

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

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In the Matter of the Arbitration Between:

HSBC Securities (USA) Inc. (Claimant) v. Seefield Investments, Joel Kaminer and Tracy E. Kruckenberger (Respondents)

Case Number: 01-02799

Hearing Site: New York, New York

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Nature of the Dispute: Member vs. Non-Member and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimant HSBC Securities (USA) Inc. ("HSBC") hereinafter referred to as "Claimant": Law Offices of Andrew S. O'Connor, Esq., Harrison, New York.

Respondents Seefield Investments ("Seefield"), Joel Kaminer ("Kaminer"), and Tracy E. Kruckenberger ("Kruckenberger"), hereinafter collectively referred to as "Respondents": Glenn A. Delk, Esq., Lightmas & Delk, Atlanta, Georgia.

**CASE INFORMATION**

Statement of Claim filed on or about: May 29, 2001

Claimant HSBC signed the Uniform Submission Agreement: May 4, 2001.

Joint Statement of Answer filed by Respondents on or about: September 10, 2001.

Respondent Seefield signed the Uniform Submission Agreement.

Respondent Kaminer did not sign the Uniform Submission Agreement.

Respondent Kruckenberger did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract, account stated, partners' liability.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$409,733.90 plus interest, costs and expenses, including attorneys' fees.

Respondents requested that the Panel dismiss the Claim as to the individual Respondents, Grant them judgment against Claimant on its Statement of Claim, award them their costs and attorneys' fees, and grant them such other relief as the Panel deems appropriate.

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

Respondents Kaminer and Kruckenberger did not file with NASD Dispute Resolution a properly executed submission agreement 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.

During the pre-hearing conference conducted on April 25, 2002, the chairperson was advised that Respondent Kaminer passed away. By letter dated January 31, 2003, Claimant advised that Maragaret H. Kaminer qualified in the North Carolina General Court of Justice, Superior Court Division in Jackson County, as the personal representative of Respondent Joel Kaminer, deceased. Accordingly, Ms. Maragaret Kaminer was substituted for Joel Kaminer as a Respondent in this proceeding.

By letter dated June 16, 2003, Claimant's counsel advised NASD Dispute Resolution that the parties had entered into a settlement agreement. By letter dated June 19, 2003, informed NASD Dispute Resolution that the parties were requesting a Stipulated Award.

On or about September 30, 2003, the parties submitted a proposed Order of Dismissal, With Prejudice (On Consent) ("Order") and Award (On Consent) ("Award") for the Panel's approval. These documents are annexed respectively as Exhibits "A" and "B."

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

### **AWARD**

After considering the pleadings, testimony, and parties' proposed Order and Award the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted against Respondent Margaret Kaminer, as the personal representative of the estate of Joel Kaminer, and Respondent Tracy E. Kruckenberger are dismissed with

prejudice.

2. Respondent Seefield shall pay to Claimant HSBC the amount of \$409,733.90, plus interest at the rate of 9% per annum from June 1, 2001 to the date of payment of the Award.
3. 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	= \$ 1,000.00
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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 persons at the time of the events giving rise to the dispute. In this matter, the member firm Claimant HSBC 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**

The following adjournment fees are assessed:

June 18 and 19, 2002 adjournment requested by Claimant	= \$ 1,125.00
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#### **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. Forum fees associated with these proceedings are:

Two (2) Pre-hearing conference sessions with a single arbitrator @ \$ 450.00	= \$ 900.00
Pre-hearing conferences: April 25, 2002 1 session	
May 1, 2002 1 session	
Two (2) Pre-hearing conference sessions with the Panel @ \$1,125.00	= \$ 2,250.00

Pre-hearing conferences:      January 22, 2002      1 session  
   February 25, 2003      1 session

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Total Forum Fees = \$ 3,150.00

1. Pursuant to the initial pre-hearing conference scheduling order, the Panel has assessed \$562.50 of the forum fees against Claimant HSBC.
2. Pursuant to the initial pre-hearing conference scheduling order, the Panel has assessed \$562.50 of the forum fees jointly and severally against Respondents Seefield, Kaminer, and Kruckenberger.
3. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure, the remaining forum fees are assessed equally among each of the parties as follows:
  - a. Claimant's share is \$506.25.
  - b. Respondent Seefield's share is \$506.25.
  - c. Respondent Kaminer's share is \$506.25.
  - d. Respondent Kruckenberger's share is \$506.25.

