

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

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In the Matter of the Arbitration Between:

Donna Partenope (Claimant) v. James Niedzwiecki, David Clapp, Reich & Co., Inc., First Montauk Securities Corp., Cantone Research, Inc., and Sharpe Capital, Inc. (Respondents)

Case Number: 02-06047

Hearing Site: New York, New York

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Nature of the Dispute: Customers vs. Members and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimant Donna Partenope ("Partenope") hereinafter referred to as "Claimant": Robert R. Levinson, Esq., Levinson & Borgen, Edison, NJ.

Respondent James Niedzwiecki ("Niedzwiecki") appeared *pro se*.

Respondent David Clapp ("Clapp") appeared *pro se*.

Respondent First Montauk Securities Corp. ("First Montauk"): Victor J. DiGioia, Esq., previously Barry R. Lax, Esq., Goldstein & DiGioia, LLP, New York, NY.

Respondent Cantone Research, Inc. ("Cantone"): Walter L. Baumgardner, Esq., Musilli, Baumgardner & Parnell, P.C., St. Clair Shores, MI.

Respondent Sharpe Capital, Inc. ("Sharpe"): Michael Simon, Esq., Sharpe Capital, Inc., New York, NY.

Respondent Reich & Co., Inc. ("Reich") did not enter an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: December 3, 2002.

Opposition to Motion to Dismiss of Cantone filed by Claimant on or about: March 17, 2003.

Claimant signed the Uniform Submission Agreement: December 3, 2001.

Statement of Answer filed by Respondent Niedzwiecki on or about: February 12, 2003.

Respondent Niedzwiecki signed the Uniform Submission Agreement: February 8, 2003.

Statement of Answer filed by Respondent Clapp on or about: January 28, 2003.

Respondent Clapp signed the Uniform Submission Agreement: January 28, 2003.

Motion to Dismiss or in the Alternative for a More Particular Statement of Claim filed by Respondent First Montauk on or about: March 21, 2003.

Respondent First Montauk did not file a Statement of Answer or sign the Uniform Submission Agreement.

Motion for Dismissal filed by Respondent Cantone on or about: February 4, 2003.

Response to Claim for Arbitration filed by Respondent Cantone on or about: March 11, 2003.

Reply to Response to Motion for Dismissal filed by Respondent Cantone on or about: March 24, 2003.

Respondent Cantone did not sign the Uniform Submission Agreement.

Statement of Answer filed by Respondent Sharpe.

Respondent Sharpe signed the Uniform Submission Agreement: February 3, 2003.

Respondent Reich did not file a Statement of Answer or sign the Uniform Submission Agreement.

### **CASE SUMMARY**

Claimant asserted the following causes of action: omission of fact and suitability. The causes of action relate to unspecified securities.

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

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

Unless specifically admitted in its Motion to Dismiss or in the Alternative for a More Particular Statement of Claim, Respondent First Montauk denied the allegations made in the Statement of Claim.

Unless specifically admitted in its Response to the Claim for Arbitration, Respondent Cantone denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$395,841.00; punitive damages in the amount of \$2,000,000.00; costs; attorneys' fees; and other case-related costs.

Respondent Niedzwiecki requested that the Respondents be dismissed.

Respondent Clapp requested dismissal.

Respondent First Montauk requested that the Motion to Dismiss be granted, or in the alternative, the Claimant be ordered to submit a More Particular Statement of Claim; attorneys' fees; costs; and such further relief as the Panel deems just and appropriate.

Respondent Cantone requested that the Panel dismiss the Claim; expunge this matter from its CRD record; and reimburse attorneys' fees, costs, and filing fees.

Respondent Sharpe requested that the Panel dismiss Claimant's case; costs; and such other and further relief as the Panel deems just.

### **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 Reich has not been properly served with the Statement of Claim and did not receive due notice of the hearing.

Respondents First Montauk and Cantone 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, are bound by the determination of the Panel on all issues submitted.

