

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Stevo Matic

Case Number: 01-01445

Name of the Respondents  
Gregg M. Becker; Robert Symonds, Jr.;  
Antonio Costanzo; Andre V. LaBarbera;  
Joseph S. Sapienza; John Stracquadanio;  
Diane Healey; Renee Scuderi; and  
Tasin & Company, Inc.

Hearing Site: Milwaukee, Wisconsin

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**REPRESENTATION OF PARTIES**

Claimant Stevo Matic, hereinafter referred to as "Claimant": Robert F. Sfasciotti, Esq. of Sfasciotti & Associates, located in Kenosha, Wisconsin.

Respondents Gregg Becker ("Becker"), Robert Symonds, Jr. ("Symonds"), Antonio Costanzo ("Costanzo"), and Andre V. LaBarbera ("LaBarbera") were originally represented by Ernest Edward Badway, Esq. of the firm of Saiber Schlesinger Satz & Goldstein, LLC, located in Newark, New Jersey. After counsel withdrew representation in April 2002, the parties appeared pro se.

Respondents Joseph S. Sapienza ("Sapienza"), John Stracquadanio ("Stracquadanio"), Diane Healey ("Healey"), Renee Scuderi ("Scuderi"), and Tasin & Company, Inc. ("Tasin") did not appear.

Respondent John Stracquadanio ("Stracquadanio") appeared pro se.

**CASE INFORMATION**

Statement of Claim filed: March 22, 2001.

Claimant signed the Uniform Submission Agreement: December 1, 2000.

Statement of Answer and Counterclaims filed by Respondents Becker, Symonds, Costanzo, LaBarbera, Stracquadanio, and Healey on: May 31, 2001.

Respondent Becker signed the Uniform Submission Agreement: November 3, 2001.

Respondent Symonds signed the Uniform Submission Agreement: November 7, 2001.

Respondent Costanzo signed the Uniform Submission Agreement: November 8, 2001.

Respondent LaBarbera signed the Uniform Submission Agreement: November 8, 2001.

Respondent Healy and Stracquadanio's Withdrawal of Answer and Counterclaim filed on: January 10, 2002.

Respondents Sapienza, Scuderi, Healy, Stracquadanio and Tasin did not file a Statement of Answer or an executed submission agreement.

Respondent Stracquadanio's Motion to Dismiss filed: July 10, 2002.

Respondent Symonds' Motion to Dismiss filed: August 6, 2002.

Respondent Costanzo's Motion to Dismiss filed: August 6, 2002.

Respondent LaBarbera's Motion to Dismiss filed: August 6, 2002.

Claimant's Response to Respondent Symonds, Costanzo and LaBarbera's Motions to Dismiss filed: August 27, 2002.

#### **CASE SUMMARY**

Claimant asserted that Respondents engaged in misrepresentation, negligence, churning and other manipulative tactics in order to increase their profits at the expense of his financial interest. All transactions involved common stock.

Unless specifically admitted in its Answer, Respondents Becker, Symonds, Costanzo, and LaBarbera denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimant failed to state a claim upon which relief can be granted. It is improper as a matter of law and without foundation as a matter of fact;
2. Claimant fails to state a claim based on either the Exchange Act Section 10(b) or Rule 10(b)(5), or any state securities law or common law fraud. Claimant cannot meet the requirements needed for such private rights of action under these statutes or in common law;
3. The alleged losses of Claimant were proximately caused by his conduct or negligence in relation to the transactions complained of and, therefore, Claimant is precluded from recovery;
4. If Claimant suffered any damages, such damages were caused or contributed to by persons, conditions or events including market condition or activity, beyond the control of the Respondents and, thus, the Respondents are not liable;
5. Claimant had full, complete and contemporaneous knowledge of the acts complained of and ratified all the acts. Claimant is therefore estopped and have waived any cause of action;
6. Claimant authorized and directed the execution of all transactions in the securities account. Each trade was executed according to Claimant's specific instructions;
7. Respondents, in discharging their duties to Claimant, if any, acted in good faith and exercised at least a degree of care, diligence and skill as ordinarily prudent

- persons would exercise in similar circumstances and like positions;
8. Respondents breached no fiduciary duty, if any, owed to Claimant because no fiduciary relationship existed;
  9. The investments and use of margin were suitable and consistent with Claimant's investment objectives;
  10. Punitive/exemplary damages are not permitted under NASD rules and regulations;
  11. The Claims asserted are barred by the Statute of Frauds provisions as set forth in Section 8-319© of the Uniform Commercial Code, because Claimant failed to send written objections to sales confirmation concerning the transaction at issue in this proceeding within ten days of receipt thereof;
  12. The claims asserted are barred by the Statute of Limitations, laches, the doctrines of unclean hands and illegality, industry customs and standards, and the doctrines of promissory and equitable estoppel;
  13. Respondents acted consistent with the standards and customs as well as the rules and regulations pertaining to the conduct of registered representatives in the securities industry;
  14. Respondents acted consistent with legitimate business interests and without wrongful intent toward Claimant; and,
  15. The claims are barred by Claimant's own tortuous, negligent and/or culpable conduct.

Respondents Symonds and LaBarbera asserted counterclaims for abuse of process and malicious prosecution.

#### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$ 75,223.08
Punitive Damages	\$ 225,669.24
Attorneys' Fees	Unspecified.
Other Costs	Unspecified.
Plus Other Monetary Relief.	

