

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Herman Horn, Vivian Horn, and the Herman Horn Living Trust, (Claimants) vs. Harland Financial Services Corp., Securities America, Inc., and Jeffrey Levy, (Respondents)

Case Number: 01-02036

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimants Herman Horn ("H. Horn"), Vivian Horn ("V. Horn"), and the Herman Horn Living Trust ("Horn Trust"), hereinafter collectively referred to as "Claimants": Herbert M. Deutsch, Esq., Deutsch & Lipner, Garden City, NY.

Respondents Harland Financial Services Corp. ("Harland"), Securities America, Inc. ("SAI"), and Jeffrey Levy ("Levy"), hereinafter collectively referred to as "Respondents": Peter B. Andrews, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA.

CASE INFORMATION

Statement of Claim filed on or about: April 17, 2001.

H. Horn signed the Uniform Submission Agreement: April 14, 2001.

V. Horn signed the Uniform Submission Agreement: April 14, 2001.

Horn Trust signed the Uniform Submission Agreement: April 14, 2001.

Joint Statement of Answer and Motion to Dismiss filed by Respondents on or about: July 9, 2001.

Harland did not sign a Uniform Submission Agreement.

SAI signed the Uniform Submission Agreement: May 31, 2001.

Levy signed the Uniform Submission Agreement: May 24, 2001.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitability; mutual fund switching; material misrepresentations; respondent superior; omissions; failure to diversify; negligence; negligent supervision; breach of contract; and breach of fiduciary duty. Claimant's claim involved mutual funds in the Putnam and American families of funds.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted against Respondents; Claimants' actions and/or inaction, under the circumstances, constitutes a ratification of all complained of activity;

Claimants' claims are barred under the doctrines of estoppel and/or laches; any alleged losses which may have occurred were the direct result of conditions and other factors beyond the control of Respondents; there were no misrepresentations or omissions of material fact by any Respondent upon which Claimants relied upon to their detriment; Claimants' claims are barred, in whole or in part, by the applicable statutes of limitations and equitable principles of law; Claimants knew or should have known, and were aware or should have been aware of the possible outcome, possible risks, and possible rewards associated with such actions, and Claimants voluntarily chose to assume those risks in an attempt to achieve certain results; any claim Claimants might have, under any theory, against Respondents is barred because Claimants had full access and ability to inquire, failed to exercise due diligence, or reasonable care, knew, or in the exercise of reasonable care should have known, of the existence of those matters alleged to constitute some violations that form the basis for the asserted claims as to Respondents; Respondents had no duty, contractual or otherwise, to disclose or inform Claimants of any facts other than those which were disclosed, nor did Respondents breach any duty owed to Claimants, if any duty existed; Claimants' claims are barred by their own contributory and/or comparative negligence; Respondents did not act with any intent to defraud Claimants or with reckless disregard of their interests, thus punitive damages may not be awarded in this matter; Claimants, by and through their own actions, were the direct cause of their damages, if any; Claimants have not identified any legally recognizable damages, as they cannot prove "loss causation"; any alleged duties owed by Respondents to Claimants were, in good faith, fully and faithfully carried out; Claimants made certain representations upon which Respondents reasonably relied, therefore Claimants are estopped from seeking recovery from Respondents on the basis of allegations that are inconsistent with those representations which were reasonably relied upon by Respondents; the doctrines of laches and/or unclean hands bar Claimants' claims as to Respondents; the actions of Respondents are not the proximate cause of Claimants' alleged damages, if any; Respondents at all times discharged their responsibilities in a professional and ethical manner, and all of its actions were well within the parameters of the investment industry standards, procedures, and all SRO and/or governmental regulations; there is no private right of action for any alleged violation of the rules of self-regulatory organizations under the law; Claimants directed, approved, and controlled the execution of all transactions in the complained of accounts; and Respondents did not control Claimants' investment decisions or the execution of transactions within the complained of accounts.

RELIEF REQUESTED

Claimants requested damages in the amount of \$100,000.00, together with interest, the costs of this proceeding, and attorneys' fees.

Respondents requested that Claimants' claims be dismissed in their entirety, and that the Panel issue an Order directing the expungement of Levy's CRD records.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Harland was not a member of NASD, Inc. or an associated person during the time in dispute. Although Respondent Harland did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration, Harland submitted an Answer to the Statement of Claim, participated in this arbitration proceeding, and appeared at the hearings in this matter. Therefore, Respondent Harland voluntarily submitted to the jurisdiction of the NASD and agreed to be bound by the determination of the Panel on all issues submitted.

During the hearings in this matter, at the conclusion of Claimants' case, Respondents made a Motion to Dismiss. After due deliberation, the Panel denied the Motion.

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. Claimants' claims are hereby dismissed in their entirety.
2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Levy'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, Respondent Levy must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. All other requests for relief are hereby 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	= \$ 225.00
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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 firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, Securities America, Inc. is a party.

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

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 a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: February 20, 2002 1 session	
One (1) Pre-hearing session with Panel x \$750.00	= \$ 750.00
Pre-hearing conference: December 10, 2001 1 session	
Three (3) Hearing sessions x \$750.00	= \$2,250.00
Hearing Dates: May 29, 2002 2 sessions	
May 30, 2002 1 session	
Total Forum Fees	= \$3,450.00

The Panel has assessed all of the forum fees jointly and severally against Claimants.

Fee Summary

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

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$3,450.00
Total Fees	= \$3,675.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,700.00

2. SAI be and hereby is solely liable for:

Member Fees	= \$3,100.00
Total Fees	= \$3,100.00
Less payments	= \$3,700.00
Refund Due SAI	= \$ 600.00

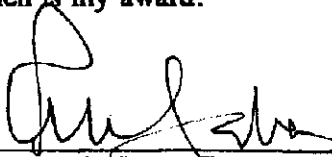
All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Richard M. Gaba, Esq.	-	Public Arbitrator, Presiding Chair
Martin A. Edelstein, Esq.	-	Public Arbitrator
Robert B. Sensale, 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.



Richard M. Gaba, Esq.
Public Arbitrator, Presiding Chair

6-17-02
Signature Date

Martin A. Edelstein, Esq.
Public Arbitrator

Signature Date

Robert B. Sensale, Esq.
Industry Arbitrator

Signature Date

July 9, 2002
Date of Service (For NASD office use only)

ARBITRATION PANEL

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Richard M. Gaba, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Martin A. Edelstein, Esq.
Public Arbitrator

7-9-02

Signature Date

Robert B. Sensale, Esq.
Industry Arbitrator

Signature Date

July 9, 2002
Date of Service (For NASD office use only)

ARBITRATION PANEL

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Richard M. Gaba, Esq.
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Signature Date

Martin A. Edelstein, Esq.
Public Arbitrator

Signature Date



Robert B. Sensale, Esq.
Industry Arbitrator

7-9-02
Signature Date

July 9, 2002
Date of Service (For NASD office use only)