

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

NFSC/FMIC IRA FBO Diane C. Bernier
and Diane Bernier

and

Case Number: 03-02886
Hearing Site: Detroit, Michigan

Respondents

Linsco/Private Ledger Corp.,
Securities America, Inc., Osman Minkara,
Derek A. Ross, Capital Investments Group, LLC,
and Continental Capital Investment Services, Inc.
a/k/a Skye Investments, Inc.

NATURE OF DISPUTE

Customer v. Members, Associated Persons, Non-Member and Terminated Member

REPRESENTATION OF PARTIES

NFSC/FMIC IRA FBO Diane C. Bernier and Diane C. Bernier ("Claimants") were represented by James Steffl, Esq., Law Office of James C. Steffl, Bingham Farms, Michigan.

Linsco/Private Ledger Corp. ("LPL") was represented by David J. Freniere, Esq., Linsco/Private Ledger Corp., Boston, Massachusetts.

Securities America, Inc. ("SAI") and Osman Minkara ("Minkara"), were represented by Dennis J. Levasseur, Esq., and Christine E. Ficks, Esq., Bodman LLP, Detroit, Michigan.

Derek A. Ross ("Ross") was represented by David A. Baugh, Esq., and Martin Q. Ryan, Esq., Mora, Baugh, Waitzman & Unger, L.L.C., Chicago, Illinois.

Capital Investments Group, LLC ("Capital") did not appear.

Continental Capital Investment Services, Inc. a/k/a Skye Investments, Inc. ("Continental") did not appear.

CASE INFORMATION

The Statement of Claim was filed on or about April 17, 2003. The Submission Agreement of NFSC/FMIC IRA FBO Diane C. Bernier was signed by Diane C. Bernier without date. The Submission Agreement of Diane C. Bernier was signed without date.

The Statement of Answer and Motion to Dismiss was filed by LPL on or about August 12, 2003. The Submission Agreement of LPL was signed on or about May 1, 2003, by Stephanie L. Brown, Managing Director and General Counsel.

The Statement of Answer and Motion to Dismiss was filed jointly by SAI and Minkara about July 18, 2003. The Submission Agreement of SAI was signed on or about July 8, 2003. The Submission Agreement of Minkara was signed on or about June 16, 2003.

The Statement of Answer and Motion to Dismiss was filed by Ross on or about June 17, 2003. The Submission Agreement of Ross was signed on or about June 10, 2003.

Capital Investments Group, LLC and Continental Capital Investment Services, Inc. a/k/a Skye Investments, Inc. did not submit Statements of Answer or Submission Agreements.

Claimant filed a Response to the Motions to Dismiss submitted by SAI, Minkara, Ross and LPL on or about March 1, 2004.

SAI and Minkara filed a Motion to Dismiss for Failing to Comply with March 2004, Order on or about April 26, 2004. Ross filed a renewed Motion to Dismiss and joined in Securities America's Motion to Dismiss on or about April 29, 2004. Claimant did not file a Response.

LPL filed a Motion to Dismiss on or about November 26, 2004. Claimant filed a Response to the Motion requesting a dismissal without prejudice on or about December 22, 2004. LPL filed a Response to Claimant's request for dismissal without prejudice on or about January 5, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitable trading; churning; breach of fiduciary duty; breach of duty of fair dealing; breach of contract; negligence; the "shingle" theory; failure to supervise; and controlling person liability/respondeat superior. The causes of action related to Claimant's allegations that Respondents Minkara and Ross "strong armed" Claimant into taking out a mortgage and that the return on the investment of funds received in the mortgage transaction would be larger than the mortgage payment. Claimant also asserted that her account was churned causing Claimant to incur unnecessary commissions and back end surrender fees in the transactions in various unspecified securities.

Unless specifically admitted in their Answer, SAI and Minkara denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant has failed, in whole or in part, to state a claim upon which relief can be granted; Claimant's claims are barred by the statute of limitations; and Claimant understood and willingly assumed the risks associated with the subject investments.

Unless specifically admitted in its Answer, LPL denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Claim fails to state a claim upon which relief can be granted and is otherwise barred by the applicable statute to limitations; LPL did not breach a fiduciary duty to Claimant; and all investment recommendations were suitable and authorized.

Unless specifically admitted in his Answer, Ross denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim fails to state a claim upon which relief can be granted; Claimant failed to mitigate her loss and/or damage, if any; and Claimant knew, understood and voluntarily assumed the risks of her investments and investment strategy and is therefore estopped or otherwise barred from recovery.

RELIEF REQUESTED

Claimant requested an award in the amount of \$250,000.00 in compensatory damages, plus \$250,000.00 in punitive/exemplary damages, attorneys' fees, costs, expenses, and other case-related costs.

LPL requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

SAI and Minkara requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

Ross requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Capital Investments Group, LLC is not an NASD Member Firm. Capital Investments Group, LLC did not voluntarily submit to NASD arbitration, nor was there a contract to arbitrate disputes with Capital presented. Therefore, Capital is not compelled by NASD rules to arbitrate disputes in this forum. In the absence of Capital's voluntary submission, NASD does not have jurisdiction over this party.

