

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Ted Cohen (Claimant) v. Millennium Securities Corp., Jerry Markowitz, Richard Sitomer, Todd Rome, and RPR Correspondent Services n/k/a Dain Correspondent Services (Respondents)

Case Number: 01-02380

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant Ted Cohen ("Cohen") hereinafter referred to as "Claimant": Larry Kars, Esq., Larry Kars, P.C., New York, NY.

Respondent RPR Correspondent Services n/k/a Dain Correspondent Services ("RPR"): Will S. Montgomery, Esq., Jenkins & Gilchrist, P.C., Dallas, TX.

Respondents Todd Rome ("Rome") and Richard Sitomer ("Sitomer"): Jonathan C. Uretsky, Esq., Winget, Spadafora & Schwartzberg, LLP, New York, NY. Sitomer previously appeared *pro se*.

Respondent Millennium Securities Corp. ("Millennium") did not make an appearance in this matter.

Respondent Jerry Markowitz ("Markowitz") did not make an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: May 2, 2001.

Claimant's Response to RPR's Motion to Dismiss filed.

Claimant's Response to Rome's Motion to Dismiss filed on or about: October 11, 2001.

Motion for Default Judgment against Richard Sitomer filed on or about: May 24, 2002.

Claimant signed the Uniform Submission Agreement: May 1, 2001.

Statement of Answer and Motion to Dismiss filed by RPR on or about: July 23, 2001.

RPR's Reply to Claimant's Response to RPR's Motion to Dismiss filed on or about: August 28, 2001.

RPR signed the Uniform Submission Agreement: July 20 and 23, 2001.

Statement of Answer and Motion to Dismiss filed by Rome on or about: August 25, 2001.

Rome did not sign a Uniform Submission Agreement.

Millennium did not file a Statement of Answer or sign a Uniform Submission Agreement.

Markowitz did not file a Statement of Answer or sign a Uniform Submission Agreement.

Sitomer did not file a Statement of Answer or sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: violation of industry rules; misrepresentation; breach of fiduciary duty; churning; suitability; common law fraud; breach of good faith and fair dealing; and respondeat superior. Claimant's claims involved shares in Mike's Original, Inc.; Acclaim Entertainment; and Applied Digital Solutions, Inc.

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

Unless specifically admitted in his Answer, Respondent Rome denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

Claimant requested judgment against Respondents, jointly and severally, (i) in the amount of \$247,000.00 for net losses; (ii) which includes approximately \$50,000.00 for commissions on churning; (iii) interest; (iv) costs and disbursements; (v) punitive damages in an amount to be determined by the arbitrators; and (vi) such other and further relief as the arbitrators may deem just and proper including the recommendation of suspension or revocation of the licenses of the individuals named as Respondents.

Respondent RPR requested that Claimant take nothing from RPR and that RPR recover all its costs and attorneys' fees from Claimant.

Respondent Rome requested dismissal prior to the hearing in this matter and the expungement of this claim from his CRD records.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Respondent Sitomer 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").

Respondents Rome and Sitomer did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, and/or appeared and testified at the hearing are bound by the determination of the Panel on all issues submitted.

By letter dated February 11, 2002, Claimant withdrew his claims against Respondent Jerry Markowitz with prejudice.

Prior to the hearing in this matter, the Panel granted Respondents' Rome's and RPR's Motions to Dismiss.

Prior to the hearing, the Panel denied Claimant's Motion for Default Judgment against Sitomer.

On or about May 12, 2003 NASD Dispute Resolution was notified that Respondent Millennium Securities Corp. filed for bankruptcy under SIPC. Therefore, all claims were stayed against them.

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, and 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. Claimant's claims are hereby denied 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	= \$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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, RPR Correspondent Services is a party.

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:

May 20, 21, and 22, 2003, adjournment by Sitomer	= \$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 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 @ \$1,125.00	= \$1,125.00
Pre-hearing conference: November 18, 2002 1 session	

Four (4) Hearing sessions @ \$1,125.00	= \$4,500.00
Hearing Dates: November 5, 2003 2 sessions	
November 6, 2003 2 sessions	

Total Forum Fees	= \$5,625.00
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1. The Panel has assessed \$1,406.25 of the forum fees against Claimant.
2. The Panel has assessed \$4,218.75 of the forum fees against Sitomer.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,406.25
Total Fees	= \$1,706.25
Less payments	= \$1,450.00
Balance Due NASD Dispute Resolution	= \$ 256.25

2. Sitomer is solely liable for:

Adjournment Fee	= \$1,125.00
Forum Fees	= \$4,218.75
Total Fees	= \$5,343.75
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$5,343.75

3. RPR is solely liable for:

<u>Member Fees</u>	= \$4,600.00
<u>Total Fees</u>	= \$4,600.00
<u>Less payments</u>	= \$3,600.00
Balance Due NASD Dispute Resolution	= \$1,000.00

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

ARBITRATION PANEL

John E. Hansen, Esq.	-	Public Arbitrator, Presiding Chair
Richard B. Ancowitz, Esq.	-	Public Arbitrator
Dean E. Kois	-	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.



John E. Hansen, Esq.
Public Arbitrator, Presiding Chairperson


Signature Date

Richard B. Ancowitz, Esq.
Public Arbitrator

Signature Date

Dean E. Kois
Non-Public Arbitrator

Signature Date

December 4, 2003

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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John E. Hansen, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Richard B. Ancowitz, Esq.
Public Arbitrator

12/4/03

Signature Date

Dean E. Kois
Non-Public Arbitrator

Signature Date

December 4, 2003

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John E. Hansen, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Richard B. Ancowitz, Esq.
Public Arbitrator

Signature Date

Dean Kois

Dean E. Kois
Non-Public Arbitrator

11/18/03

Signature Date

December 4, 2003

Date of Service (For NASD Dispute Resolution use only)