**Fee Summary**

1. Claimant HSBC is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 4,600.00
Adjournment Fee	= \$ 1,125.00
<u>Forum Fees</u>	<u>= \$ 1,068.75</u>
Total Fees	= \$ 7,793.75
<u>Less payments</u>	<u>= \$ 6,725.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,068.75
2. Respondent Seefield is solely liable for:

<u>Forum Fees</u>	<u>= \$ 506.25</u>
Total Fees	= \$ 506.25
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 506.25
3. Respondent Kaminer is solely liable for:

<u>Forum Fees</u>	<u>= \$ 506.25</u>
Total Fees	= \$ 506.25
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 506.25

4. Respondent Kruckenberg is solely liable for:

Forum Fees	= \$ 506.25
Total Fees	= \$ 506.25
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 506.25

5. Respondents Seefield, Kaminer, and Kruckenberg are jointly and severally liable for:

Forum Fees	= \$ 562.50
Total Fees	= \$ 562.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 562.50

All balances are due and payable to NASD Dispute Resolution

NASD Dispute Resolution  
Arbitration No. 01-02799  
Award Page 6 of \_\_\_\_\_

ARBITRATION PANEL

David N. Brainin, Esq.	-	Public Arbitrator, Presiding Chair
Marian S. Hertz, Esq.	-	Public Arbitrator
Philip M. Mandel, Esq.	-	Non-public Arbitrator

Concurring Arbitrators' Signatures



David N. Brainin, Esq.  
Public Arbitrator, Presiding Chair

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

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Marian S. Hertz, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Philip M. Mandel, Esq.  
Non-public Arbitrator

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

November 21, 2003

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

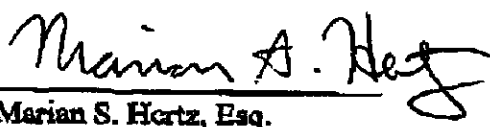
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NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

-----X  
HSBC SECURITIES (USA) INC.,

: NASD Docket No. 01-2799

Claimant,

: **ORDER OF DISMISSAL  
WITH PREJUDICE  
(ON CONSENT)**

v.

SEEFIELD INVESTMENTS, JOEL KAMINER and  
TRACY E. KRUCKENBERGER,

Respondents.

:

-----X

Counsel for all of the parties herein having advised the case administrator that the claims presented in the above-captioned action have been settled, and

Counsel for all of the parties herein having further advised the case administrator that the settlement agreement of the parties provides, in relevant part, that (a) the claims asserted against respondent Margaret Kaminer, as the personal representative of the estate of Joel Kaminer and respondent Tracy Kruckenberg in the above-captioned arbitration be dismissed with prejudice, and (b) that a consent award shall be entered in favor of claimant and against respondent Seefield Investments; and

Counsel for all of the parties having evidenced their consent to this Order by subscribing their names hereto;

IT IS ORDERED that the claims asserted against respondent Margaret Kaminer, as the personal representative of the estate of Joel Kaminer and respondent Tracy Kruckenberg in the above-captioned arbitration be, and the same hereby are, dismissed with prejudice; and

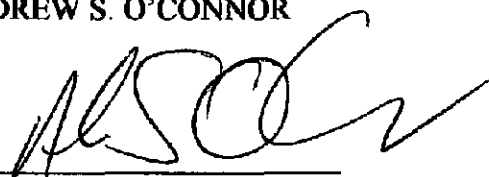
IT IS FURTHER ORDERED that the claims asserted against respondent Seefield Investments in the above-captioned arbitration shall be resolved in accordance with a consent award in the form submitted by counsel for the parties

Dated: New York, New York  
August \_\_, 2003

Chairperson David N. Brainin,  
on behalf of the arbitration panel

CONSENTED TO:

LAW OFFICES OF  
ANDREW S. O'CONNOR

By:   
Andrew S. O'Connor  
Attorneys for Claimant  
2039 Palmer Avenue, Suite 104  
Larchmont, NY 10538  
(914) 834-5400

LIGHTMAS & DELK


By:   
Glenn A. Delk  
Georgia Bar No. 216950  
Attorneys for Respondents  
Suite 1150, The Peachtree  
1355 Peachtree Street, N.E.  
Atlanta, Georgia 30309  
(404) 876-3335

EXHIBIT "B"

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

-----X  
HSBC SECURITIES (USA) INC.,

: NASD Docket No. 01-2799

Claimant,

v.

: **AWARD**

: **(ON CONSENT)**

SEEFIELD INVESTMENTS, JOEL KAMINER and  
TRACY E. KRUCKENBERGER,

Respondents.

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Counsel for all of the parties herein having advised the case administrator that the claims presented in the above-captioned action have been settled, and

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Counsel for all of the parties having evidenced their consent to this Award by subscribing their names hereto;

NOW THEREFORE, respondent Seefield Investments is hereby directed to pay to claimant HSBC Securities (USA), Inc. the amount of \$409,733.90, plus interest at the rate of 9% per annum from June 1, 2001 to the date of payment of the award.

The undersigned arbitrators hereby affirm that they have executed this instrument which is their award.

Dated: New York, New York  
August \_\_, 2003


\_\_\_\_\_  
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Marian S. Hertz


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Philip M. Mandel

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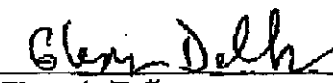
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