Continental Capital Investment Services, Inc. a/k/a Skye Investments, Inc. (Continental")

filed a voluntary petition in United States Bankruptcy Court on or about October 7, 2003, and arbitration of the claim against it is subject to an automatic stay. The Panel did not adjudicate any claims against Continental.

In its Order entered on or about March 8, 2004, the panel ordered Claimant to produce a more definite Statement of Claim within 30 days and comply with outstanding discovery in 30 days.

The panel granted the unopposed Motion to Dismiss for Failing to Comply with March 8, 2004 Order filed by Securities America and granted the unopposed Motion to Dismiss filed by Derek Ross in its order entered on or about June 9, 2004.

After consideration of LPL's Motion to Dismiss and Claimant's Response requesting that her claims be dismissed without prejudice, and LPL's further request for dismissal with prejudice, the panel dismisses LPL without prejudice.

AWARD

After considering the pleadings, and the requests and notions of the parties, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) *Claimant's claims, each and all, are dismissed without prejudice;*
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby dismissed without prejudice.

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 firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firms are Linsco/Private Ledger Corp., and Securities America, Inc.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

Adjournment Fees

Adjournments requested during these proceedings:

October 12-14, 2004, adjournment requested by Claimant	= \$ 1,125.00
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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:

Three (3) Pre-hearing sessions with Panel x \$1,125.00	= \$ 3,375.00
Pre-hearing conferences: February 2, 2004 1 session	
March 8, 2004 1 session	
October 14, 2004 1 session	
<hr/> Total Forum Fees	<hr/> = \$ 3,375.00

The Arbitration Panel has assessed \$3,375.00 of the forum fees to Diane C. Bernier.

Fee Summary

Claimant, Diane C. Bernier, is liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 1,125.00
Forum Fees	= \$ 3,375.00
<hr/> Total Fees	<hr/> = \$ 4,800.00
Less payments	= \$ 1,425.00
<hr/> Balance Due NASD Dispute Resolution	<hr/> = \$ 3,675.00

Respondent, Linsco/Private Ledger Corp., is liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent, Securities America, Inc., is liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

Barry Goldman, Esq. - Public Arbitrator, Presiding Chair
Robert L. Nichols, Sr. - Public Arbitrator
Keith J. Koerber - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Barry Goldman, Esq.
Barry Goldman, Esq.
Public Arbitrator, Presiding Chair

01/27/05
Signature Date

/s/ Robert L. Nichols, Sr.
Robert L. Nichols, Sr.
Public Arbitrator

01/27/05
Signature Date

/s/ Keith J. Koerber
Keith J. Koerber
Non-Public Arbitrator

01/27/05
Signature Date

01/27/05
Date of Service (For NASD office use only)

NASD Dispute Resolution
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Respondent, Linsco/Private Ledger Corp., is liable for:

<u>Member Fees</u>	= \$ 5,200.00
<u>Total Fees</u>	= \$ 5,200.00
<u>Less payments</u>	= \$ 5,200.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent, Securities America, Inc., is liable for:

<u>Member Fees</u>	= \$ 5,200.00
<u>Total Fees</u>	= \$ 5,200.00
<u>Less payments</u>	= \$ 5,200.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

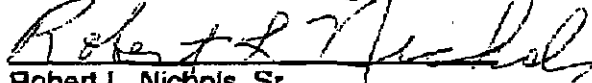
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 Keith J. Koerber - Non-Public Arbitrator

Concurring Arbitrators:

Barry Goldman, Esq.
 Public Arbitrator, Presiding Chair


 Robert L. Nichols, Sr.
 Public Arbitrator

Signature Date


 Signature Date

Keith J. Koerber
 Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

01/27/05 THU 15:05 FAX

NASD REGULATION

NASD Dispute Resolution
Arbitration No. 03-02886
Award Page 6 of 6

Respondent, Linsco/Private Ledger Corp., is liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent, Securities America, Inc., is liable for:

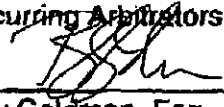
Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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Robert L. Nichols, Sr. - Public Arbitrator
Keith J. Koerber - Non-Public Arbitrator

Concurring Arbitrators:



Barry Goldman, Esq.
Public Arbitrator, Presiding Chair

1/27/05

Signature/Date

Robert L. Nichols, Sr.
Public Arbitrator

Signature Date

Keith J. Koerber
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 03-02886
Award Page 6 of 8

Respondent, Linsco/Private Ledger Corp., is liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent, Securities America, Inc., is liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

Barry Goldman, Esq. - Public Arbitrator, Presiding Chair
Robert L. Nichols, Sr. - Public Arbitrator
Keith J. Koerber - Non-Public Arbitrator

Concurring Arbitrators:

Barry Goldman, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Robert L. Nichols, Sr.
Public Arbitrator

Signature Date



Keith J. Koerber
Non-Public Arbitrator



Signature Date

Date of Service (For NASD office use only)