

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimants

John McQuillan and Jane McQuillan

and

01-01125
Minneapolis, Minnesota

Name of Respondents

Sharpe Capital, Inc.
James Michael Pepio
Lanny Todd Fried

REPRESENTATION OF PARTIES

John McQuillan and Jane McQuillan ("**Claimants**") were represented prior to the hearing by Scott G. Bowman, Esq. and Kristin R. Sankowitz, Esq., Briggs and Morgan, P.A., Minneapolis, Minnesota. Claimant John McQuillan appeared at the hearing *pro se*.

Sharpe Capital, Inc. ("**Respondent Sharpe Capital**") was represented by Michael Simon, Esq., Sharpe Capital, Inc., New York, New York. Respondent Sharpe reached a settlement with Claimants prior to the hearing.

James Michael Pepio ("**Respondent Pepio**") and Lanny Todd Fried ("**Respondent Fried**") were represented by Michael Utila, Esq., Brooklyn, New York at the time of the filing of their Answer. Respondents James Michael Pepio and Lanny Todd Fried did not appear at the hearing.

CASE INFORMATION

The Statement of Claim was filed on or about March 7, 2001. Submission Agreement of Claimants John McQuillan and Jane McQuillan was signed on March 6, 2001.

Respondent Sharpe Capital, Inc.'s Answer, Defense and Counterclaim was filed by Respondent Sharpe Capital, Inc. on or about October 5, 2001. Submission Agreement of Respondent Sharpe Capital, Inc. was signed on October 4, 2001.

Statement of Answer was filed by Respondents James Michael Pepio and Lanny Todd Fried on or about June 22, 2001.

CASE SUMMARY

Claimants alleged that Respondents Pepio and Fried engaged in unauthorized trades and margin purchases; misrepresented and omitted material facts in managing their account. Specifically, Claimants alleged that Respondents Pepio and Fried executed an unauthorized purchase of 690 shares of Lightpath Technologies, Inc. It was also alleged that Respondent Sharpe Capital failed to properly supervise the activities of Respondents Pepio and Fried.

Respondent Sharpe Capital denied the allegations set forth in the Statement of Claim. Specifically, Respondent Sharpe stated that it was Claimants' decision not to contact a supervisor immediately along with their continued heavy use of margin and position concentration that caused the loss of value in their account. Respondent Sharpe Capital further stated that Claimants were suitable for the investments in their account and those investments met their investment objectives of growth and speculation.

Respondents Pepio and Fried denied the allegations set forth in the Statement of Claim. Specifically, Respondents Pepio and Fried stated that Claimants authorized and directed the execution of the Lightpath transaction which they seek to question, including knowingly, intelligently, and voluntarily purchasing the position on margin.

RELIEF REQUESTED

Claimants requested an award of compensatory damages of at least \$71,062.38, reasonable attorneys' fees and costs pursuant to Minnesota Statutes §§ 80A.23 and 325F.69, and for such other relief as is allowed by law and as the panel deems just and equitable.

Respondent Sharpe Capital requested that the Arbitration Panel dismiss Claimant's case, order Claimants to indemnify it for its costs of defense, and award such other and further relief as the deem just.

Respondents Pepio and Fried requested that the Statement of Claim be dismissed in its entirety as against them.

OTHER ISSUES CONSIDERED & DECIDED

Prior to the commencement of the hearing of this matter, Claimants reached a settlement of the claims asserted against Respondent Sharpe Capital, Inc.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondents James Michael Pepio and Lanny Todd Fried had received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondents James Michael Pepio and Lanny Todd Fried did not file with the NASD Dispute Resolution, Inc. 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") and having answered the claim are bound by the determination of the arbitration panel on all issues submitted.

The party present at the hearing, 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 the NASD Dispute Resolution, Inc. (the "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. The remaining claims asserted in this matter against Respondents James Michael Pepio and Lanny Todd Fried shall be and hereby are denied in their entirety.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

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	= \$ 225.00
Counterclaim filing fee	= \$1,000.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is Sharpe Capital, Inc.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

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:

One (1) Pre-hearing session(s) with Panel x \$750.00	= \$ 750.00
Pre-hearing conference(s): October 16, 2001 1 session	
One (1) Hearing sessions x \$750.00	= \$ 750.00
Hearing Date(s): <u>June 12, 2002</u> <u>1 session</u>	
Total Forum Fees	= \$1,500.00

The Arbitration Panel has assessed \$1,500.00 of the forum fees jointly and severally to James Michael Pepio and Lanny Todd Fried.

Fee Summary

Claimants, John McQuillan and Jane McQuillan, shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$ 225.00
<u>Less payments</u>	= \$ 975.00
Balance to be refunded by NASD Dispute Resolution, Inc.	= \$ 750.00

Respondent, Sharpe Capital, Inc., shall be and hereby is liable for:

Counterclaim Filing Fee	= \$1,000.00
Member Fees	= \$3,100.00
<u>Forum Fees</u>	= \$ 0.00

Total Fees	= \$4,100.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,100.00

Respondents James Michael Pepio and Lanny Todd Fried shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$1,500.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,500.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Albert A. Woodward, Esq. - Public Arbitrator, Presiding Chair
Michael W. Schley - Public Arbitrator
Jeffrey D. Hedlund, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Albert A. Woodward
Albert A. Woodward, Esq.
Public Arbitrator, Presiding Chair

June 27, 2002
Signature Date

/s/ Michael W. Schley
Michael W. Schley
Public Arbitrator

June 27, 2002
Signature Date

/s/ Jeffrey D. Hedlund
Jeffrey D. Hedlund, Esq.
Non-Public Arbitrator

June 27, 2002
Signature Date

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NASD REGULATION

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Total Fees

Less payments

Balance Due NASD Dispute Resolution, Inc.

= \$4,100.00

= \$ 0.00

= \$4,100.00

Respondents James Michael Pepio and Lanny Todd Fried shall be and hereby are jointly and severally liable for:

Forum Fees

Balance Due NASD Dispute Resolution, Inc.

= \$1,500.00

= \$1,500.00

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ARBITRATION PANEL

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 Michael W. Schley - Public Arbitrator
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Concurring Arbitrators:



Albert A. Woodward, Esq.
 Public Arbitrator, Presiding Chair

6-27-02
 Signature Date

Michael W. Schley
 Public Arbitrator

Signature Date

Jeffrey D. Hedlund, Esq.
 Non-Public Arbitrator

Signature Date

NASD Dispute Resolution, Inc.
Arbitration No. 01-01125
Award Page 5 of 5

Total Fees	= \$4,100.00
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Respondents James Michael Pepio and Lanny Todd Fried shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$1,500.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,500.00

All balances are due to NASD Dispute Resolution, Inc.

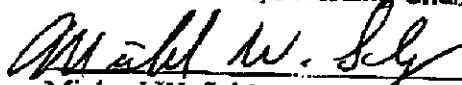
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Public Arbitrator, Presiding Chair

Signature Date



Michael W. Schley
Public Arbitrator



Signature Date

Jeffrey D. Hedlund, Esq.
Non-Public Arbitrator

Signature Date

NASD Dispute Resolution, Inc.
Arbitration No. 01-01125
Award Page 5 of 5

Total Fees	= \$4,100.00
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Respondents James Michael Pepio and Lanny Todd Fried shall be and hereby are jointly and severally liable for:

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Public Arbitrator, Presiding Chair

Signature Date

Michael W. Schley
Public Arbitrator

Signature Date



Jeffrey D. Hedlund, Esq.
Non-Public Arbitrator

6/27/02
Signature Date