

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Name of the Claimants

Keith Orland and Margaret Orland

Case Number: 01-01776

Name of the Respondents

Carnegie Investor Services, Inc.,  
Brett A. Kantor, Gregg A. Rosenbaum,  
Peter L. Falk, Edmund Singer, and  
Wexford Clearing Services Corporation

Hearing Site: Chicago, Illinois

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**REPRESENTATION OF PARTIES**

Claimants Keith Orland and Margaret Orland, hereinafter collectively referred to as "Claimants," were *pro se*. They were originally represented by Marc J. Ross, Esq. and Richard J. Babnick, Jr., Esq. of the firm Sichenzia Ross Friedman Ference, LLP located in New York, New York.

Respondents Carnegie Investor Services, Inc. ("Carnegie"), Brett A. Kantor ("Kantor"), Gregg A. Rosenbaum ("Rosenbaum"), Edmund Singer ("Singer") were *pro se*. These respondents were originally represented by Louis H. Miron with law offices located in Westfield, New Jersey.

Respondent Peter L. Falk ("Falk") was represented, for the limited purpose of propounding and responding to two motions, by Brian Reis of the firm Brian Reis & Associates located in New York, New York. Through a power of attorney, Jonathon Falk, a non-attorney, appeared throughout the case and at hearing on behalf of Peter Falk.

Respondent Wexford Clearing Services Corporation ("Wexford") was represented by Joseph Dolcimascolo, Esq. and Noah Sorkin, Esq., Prudential Securites, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: April 09, 2001.

Claimants each signed the Uniform Submission Agreement: March 24, 2001.

Joint Statement of Answer filed by Respondents Carnegie, Kantor, Rosenbaum, Falk, and Singer on or about: June 01, 2001.

Respondent Singer signed the Uniform Submission Agreement: April 30, 2001.

Respondent Kantor signed the Uniform Submission Agreement: May 10, 2001.

Statement of Answer and Motion to Dismiss filed by Respondent Wexford on or about: May 31, 2001.

Respondent Wexford signed the Uniform Submission Agreement: May 29, 2001.  
Claimants' Response to Wexford's Motion to Dismiss filed on or about: June 10, 2002.

Respondent Rosenbaum's Motion to Dismiss filed on or about: June 04, 2002.  
Claimants' Response to Wexford's Motion to Dismiss filed on or about: June 10, 2002.

### CASE SUMMARY

Claimants asserted the following causes of action:

- violation of the Securities Exchange Act of 1934
- violation of the Illinois Securities Act of 1953
- fraud and misrepresentation
- *respondeat superior*
- negligence

The causes of action relate to the Cellpoint and Shopnow stock.

Unless specifically admitted in their Joint Answer, Respondents Carnegie, Kantor, Rosenbaum, Falk, and Singer denied the allegations made in the Statement of Claim and asserted the following defenses:

- failure to state a claim upon which relief can be granted
- assumption of risk
- Claimants failed to exercise due care and diligence
- damages sustained by Claimants were avoidable by Claimants
- Claimants' alleged losses were caused by third parties over whom Respondents did not exercise control
- Claimants' alleged losses were caused by events and conditions in the world economic market over which Respondents did not exercise control
- Respondents did not breach any contractual, statutory or common law duty to Claimants
- Claimants are barred from recovering punitive damages as a matter of law
- Respondents cannot, as a matter of law, be liable jointly and severally with any other Respondent and are not responsible for any conduct allegedly engaged in by any other Respondent

Unless specifically admitted in its Answer, Respondent Wexford denied the allegations made in the Statement of Claim and asserted the following defenses: Failure to State a Cause of Action

### RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$750,000.00
Punitive Damages	amount not specified
Attorneys' Fees	reasonable amounts
Other Costs	amount not specified

Other Monetary/Non-Monetary Relief if any: as the panel deems just and equitable

Respondents Carnegie, Kantor, Rosenbaum, Falk, and Singer requested:

Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	dismissal or denial of claims
	Singer and Falk requested
	sanctions for Claimants'
	failure to comply with
	discovery orders

Respondent Wexford requested:

Other Monetary/Non-Monetary Relief if any: dismissal or denial of claims

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

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators the "Panel" determined that Respondents Carnegie Investor Services, Inc., Brett A. Kantor, Gregg A. Rosenbaum, have been 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").

