

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Loy R. Clemons, Vita R. Clemons,
Clemons Family Revocable Trust,
Clemons-Eicken Fine European Imports, Inc., and
Vita Clemons, LTD.

and

02-04752
Phoenix, Arizona

Name of Respondents

Berry-Shino Securities, Inc.
Christopher J. Mercer

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

REPRESENTATION OF PARTIES

Loy R. Clemons, Vita R. Clemons, Clemons Family Revocable Trust, Clemons-Eicken Fine European Imports, Inc., and Vita Clemons, LTD. ("**Claimants**") were originally represented by John R. Augustine, Jr., Esq., Phoenix, Arizona. Since on or about July 16, 2003, Stephen Murphy, Esq., Stephen Murphy, PA, Phoenix, Arizona represented Claimants.

Berry-Shino Securities, Inc. ("**Respondent Berry-Shino**") and Christopher J. Mercer ("**Respondent Mercer**") (collectively as "**Respondents**") were represented by Timothy Feil, Esq., Finkelstein & Feil LLP, Garden City, New York.

CASE INFORMATION

The Statement of Claim was filed on or about August 13, 2002. Submission Agreement of Claimants Loy R. Clemons, Vita R. Clemons, Clemons Family Revocable Trust, Clemons-Eicken Fine European Imports, Inc., and Vita Clemons, LTD. Was undated.

Statement of Answer was filed by Respondent Berry-Shino Securities, Inc. on or about October 10, 2002. Respondents' Motion to Dismiss and/or Preclude was filed on or about June 16, 2003. Respondents' Motion to Postpone Hearing and Dismiss the Action with Prejudice was filed on or about December 31, 2003. Submission Agreement of Respondent Berry-Shino Securities, Inc. was signed on October 7, 2002 by R. Matthew Shino. Submission Agreement of Respondent Christopher J. Mercer was signed on October 4, 2002.

CASE SUMMARY

Claimants alleged that Respondents were negligent in the recommendation and purchase of securities and in the formation of Claimants' investment portfolio, all in violation of their professional and contractual duties. Additionally, by virtue of the volume of trading, Respondent Mercer committed fraud in the form of churning, all in violation of Arizona law. Claimants asserted the following causes of action: negligence; securities fraud; breach of contract; and breach of fiduciary duty.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated as follows:

Claimants claim can easily be distilled as a simple attempt to recoup from Respondents, losses suffered as a result of Claimants' own investment decisions. By alleging that Respondents have any liability whatsoever for Claimants' alleged losses, Claimants seek to mask their own role and that of the operative market forces in shaping their portfolio during the time period at issue. In fact, at all times relevant to this proceeding, Claimants were knowledgeable and informed investors, who fully appreciated the risks associated with their chosen investment strategies.

It is patently obvious that Claimants are merely fishing for a deep pocket to absorb the losses they incurred because Claimants own investment decisions did not work out as favorably as Claimants would have preferred.

RELIEF REQUESTED

Claimants requested an award in their favor and against Respondents as follows:

1. For an award of compensatory damages in an amount to be proven at hearing in this matter but in no event less than \$100,000.00;
2. For an award of consequential damages, including those for lost opportunity, in an amount to be proven at hearing in this matter but in no event less than \$25,000.00;
3. For an award of all pre-judgment and post-judgment interest;
4. For an award of attorneys' fees pursuant to A.R.S. §§44-2001-2003 and 12-341.01; and
5. For such other and further relief as the arbitrators deem just and proper under the circumstances.

Respondents requested the following relief:

1. That the Panel dismiss the Statement of Claim in its entirety, with prejudice;
2. That the Panel award costs, fees, expenses and reasonable attorneys' fees in an amount not less than \$20,000.00, incurred in defending this baseless claim; and
3. Such other and further relief as the Panel deems just, equitable and sufficient.

OTHER ISSUES CONSIDERED & DECIDED

By Order dated November 26, 2003, the Arbitration Panel denied Respondents' Motion to Dismiss and/or Preclude.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims of the parties are dismissed in their entirety.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

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

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is Berry-Shino Securities, Inc..

