

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Steven J. Lynch and Jane E. Fontaine (Claimants) v. Berry-Shino Securities, Inc., Wayne Richardson (Respondents) v. William J. Muenckler (Third-party Respondent)

Case Number: 01-02242

Hearing Site: New York, New York

Nature of the Dispute: Customers vs. Member and Associated Person vs. Associated Person

REPRESENTATION OF PARTIES

Claimants, Steven J. Lynch ("Lynch") and Jane E. Fontaine ("Fontaine"), hereinafter collectively referred to as "Claimants": Timothy Feil, Esq., Finkelstein & Feil LLP, Garden City, NY. Previously appeared *pro se*.

Respondent, Berry-Shino Securities, Inc. ("Berry-Shino") hereinafter referred to as "Berry-Shino": R. Matthew Shino, Berry-Shino Securities, Inc., Scottsdale, AZ. Previously represented by M. David Sayid, Esq., Sayid and Associates LLP, New York, NY. Previously represented by Louis F. Burke, Esq., Louis F. Burke P.C., New York, NY.

Respondent, Wayne Richardson. ("Richardson") hereinafter referred to as "Richardson": Craig L. Smith, Esq., Northport, NY.

Third-party Respondent, William J. Muenckler. ("Muenckler") hereinafter referred to as "Muenckler": Muenckler appeared *pro se*. Previously represented by Timothy Feil, Esq., Finkelstein & Feil, LLP.

CASE INFORMATION

Statement of Claim filed on or about: February 16, 2001.

Claimants signed the Uniform Submission Agreement: May 16, 2001.

Statement of Answer, Cross-claim, and Third-party claim filed by Respondent, Berry-Shino, on or about: September 7, 2001.

Statement of Answer filed by Third-party Respondent, Muenckler, on or about: November 5, 2001.

Respondent, Muenckler, signed the Uniform Submission Agreement: December 3, 2001.

Respondent Richardson did not file a Statement of Answer or submit a Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: margin calls, negligence, failure to supervise, failure to execute, breach of fiduciary duty, misrepresentations, non-disclosures, unauthorized trading, omission of facts, and manipulations. The causes of action relate to options.

Unless specifically admitted in its Answer, Respondent Berry-Shino denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Respondent Muenckler, denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$ 35,000.00
Punitive Damages	\$ 15,000.00
Attorneys' Fees	\$ Unspecified
Other Costs	\$ Unspecified
Other Monetary Relief if any:	\$ Unspecified

Respondent Berry-Shino requested:

Compensatory Damages	\$ 35,000.00
Punitive Damages	\$ 15,000.00
Attorneys' Fees	\$ 25,000.00
Other Costs	\$ Unspecified
Other Monetary Relief if any:	\$ Unspecified

Respondent Berry Shino requested that the Panel dismiss the Statement of Claim in its entirety with prejudice and asserted a cross-claim against Respondent Richardson and third-party claim against William Muenckler for indemnification and/or contribution against any loss, liability, claims asserted herein, as well as attorneys' fees and other costs that may be incurred.

Respondent Muenckler requested that the Third-party claim be dismissed in its entirety and his CRD records expunged.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators the "Panel" determined that Respondent Wayne Richardson has 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").

Respondent Wayne Richardson did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

Claimants originally named William Muenckler as a Respondent, but removed him from this matter prior to initial service.

At the hearing on May 24, 2002, the parties agreed to settle the case. The parties failed to finalize their settlement agreement.

On or about November 20, 2002, Claimants settled their claims with Third-party Respondent William Muenckler.

On or about November 26, 2002, Claimants settled their claims against Respondent Berry-Shino.

NASD Dispute Resolution ("NASD DR") has been unable to reschedule this matter since the cancellation of the hearing scheduled for April 3, 2003. Several attempts were made to contact Claimants' counsel asking him to advise NASD DR as to the status of this matter. To date, NASD DR has not received a response and the Panel has determined to dismiss this matter without prejudice.

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 dismissed in their entirety.
2. 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	= \$ 175.00
Cross claim/Third Party Claim 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 that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Berry-Shino Securities, Inc. is a party in this matter.

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,000.00

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 @ \$600.00	= \$ 600.00
Pre-hearing conferences: March 5, 2002 1 session	
Four (4) Hearing sessions @ \$600.00	= \$ 2,400.00
Hearing Dates: May 23, 2002 2 sessions	
May 24, 2002 2 sessions	
Total Forum Fees	= \$ 3,000.00

1. The Panel has assessed \$ 1,500.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$ 1,500.00 of the forum fees to Respondent Richardson.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Richardson requested tapes = \$15.00
2. Muenckler requested tapes = \$15.00

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	= \$ 1,500.00
Total Fees	= \$ 1,675.00
<u>Less payments</u>	= \$ 775.00
Balance Due NASD Dispute Resolution	= \$ 900.00
2. Respondent, Berry-Shino, is solely liable for:

Cross Claim/Third-party Filing Fee	= \$ 1,000.00
<u>Member Fees</u>	= \$ 2,400.00
Total Fees	= \$ 3,400.00
<u>Less payments</u>	= \$ 3,400.00
Refund Due Berry-Shino	= \$ 0.00
3. Respondent, Richardson, is solely liable for:

Administrative Cost	= \$ 15.00
<u>Forum Fees</u>	= \$ 1,500.00
<u>Total Fees</u>	= \$ 1,515.00
<u>Less payments</u>	= \$ 15.00
Balance Due NASD Dispute Resolution	= \$ 1,500.00

4. Respondent, Muenckler, is solely liable for:

<u>Administrative Cost</u>	= \$ 15.00
<u>Total Fees</u>	= \$ 15.00
<u>Less payments</u>	= \$ 15.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

Hilda H. Boas

Edward A. Weinstein

Catherine Ladnier

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public 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.

Hilda H. Boas

Hilda H. Boas

Public Arbitrator, Presiding Chairperson

9-8-05
Signature Date

Edward A. Weinstein

Public Arbitrator

Signature Date

Catherine Ladnier

Non-Public Arbitrator

Signature Date

September 12, 2005

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Hilda H. Boas

Edward A. Weinstein

Catherine Ladnier

- Public Arbitrator, Presiding Chairperson

- Public Arbitrator

- Non-Public Arbitrator

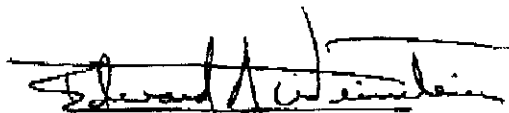
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Hilda H. Boas

Public Arbitrator, Presiding Chairperson

Signature Date



Edward A. Weinstein
Public Arbitrator

30 August 2005
Signature Date

Catherine Ladnier

Non-Public Arbitrator

Signature Date

September 12, 2005

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Hilda H. Boas
Edward A. Weinstein
Catherine Ladnier

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

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Hilda H. Boas
Public Arbitrator, Presiding Chairperson

Signature Date

Edward A. Weinstein
Public Arbitrator

Signature Date


Catherine Ladnier
Non-Public Arbitrator

Aug 31, 2005
Signature Date

September 12, 2005
Date of Service (For NASD Dispute Resolution use only)