In an order dated October 31, 2002, the panel denied Wexford's Motion to Dismiss.

In an order dated October 31, 2002, the panel denied Rosenbaum's Motion to Dismiss.

On November 16, 2002 Claimants noticed NASD that they had entered into a settlement agreement with Wexford. As a consequence, Claimants' claims against Wexford were not adjudicated.

At beginning of the November 19, 2002 hearing, the panel was presented with a Motion to Postpone by Claimants to which Falk and Singer objected. The panel agreed to cancel the afternoon session and reconvene on November 20, 2002.

During the November 19, 2002 hearing, Respondent Singer orally motioned to dismiss based on Claimants' noncompliance with the panel's order to produce. Respondent Falk joined in the motion. The panel denied the motion.

At the November 20, 2002 hearing, Claimants voluntarily dismissed their claims against Respondents Falk and Singer. Consequently, these claims were not adjudicated.

Respondents Carnegie Investor Services, Inc. and Gregg A. Rosenbaum did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, 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. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with the NASD.

### **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. Carnegie Investor Services, Inc. and Brett A. Kantor are jointly and severally liable for and shall pay to Claimants Keith Orland and Margaret Orland the sum of \$347,000.00 as compensatory damages.
2. Parties shall bear their own costs, including attorney's fees.
3. Any and all claims asserted by Claimants Keith Orland and Margaret Orland against Gregg Rosenbaum are denied in their entirety.
4. 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, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$375.00
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#### **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 at the time of the events giving rise to the dispute. Carnegie Investor Services, Inc. and Wexford Clearing Services Corporation are parties.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$3,500.00</u>
Total	= \$6,100.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the 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 at \$1,200.00	= \$1,200.00
Pre-hearing conference: February 21, 2002	1 session
Three (3) Hearing sessions at \$1,200.00	= \$3,600.00
Hearing Dates: November 19, 2002	1 session
November 20, 2002	2 sessions
Total Forum Fees	= \$4,800.00

1. The Panel has assessed \$1,200.00 of the forum fees to Keith Orland and Margaret Orland.
2. The Panel has assessed \$3,600.00 of the forum fees to Carnegie Investor Services, Inc. and Brett A. Kantor.

**FEE SUMMARY**

1. Claimants Keith Orland and Margaret Orland is solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$1,200.00
Total Fees	= \$1,575.00
Less payments	= \$1,575.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00
2. Respondent Carnegie Investor Services, Inc. is solely liable for:

Member Fees	= \$6,100.00
Total Fees	= \$6,100.00
Less payments	= \$1,500.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,600.00
3. Respondent Wexford Clearing Services Corp. is solely liable for:

Member Fees	= \$6,100.00
Total Fees	= \$6,100.00
Less payments	= \$6,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00
4. Respondents Carnegie Investor Services, Inc. and Brett A. Kantor are jointly and severally liable for:

Forum Fees	= \$3,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,600.00

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

**ARBITRATION PANEL**

Michael F. Jordan, Esq.	-	Public Arbitrator, Presiding Chairperson
Kathleen Hoey Gorr, Esq.	-	Public Arbitrator
Phillip M. Petraitis	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Michael F. Jordan

12/23/02

\_\_\_\_\_  
Michael F. Jordan, Esq.  
Public Arbitrator, Presiding Chairperson

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

/s/ Kathleen H. Gorr

12/23/02

\_\_\_\_\_  
Kathleen Hoey Gorr, Esq.  
Public Arbitrator

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

/s/ Phillip M. Petraitis

12/19/02

\_\_\_\_\_  
Phillip M. Petraitis  
Non-Public Arbitrator

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

12/24/02

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

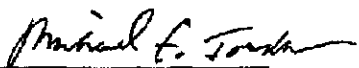
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Public Arbitrator

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Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

Signature Date

*Kathleen H. Gorr*

Kathleen Hoey Gorr, Esq.  
Public Arbitrator

*12/23/02*

Signature Date

Phillip M. Petraitis  
Non-Public Arbitrator

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Non-Public Arbitrator


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Public Arbitrator, Presiding Chairperson

Signature Date

Kathleen Hoey Gorr, Esq.  
Public Arbitrator

Signature Date

  
Phillip M. Petratis  
Non-Public Arbitrator

12/19/02  
Signature Date

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