

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

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In the Matter of the Arbitration Between:

Kaveh S. Shahi and Leslie R. Shahi (Claimants) v. Ascend Financial Services, Inc. and  
Securian Financial Services, Inc. (Respondents)

Case Number: 03-01854

Hearing Site: Boston, Massachusetts

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Nature of the Dispute: Customers vs. Members.

**REPRESENTATION OF PARTIES**

Claimants Kaveh S. Shahi and Leslie R. Shahi ("The Shahis") hereinafter collectively referred to as "Claimants" appeared *pro se*.

Respondents Ascend Financial Services, Inc. ("Ascend") and Securian Financial Services, Inc. ("Securian") hereinafter collectively referred to as "Respondents":  
Rebecca L. Burnaugh, Esq., Sutherland Asbill & Brennan, LLP, Atlanta, GA.

**CASE INFORMATION**

Statement of Claim filed on or about: March 17, 2003.

Opposition to Respondents' Motion to Dismiss for Nonjoinder of Registered Representative filed on or about: July 22, 2003.

Claimants signed the Uniform Submission Agreement: March 14, 2003.

Joint Statement of Answer filed by Respondents on or about: June 30, 2003.

Joint Motion to Dismiss filed by Respondents on or about: June 30, 2003.

Respondent Securian signed the Uniform Submission Agreement: April 16, 2003.

Respondent Ascend did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: misrepresentation; suitability; negligence; breach of fiduciary duty; breach of contract; and omission of fact.  
Claimants' claim involved mutual funds.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of at least \$70,000.00 together with costs, fees, interest, and such further relief as may be appropriate. In their Opposition to Respondents' Motion to Dismiss for Nonjoinder of Registered Representative, Claimants requested that the motion be denied.

Respondents requested that the Panel reject Claimants' Statement of Claim in its entirety and order that all costs of this arbitration be borne by Claimants. In their Motion to Dismiss, Respondents requested that the Panel dismiss Claimants' Statement of Claim for failure to add an indispensable party.

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

Respondent Ascend 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.

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, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are jointly and severally liable for and shall pay to Claimants compensatory damages in the amount of \$7,761.10.
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	= \$225.00
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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, Securian Financial Services, Inc. is a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

**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 @ \$750.00	= \$ 750.00
Pre-hearing conference: December 1, 2003 1 session	

Two (2) Hearing sessions @ \$750.00	= \$1,500.00
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<u>Hearing Date:</u> April 27, 2004	<u>2 sessions</u>
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Total Forum Fees	= \$2,250.00
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1. The Panel has assessed \$1,125.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$1,125.00 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= \$1,125.00
Total Fees	= \$1,350.00
<u>Less payments</u>	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 375.00

2. Respondent Securian is solely liable for:

<u>Member Fees</u>	= \$3,550.00
Total Fees	= \$3,550.00
<u>Less payments</u>	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$1,125.00
Total Fees	= \$1,125.00
<u>Less payments</u>	= \$ 0.00

Balance Due NASD Dispute Resolution

= \$1,125.00


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

**ARBITRATION PANEL**

Peter J. Dale, Esq.	-	Public Arbitrator, Presiding Chair
Kevin J. Mulrey	-	Public Arbitrator
Todd A. O'Connor	-	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.

  
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Peter J. Dale, Esq.  
Public Arbitrator, Presiding Chairperson

5-12-04  
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Signature Date

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Kevin J. Mulrey  
Public Arbitrator

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

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Todd A. O'Connor  
Non-Public Arbitrator

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Signature Date

May 20, 2004  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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