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	2,750.00
Total Member Fees	\$	5,200.00

Adjournment Fees

Adjournments requested during these proceedings:

Hearing Date(s) July 15-17, 2003, adjournment requested by Claimants = \$1,125.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

1	Pre-hearing session(s) with a single arbitrator	x	\$450.00	\$	450.00
	October 17, 2003	1	session		
3	Pre-hearing session(s) with Panel	x	1,125.00	\$	3,375.00
	February 21, 2003	1	session		
	July 16, 2003	1	session		
	January 5, 2004	1	session		
3	Hearing sessions	x	1,125.00	\$	3,375.00
	January 7, 2004	2	sessions		
	January 8, 2004	1	sessions		
	Total Forum Fees			\$	7,200.00

The Arbitration Panel has assessed \$2,400.00 of the forum fees to Loy R. Clemons, Vita R. Clemons, Clemons Family Revocable Trust, Clemons-Eicken Fine European Imports, Inc., and Vita Clemons, LTD.

The Arbitration Panel has assessed \$2,400.00 of the forum fees to Berry-Shino Securities, Inc.

The Arbitration Panel has assessed \$2,400.00 of the forum fees to Christopher J. Mercer.

Fee Summary

Claimants, Loy R. Clemons, Vita R. Clemons, Clemons Family Revocable Trust, Clemons-Eicken Fine European Imports, Inc., and Vita Clemons, LTD. shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$	300.00
Adjournment Fee	= \$	1,125.00
<u>Forum Fees</u>	= \$	2,400.00
Total Fees	= \$	3,825.00
<u>Less payments</u>	= \$	-1,425.00
Balance Due NASD Dispute Resolution	= \$	2,400.00

Respondent, Berry-Shino Securities, Inc., shall be and hereby is liable for:

Member Fees	= \$	5,200.00
<u>Forum Fees</u>	= \$	2,400.00
Total Fees	= \$	7,600.00
<u>Less payments</u>	= \$	-5,200.00
Balance Due NASD Dispute Resolution	= \$	2,400.00

Respondent, Christopher J. Mercer, shall be and hereby is liable for:

<u>Forum Fees</u>	= \$	2,400.00
Total Fees	= \$	2,400.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	2,400.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Robert D. Mitchell, Esq. - Public Arbitrator, Presiding Chair
David C. Rupley - Public Arbitrator
Paul C. Bookidis - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Robert D. Mitchell
Robert D. Mitchell, Esq.
Public Arbitrator, Presiding Chair

January 13, 2004
Signature Date

/s/ David C. Rupley
David C. Rupley
Public Arbitrator

January 20, 2004
Signature Date

/s/ Paul C. Bookidis
Paul C. Bookidis
Non-Public Arbitrator

January 13, 2004
Signature Date

NASD Dispute Resolution, Inc.

Arbitration No. 02-04752

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ARBITRATION PANEL

Robert D. Mitchell, Esq. - Public Arbitrator, Presiding Chair

David C. Rupley - Public Arbitrator

Paul C. Bookidis - Non-Public Arbitrator

Concurring Arbitrators:


Robert D. Mitchell, Esq.

Public Arbitrator, Presiding Chair

1-13-04
Signature Date

David C. Rupley

Public Arbitrator

Signature Date

Paul C. Bookidis

Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution, Inc.

Arbitration No. 02-04752

Award Page 6 of 6**ARBITRATION PANEL**

Robert D. Mitchell, Esq. - Public Arbitrator, Presiding Chair

David C. Rupley - Public Arbitrator

Paul C. Bookidis - Non-Public Arbitrator

Concurring Arbitrators:

Robert D. Mitchell, Esq.
Public Arbitrator, Presiding Chair

Signature Date


David C. Rupley
Public Arbitrator1-20-04
Signature DatePaul C. Bookidis
Non-Public Arbitrator

Signature Date

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Public Arbitrator, Presiding Chair

Signature Date

David C. Rupley
Public Arbitrator

Signature Date

Paul C. Bookidis

Paul C. Bookidis
Non-Public Arbitrator

1-13-04

Signature Date