Respondents Becker, Symonds, Costanzo, and LaBarbera requested:

- a. The claims against Respondents be dismissed in their entirety;
- b. The Panel issue an order expunging the instant Statement of Claim from the Respondents' CRD reports;
- c. An award be entered against Claimant of all forum and hearing fees, attorneys' fees and all other expenses and costs incurred in this arbitration;
- d. Respondents Symonds and LaBarbera requested an award on their Counterclaims for compensatory and punitive damages; and,
- e. All such other and further remedies or relief that the Arbitration Panel may deem just, proper and equitable in the circumstances.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators determined that Respondents Sapienza, Healy, Scuderi and Tasin were properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents Sapienza, Scuderi, Healy, Stracquadanio and Tasin did not file with NASD Dispute Resolution, a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

Upon review of the papers, the panel granted Respondent Stracquadanio's Motion to Dismiss on October 22, 2002. Respondent Symonds, Costanzo and LaBarbera's Motions to Dismiss were denied on the same date.

At hearing, the Claimant presented a Motion for Sanctions.

### **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. The claims asserted in the Statement of Claim are dismissed and denied in their entirety;
2. The counterclaims asserted by Respondents Symonds and LaBarbera are dismissed and denied in their entirety;
3. The Claimant's Motion for Sanctions is denied;
4. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those specifically enumerated herein; and
5. Any and all relief not specifically addressed herein, including punitive damages, is 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	= \$ 300.00
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 firm that employed the associated persons at the time of the events giving rise to the

dispute. Accordingly, Tasin & Company, Inc. is a party and the following fees were assessed:

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

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

April 9-11, 2002 adjournment by Matic, Becker, Symonds and Costanzo = \$ 1,125.00

Fees were divided equally between the parties requesting postponement.

**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 full panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: November 26, 2001 1 session	
Four (4) Hearing sessions @ \$1,125.00	= \$ 4,500.00
Hearing Dates: February 11, 2003 2 sessions	
February 12, 2003 2 sessions	
Total Forum Fees	= \$ 5,625.00

The Panel has assessed \$5,625.00 of the forum fees to Claimant Stevo Matic.

**SEE SUMMARY**

Claimant Stevo Matic is solely liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 281.25
Forum Fees	= \$ 5,625.00
Total Fees	= \$ 6,206.25
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 4,781.25

Respondent Gregg M. Becker is solely liable for:

Adjournment Fee	= \$ 281.25
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 281.25

Respondents Robert Symonds, Jr. and Andre V. LaBarbera are jointly and severally liable for:

Filing Fee	= \$ 250.00
Less payments	= \$ 0.00

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Balance Due NASD Dispute Resolution = \$ 250.00

Respondent Robert Symonds, Jr. is solely liable for:

Adjournment Fee = \$ 281.25

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$ 281.25

Respondent Antonio Costanzo is solely liable for:

Adjournment Fee = \$ 281.25

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$ 281.25

Respondent Tasin & Company, Inc. is solely liable for:

Member Fees = \$ 4,600.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$ 4,600.00

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

**ARBITRATION PANEL**

Fredric R. Dichter, J.D. - Public Arbitrator, Presiding Chairperson

Terry F. Peppard, Esq. - Public Arbitrator

Donald V. Anderson - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Fredric R. Dichter, J.D.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Terry F. Peppard, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Donald V. Anderson  
Non-Public Arbitrator

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

  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)

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 Arbitration No. 01-01445  
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Balance Due NASD Dispute Resolution = \$ 250.00

Respondent Robert Symonds, Jr. is solely liable for:

Adjournment Fee = \$ 281.25

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$ 281.25

Respondent Antonio Costanzo is solely liable for:

Adjournment Fee = \$ 281.25

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$ 281.25

Respondent Tasin & Company, Inc. is solely liable for:

Member Fees = \$ 4,600.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$ 4,600.00

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#### ARBITRATION PANEL

Fredric R. Dichter, J.D. - Public Arbitrator, Presiding Chairperson


Terry F. Peppard, Esq. - Public Arbitrator

Donald V. Anderson - Non-Public Arbitrator

#### Concurring Arbitrators' Signatures

Fredric R. Dichter, J.D.  
 Public Arbitrator, Presiding Chairperson

Signature Date

  
 Terry F. Peppard, Esq.  
 Public Arbitrator

3/27/03  
 Signature Date

Donald V. Anderson  
 Non-Public Arbitrator

Signature Date

3/24/03   
 Date of Service (For NASD Dispute Resolution office use only)

Balance Due NASD Dispute Resolution = \$ 250.00

Respondent Robert Symonds, Jr. is solely liable for:

Adjournment Fee = \$ 281.25

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$ 281.25

Respondent Antonio Costanzo is solely liable for:

Adjournment Fee = \$ 281.25

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$ 281.25

Respondent Tasin & Company, Inc. is solely liable for:

Member Fees = \$ 4,600.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$ 4,600.00

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

#### ARBITRATION PANEL

Fredric R. Dichter, J.D. - Public Arbitrator, Presiding Chairperson

Terry F. Peppard, Esq. - Public Arbitrator

Donald V. Anderson - Non-Public Arbitrator

#### Concurring Arbitrators' Signatures

Fredric R. Dichter, J.D.  
Public Arbitrator, Presiding Chairperson

Signature Date

Terry F. Peppard, Esq.  
Public Arbitrator

Signature Date

Donald V. Anderson  
Non-Public Arbitrator

Signature Date

3/24/03   
Date of Service (For NASD Dispute Resolution office use only)