michael Sabino, Esq., Sabino & Sabino, P.C., Mineola, NY.

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

Respondents, Dirks & Company, Inc. ("D&C"), Katherine Kierce Bader ("Bader"), Jessy Dirks ("Dirks"), and Robert L. Goss ("Goss"): Martin S. Siegel, Esq., Berlack, Israels & Liberman LLP, New York, NY. Previously represented by: Jeffrey S. Eisenberg, Esq., Law Offices of Jeffrey S. Eisenberg, New York, NY.

Respondent, Vincent Piazza ("Piazza"), appeared *pro se*. Previously represented by: J. Edward Meyer, Esq., Meyer Taub & Wild, LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: February 23, 2001.

E. Carlson signed the Uniform Submission Agreement: February 20, 2001.

D. Carlson signed the Uniform Submission Agreement: February 20, 2001.

SST signed the Uniform Submission Agreement: February 20, 2001.

Statement of Answer filed by SCT on or about: May 24, 2001.

SCT signed the Uniform Submission Agreement: May 14, 2001.

Joint Statement of Answer filed by D&C, Bader, Dirks, and Goss on or about: June 14, 2001.

D&C signed the Uniform Submission Agreement: April 12, 2001.

Bader did not sign a Uniform Submission Agreement.

Dirks signed the Uniform Submission Agreement: April 12, 2001.

Goss signed the Uniform Submission Agreement: April 12, 2001.

Statement of Answer filed by Piazza on or about: May 23, 2001.

Piazza did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: unauthorized trades; securities fraud; unsuitability; churning; mail and wire fraud; common law fraud; conversion; breach of common law agency; control person liability; and common law negligence. Claimants' claim involved the stocks of Log On America and Viewcast.

Unless specifically admitted in its Answer, SCT denied the allegations made in the 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 lacks the specificity required to provide SCT with notice of the specific claims being made against it; 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' actions are barred by the relevant statute of limitations and by the equitable doctrine of laches; Claimants have not been damaged by any of the trades made in their accounts at SCT, but rather, Claimants realized profits on the trades made in their SCT accounts; 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; at all relevant times, SCT acted in compliance with all statutory and regulatory rules, laws, and regulations in the conduct of its business; no act or conduct of SCT caused any damages to Claimants; any damages suffered by Claimants were due in whole or in part to Claimants' own negligence, recklessness, or intentional conduct; Claimants did not reasonably rely on the representations made by Respondents in making their purchases; each transaction recommended to Claimants was consistent with their investment needs, strategies, and objectives, and were in accord with their financial circumstances; Claimants failed to meet the pleading requirements under the Private Securities Litigation Reform Act; Claimants failed to adequately plead scienter; Claimants have failed to adequately allege loss causation or transaction causation; each of the transactions complained of were duly ratified and approved of by Claimants; SCT disclosed to Claimants all risks associated with the investments being made for their accounts; Claimants failed to conduct the requisite due diligence prior to making the relevant investments; Claimants are barred by their own

unclean hands, and the doctrine of in pari delicto, from prevailing on their claims against SCT; at all relevant times, SCT maintained an adequate supervisory system; after Claimants moved their accounts to Dirks, SCT owed no duties to them in connection with the transferred accounts, and therefore, could not incur any liabilities with respect to any allegations and claims that occurred subsequent to the transfer of accounts; and Claimants are barred from any recovery because they have failed to mitigate any damages they allegedly suffered.

Unless specifically admitted in their Answer, D&C, Bader, Dirks, and Goss denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a cause of action for an Award against Respondents; the Statement of Claim fails to plead with particularity the alleged wrongdoing by each Respondent; Claimants are barred from recovery under the doctrines of laches, ratification, waiver, and estoppel; Claimants' causes of action are barred by the applicable statute of limitations; any losses Claimants may have suffered are due to their own investment decisions and/or failure to follow recommendations by Respondents; any losses Claimants may have suffered are due to their own negligence, recklessness, or intentional conduct; Claimants have failed to mitigate damages; each transaction complained of was duly authorized by Claimants; each transaction complained of was consistent with Claimants' stated investment objectives and was appropriate for Claimants' financial condition; Respondents fully discharged their respective duties and responsibilities to Claimants; Respondents acted in accordance with applicable rules and regulations at all relevant times; Claimants have failed to adequately plead scienter; Claimants have failed to adequately allege loss causation or transaction causation; all risks of investment were properly disclosed to Claimants; at all relevant times, Respondents maintained an adequate supervisory system of its registered representatives, and fully discharged its supervisory responsibilities; and Claimants are barred from recovery due to their own unclean hands.

Unless specifically admitted in his Answer, Piazza denied the allegations made in the Statement of Claim and asserted the following defenses: to the extent that Piazza caused some stock trades to be made in Claimants' accounts at SCT, all such trades were authorized by Claimants, and none of them were solicited by Piazza; with respect to the trades alleged by Claimants to have been authorized, Claimants invested the proceeds of such trades for their benefit; and Piazza did extensive due diligence with respect to Log On America stock.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$12,000,000.00, plus punitive damages in the amount of \$8,000,000.00, interest, costs, attorneys' fees, and such other relief as the Panel deems just and proper under the circumstances.

SCT requested that judgement 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.