Respondents moved to dismiss the Statement of Claim on grounds, including the failure of the Statement of Claim to state a cause of action and the failure to implicate certain of the Respondents. At the pre-hearing conference held on June 11, 2003, the Panel ordered in part that Claimant submit an amended and more detailed Statement of Claim and reply to the motions to dismiss. Claimant did not submit an amended or more detailed Statement of Claim, and Claimant did not respond to all of the motions, and the Panel determined to grant the motions to dismiss, and dismiss the claim as to all Respondents.

On or about November 11, 2004, Claimant submitted a more specific Statement of Claim. The Panel reconvened and determined: "The Panel unanimously agrees that: (1) We directed this matter to be dismissed in August 2003 because no Amended Statement of Claim was filed as ordered; (2) the filing of an Amended Statement of Claim in November 2004 does not affect our previous ruling. As far as we are concerned, the claim has and remains dismissed."

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 pre-hearing conference, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's 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 = \$500.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, First Montauk Securities Corp., Cantone Research, Inc., and Sharpe Capital, Inc. are parties.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

#### **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 @ \$1,200.00	= \$1,200.00
Pre-hearing conference: June 11, 2003 1 session	
Total Forum Fees	= \$1,200.00

1. The Panel has assessed \$600.00 of the forum fees against Claimant.
2. The Panel has assessed \$600.00 of the forum fees jointly and severally against Respondents.

### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 600.00
Total Fees	= \$1,100.00
Less payments	= \$2,000.00
Refund Due Claimant	= \$ 900.00

2. Respondent First Montauk is solely liable for:

Member Fees	= \$8,550.00
Total Fees	= \$8,550.00
Less payments	= \$8,550.00

Balance Due NASD Dispute Resolution = \$ 0.00

3. Respondent Cantone is solely liable for:

<u>Member Fees</u>	= \$8,550.00
<u>Total Fees</u>	= \$8,550.00
<u>Less payments</u>	= \$8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondent Sharpe is solely liable for:

<u>Member Fees</u>	= \$8,550.00
<u>Total Fees</u>	= \$8,550.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$8,550.00

5. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 600.00
<u>Total Fees</u>	= \$ 600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 600.00

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

**ARBITRATION PANEL**

Richard W. Cutler, Esq.	-	Public Arbitrator, Presiding Chairperson
Marjorie Levine	-	Public Arbitrator
Edward G. Turan, Esq.	-	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.

\_\_\_\_\_  
Richard W. Cutler, Esq.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Marjorie Levine  
Public Arbitrator

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

\_\_\_\_\_  
Edward G. Turan, Esq.  
Non-Public Arbitrator

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Signature Date

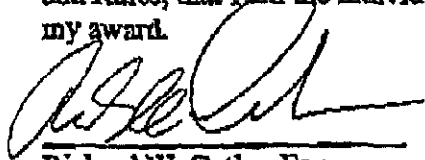
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Date of Service (For NASD Dispute Resolution use only)

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Marjorie Levine	-	Public Arbitrator
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Richard W. Cutler, Esq.  
Public Arbitrator, Presiding Chairperson

4/28/05  
Signature Date

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Marjorie Levine  
Public Arbitrator

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Signature Date

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Edward G. Turan, Esq.  
Non-Public Arbitrator

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Signature Date

May 4, 2005

Date of Service (For NASD Dispute Resolution use only)

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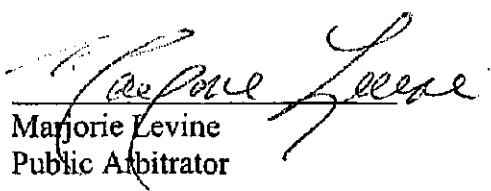
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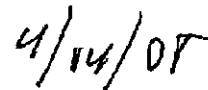
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Marjorie Levine  
Public Arbitrator

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Signature Date





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Edward G. Turan, Esq.  
Non-Public Arbitrator

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Signature Date

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May 4, 2005

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Date of Service (For NASD Dispute Resolution use only)