

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

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In the Matter of the Arbitration Between:

P. Schoenfeld Asset Management, LLC (Claimant) v. Maxcor Financial, Inc. and CRT Capital Group, LLC (Respondents)

Case Number: 03-01562

Hearing Site: New York, New York

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Nature of the Dispute: Member vs. Members.

**REPRESENTATION OF PARTIES**

Claimant P. Schoenfeld Asset Management, LLC ("PSAM") hereinafter referred to as "Claimant": David S. Smith, Esq., Smith Campbell, LLP, New York, NY.

Respondent Maxcor Financial, Inc. ("Maxcor"): P. Gregory Schwed, Esq., Loeb & Loeb, LLP, New York, NY.

Respondent CRT Capital Group, LLC ("CRT"): Michael M. Pomerantz, Esq., Kaye Scholer, LLP, New York, NY.

Maxcor and CRT are hereinafter collectively referred to as "Respondents".

**CASE INFORMATION**

Statement of Claim filed on or about: March 4, 2003.

Claimant signed the Uniform Submission Agreement: March 3, 2003.

Statement of Answer and Counterclaim filed by Respondent Maxcor on or about: June 6, 2003.

Respondent Maxcor signed the Uniform Submission Agreement: June 6, 2003.

Statement of Answer filed by Respondent CRT on or about: June 6, 2003.

Respondent CRT did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; failure of Respondents to honor their obligations to fully settle trades in common stock of NTL by delivering shares that they contracted to sell to PSAM.

Unless specifically admitted in its Reply to Counterclaim, Claimant denied the allegations made in the Counterclaim.

Unless specifically admitted in its Answer and Counterclaim, Respondent Maxcor denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In its Counterclaim, Respondent Maxcor asserted the following cause of action: declaratory judgment.

Unless specifically admitted in its Answer, Respondent CRT denied the allegations made in the Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested that Respondent Maxcor pay compensatory damages in the amount of \$708,000.00; that Respondent CRT pay compensatory damages in the amount of \$3,186,000.00; other damages or relief; assessing all forum costs against Respondents; costs and attorneys' fees; and such other and further relief as the Panel deems proper.

In its Reply to Counterclaim, Claimant requested that Respondent Maxcor's Counterclaim be denied in its entirety.

In its Answer and Counterclaim, Respondent Maxcor requested a declaratory judgment that its two trades with Claimant were properly adjusted pursuant to the Bankruptcy Court's January 16 Order and properly settled to reflect the 1-for-4 reverse stock split, and that no damages are due in connection therewith; an award of its costs and expenses, including but not limited to attorneys' fees and any NASD member surcharge incurred, plus interest; that Claimant's claim against it be denied in its entirety, or in the alternative dismissed; that the costs, including Maxcor's attorneys' fees and other costs be assessed against Claimant; and that it be granted such other and further relief as is just.

In its Answer, Respondent CRT requested a judgment that all trades should have been adjusted and settled on a basis to reflect the 1-for-4 reverse stock split and that provides closure for sales that have settled on an adjusted basis; in the alternative, dismissing the arbitration dispute, and allowing a more suitable forum handle the dispute; attorneys' fees, costs, and disbursements; and such other relief as is just and proper.

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

Respondent CRT 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, having answered the claim, and appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

During the hearing, the parties notified NASD Dispute Resolution that Claimant and Respondent Maxcor settled.

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 denied in their entirety.
2. Any and all relief not specifically addressed herein 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	= \$2,000.00
Counterclaim 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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, P. Schoenfeld Asset Management, Inc. is a party.

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

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, Maxcor Financial, Inc. is a party.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

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, CRT Capital Group, LLC is a party.

Member surcharge	= \$2,800.00
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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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$ 900.00
Pre-hearing conferences: December 23, 2003 1 session	
February 19, 2004 1 session	
One (1) Pre-hearing session with Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: October 15, 2003 1 session	
Eight (8) Hearing sessions @ \$1,200.00	= \$ 9,600.00
Hearing Dates: March 4, 2004 2 sessions	
March 5, 2004 2 sessions	
April 1, 2004 2 sessions	
April 2, 2004 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$11,700.00

1. The Panel has assessed \$5,850.00 of the forum fees against Claimant.
2. The Panel has assessed \$5,850.00 of the forum fees against Respondent CRT.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 2,000.00
Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	<u>= \$ 5,850.00</u>
Total Fees	= \$16,400.00
<u>Less payments</u>	<u>= \$11,750.00</u>
Balance Due NASD Dispute Resolution	= \$ 4,650.00
2. Respondent CRT is solely liable for:

Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	<u>= \$ 5,850.00</u>
Total Fees	= \$14,400.00
<u>Less payments</u>	<u>= \$ 8,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 5,850.00

3. Respondent Maxcor is solely liable for:

Counterclaim filing fee	= \$ 500.00
<u>Member Fees</u>	<u>= \$7,000.00</u>
Total Fees	= \$7,500.00
<u>Less payments</u>	<u>= \$9,500.00</u>
Refund Due to Respondent Maxcor	= \$2,000.00

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

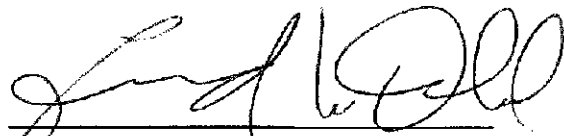
Judith R. MacDonald, Esq. - Non-Public Arbitrator, Presiding Chair  
Leonard M. Bakal, Esq. - Non-Public Arbitrator  
Andre Sharon - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

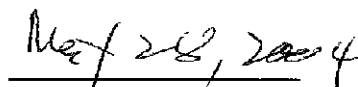
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

\_\_\_\_\_  
Judith R. MacDonald, Esq.  
Non-Public Arbitrator, Presiding Chairperson

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



\_\_\_\_\_  
Leonard M. Bakal, Esq.  
Non-Public Arbitrator

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

\_\_\_\_\_  
Andre Sharon  
Non-Public Arbitrator

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

\_\_\_\_\_  
JUNE 1, 2004

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Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Judith R. MacDonald, Esq.	-	Non-Public Arbitrator, Presiding Chair
Leonard M. Bakal, Esq.	-	Non-Public Arbitrator
Andre Sharon	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Judith R. MacDonald, Esq.  
Non-Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Leonard M. Bakal, Esq.  
Non-Public Arbitrator

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Signature Date



\_\_\_\_\_  
Andre Sharon  
Non-Public Arbitrator

June 9, 2004  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Judith R. MacDonald, Esq. - Non-Public Arbitrator, Presiding Chair  
Leonard M. Bakal, Esq. - Non-Public Arbitrator  
Andre Sharon - Non-Public Arbitrator

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Judith R. MacDonald  
Judith R. MacDonald, Esq.  
Non-Public Arbitrator, Presiding Chairperson

June 1, 2004  
Signature Date

Leonard M. Bakal, Esq.  
Leonard M. Bakal, Esq.  
Non-Public Arbitrator

Signature Date

Andre Sharon  
Andre Sharon  
Non-Public Arbitrator

Signature Date

JUNE 1, 2004

Date of Service (For NASD Dispute Resolution use only)