D&C, Bader, Dirks, and Goss requested that the Statement of Claim be dismissed in its entirety, and that they be awarded their costs and disbursements, including forum fees and reasonable attorneys' fees, and such other and further relief as the Panel deems just and proper.

Piazza requested that the Statement of Claim against him be dismissed, and that he be awarded costs, reasonable counsel fees, and such other and further relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Bader and Piazza did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure 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 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. Claimant's claims are hereby dismissed in their entirety.
2. Claimants be and hereby are jointly and severally liable for and shall pay to Piazza the sum of \$2,500.00 as legal fees.

3. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondents Bader, Dirks, Goss, and Piazza'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, Respondents Bader, Dirks, Goss, and Piazza must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. All other requests for relief are hereby denied.

CHAIRPERSON'S REPORT

The following opinion reflects the view of Chairperson David E. Robbins, Esq. only:

Based on the evidence presented, I concluded that the 10,000 share purchase of Log On America, settlement date April 29, 1999 for approximately \$306,000.00, by Claimant's broker who thereafter died and whose estate was not a party to this arbitration, was not authorized by the Claimants and that its purchase would have been illogical from their point of view. However, I also believe that Claimants failed to reasonably mitigate damages and as a result of that failure, should not be awarded any damages. Further, I joined in the awarding of attorneys' fees for Respondent Piazza because there came a point during the hearings when it was clear that Claimants' claims against Mr. Piazza lacked merit and continued to pursue those claims against said Respondent.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial 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 firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, Security Capital Trading, Inc. and Dirks & Company, Inc. are parties.

Security Capital Trading, Inc.

Member surcharge	= \$ 3,600.00
Pre-hearing process fee	= \$ 600.00

Hearing process fee = \$ 5,000.00

Dirks & Company, Inc.

Member surcharge = \$ 3,600.00
Pre-hearing process fee = \$ 600.00
Hearing process fee = \$ 5,000.00

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:

One (1) Pre-hearing session with Panel x \$1,200.00 = \$ 1,200.00

Pre-hearing conference: January 15, 2002 1 session

Eight (8) Hearing sessions x \$1,200.00 = \$ 9,600.00

Hearing Dates: May 30, 2002 2 sessions
May 31, 2002 2 sessions
June 11, 2002 2 sessions
June 12, 2002 2 sessions

Total Forum Fees = \$10,800.00

1. The Panel has assessed \$5,400.00 of the forum fees against Claimants.
2. The Panel has assessed \$2,700.00 of the forum fees against SCT.
3. The Panel has assessed \$2,700.00 of the forum fees against D&C.

Fee Summary

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	= \$ 5,400.00
Total Fees	= \$ 6,000.00
<u>Less payments</u>	= \$ 1,800.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 4,200.00

2. SCT be and hereby is solely liable for:

Member Fees	= \$ 9,200.00
<u>Forum Fees</u>	= \$ 2,700.00
Total Fees	= \$11,900.00
<u>Less payments</u>	= \$ 566.00

Balance Due NASD Dispute Resolution, Inc. = \$11,334.00

3. D&C be and hereby is solely liable for:

Member Fees	= \$ 9,200.00
<u>Forum Fees</u>	<u>= \$ 2,700.00</u>
Total Fees	= \$11,900.00
<u>Less payments</u>	<u>= \$ 9,200.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,700.00

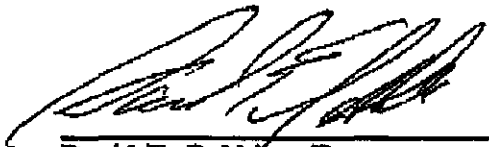
All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

David E. Robbins, Esq.	-	Public Arbitrator, Presiding Chair
Sheldon M. Finkelstein, Esq.	-	Public Arbitrator
Philip M. Mandel, Esq.	-	Industry 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.



David E. Robbins, Esq.
Public Arbitrator, Presiding Chair

6/27/02

Signature Date

Sheldon M. Finkelstein, Esq.
Public Arbitrator

Signature Date

Philip M. Mandel, Esq.
Industry Arbitrator

Signature Date

July 5, 2002
Date of Service (For NASD office use only)

ARBITRATION PANEL

David E. Robbins, Esq.	-	Public Arbitrator, Presiding Chair
Sheldon M. Finkelstein, Esq.	-	Public Arbitrator
Philip M. Mandel, Esq.	-	Industry 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.

David E. Robbins, Esq.
Public Arbitrator, Presiding Chair

Signature Date


Sheldon M. Finkelstein, Esq.
Public Arbitrator

6/25/02
Signature Date

Philip M. Mandel, Esq.
Industry Arbitrator

Signature Date

July 5, 2002
Date of Service (For NASD office use only)

ARBITRATION PANEL

David E. Robbins, Esq.	-	Public Arbitrator, Presiding Chair
Sheldon M. Finkelstein, Esq.	-	Public Arbitrator
Philip M. Mandel, Esq.	-	Industry 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.

David E. Robbins, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Sheldon M. Finkelstein, Esq.
Public Arbitrator

Signature Date

Philip M. Mandel
Philip M. Mandel, Esq.
Industry Arbitrator

7/2/02
Signature Date

July 5, 2002
Date of Service (For NASD office use only)