

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

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In the Matter of the Arbitration Between:

Name of the Claimants

Case Number: 01-01993

Thomas and Susan Descano

Name of the Respondents

Hearing Site: Philadelphia, Pennsylvania

Janney Montgomery Scott, LLC,  
James J. Coyne, and  
Christopher J. Munafo

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REPRESENTATION OF PARTIES

Claimants Thomas M. Descano and Susan A. Descano, hereinafter collectively referred to as "Claimants", were represented by Nicholas J. Guiliano, Esq., Attorney at Law, Philadelphia, Pennsylvania.

Respondents Janney Montgomery Scott, LLC ("Janney"), James J. Coyne ("Coyne"), and Christopher J. Munafo ("Munafo"), hereinafter collectively referred to as "Respondents", were represented by Elizabeth H. Fay, Esq., Morgan, Lewis & Bocklious, LLP, Philadelphia, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on April 18, 2001.

Claimants signed the Uniform Submission Agreement on April 18, 2001.

Statement of Answer filed by Respondents on June 14, 2001.

Respondent Coyne signed the Uniform Submission Agreement on June 12, 2001.

Respondent Munafo signed the Uniform Submission Agreement on June 12, 2001.

A representative of Respondent Janney executed the Uniform Submission Agreement on June 12, 2001.

CASE SUMMARY

Claimants asserted the following causes of action, among others: violation of the federal securities laws; excessive activity; the sale of unsuitable securities; failure to execute; unauthorized trading; fraudulent use of a margin account; common law fraud; breach of fiduciary duty; and, violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Act. The causes of action relate to the purchase and sale of various unspecified stocks.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Respondents did not breach any duty

owed to Claimants; Claimants approved, authorized and ratified every transaction in their account; Respondents were not fiduciaries; ratification, waiver, and estoppel; no private action for violation of NASD rules; statute of limitations; Respondents made no material misrepresentations or omissions; Claimants controlled the trading in their account; Respondents acted in good faith; any losses were caused by market forces or Claimants' own lack of diligence or failure to mitigate; a system of supervision was in place; and, Claimants have not plead sufficient facts to support their claims for damages.

#### RELIEF REQUESTED

Claimants in their Statement of Claim requested:

Compensatory Damages	\$ 175,000.00
Punitive Damages	unspecified
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified

Respondents in their Statement of Answer requested the following: the Statement of Claim be dismissed in its entirety; all expenses and forum fees of this action be assessed against Claimants; and, Respondent Munafo and Coyne's NASD Central Registration Depository ("CRD") records be expunged.

#### OTHER ISSUES CONSIDERED AND DECIDED

At the hearing on this matter, Claimants withdrew their claims against Respondent Munafo and agreed that his CRD records should be expunged.

#### 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. Respondent Janney and Coyne are jointly and severally liable to and shall pay to Claimants compensatory damages of \$98,676.34. No pre-judgment interest is awarded on this amount;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Munafo registration records maintained by the CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Munafo must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and,

4. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

#### 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
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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 persons at the time of the events giving rise to the dispute. Accordingly, Respondent Janney is a party.

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$ 2,500.00</u>
Total Member Fees	= \$ 4,600.00

##### Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

May 7-9, 2002, adjournment by Claimant	= \$ 1,125.00
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##### 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 single arbitrator @ \$ 450.00	= \$ 450.00
Pre-hearing conference: April 8, 2002 1 session	

Two (2) Pre-hearing sessions with Panel @ \$ 1,125.00	= \$ 2,250.00
Pre-hearing conferences: December 3, 2001 1 session	
May 7, 2002 1 session	

Four (4) Hearing sessions @ \$ 1,125.00 = \$ 4,500.00

Hearing Date(s):           October 1, 2002           2 sessions

October 2, 2002           2 sessions

Total Forum Fees = \$ 7,200.00

1. The Panel has assessed \$3,600.00 of the forum fees to Claimants.

2. The Panel has assessed \$3,600.00 of the forum fees jointly and severally to Respondents Janney and Coyne.

#### FEE SUMMARY

1. Claimants are assessed the following fees:

Initial Filing Fee = \$ 300.00

Adjournment Fee = \$ 1,125.00

Forum Fees = \$ 3,600.00

Total Fees = \$ 5,025.00

Less payments = \$ 1,425.00

Balance Due NASD Dispute Resolution = \$ 3,600.00

2. Respondent Janney is assessed the following fees:

Member Fees = \$ 4,600.00

Total Fees = \$ 4,600.00

Less payments = \$ 4,600.00

Balance Due NASD Dispute Resolution = \$ 0.00

4. Respondents Janney and Coyne are jointly and severally assessed the following fees:

Forum Fees = \$ 3,600.00

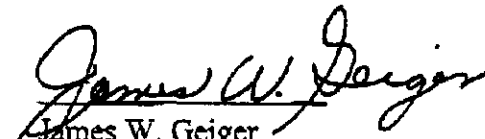
Balance Due NASD Dispute Resolution = \$ 3,600.00

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

#### ARBITRATION PANEL

James W. Geiger	-	Public Arbitrator, Presiding Chairperson
John Robert Harris	-	Public Arbitrator, Panelist
W. Thomas Gehrt	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

  
James W. Geiger  
Public Arbitrator, Presiding Chairperson

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Signature Date

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John Robert Harris  
Public Arbitrator, Panelist

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Signature Date

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W. Thomas Gehrt  
Non-Public Arbitrator, Panelist

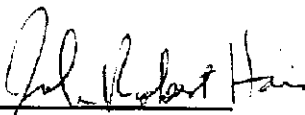
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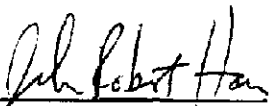
November 12 2000  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

James W. Geiger  
Public Arbitrator, Presiding Chairperson

Signature Date

  
John Robert Harris  
Public Arbitrator, Panelist

  
Signature Date  
11/4/02

W. Thomas Gehrt  
Non-Public Arbitrator, Panelist

Signature Date

November 12, 2002  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

James W. Geiger  
Public Arbitrator, Presiding Chairperson

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Signature Date

John Robert Harris  
Public Arbitrator, Panelist

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

  
W. Thomas Gehrt  
Non-Public Arbitrator, Panelist

11-5-02  
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Signature Date

November 12, 2002  
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Date of Service (For NASD Dispute Resolution office use only)