

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

David and Pamela Swanstrom, individually and as respective trustees for their retirement accounts, and David Swanstrom, as custodian for their daughter Lane Swanstrom, (Claimants) v. Summit Equities, Peter O'Neill, and Kevin Rex (Respondents)

Case Number: 03-02973

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimants, David Swanstrom ("D. Swanstrom"), Pamela Swanstrom ("P. Swanstrom"), David Swanstrom, as custodian for their daughter Lane Swanstrom ("D. Swanstrom Custodian") hereinafter collectively referred to as "Claimants": Richard D. De Vita, Esq., DeVita & Associates, Hoboken, NJ.

Respondents, Summit Equities ("Summit"), Peter O'Neill ("O'Neill") and Kevin Rex ("Rex"), hereinafter collectively referred to as "Respondents": Barry R. Temkin, Esq., Fiedelman Garfinkel & Lesman, formerly Jacobowitz, Garfinkel & Lesman, New York, NY.

CASE INFORMATION

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

Claimants signed the Uniform Submission Agreement: April 7, 2003.

Joint Statement of Answer filed by Respondents on or about: July 1, 2003.

Respondent Summit signed the Uniform Submission Agreement: July 28, 2003.

Respondent O'Neill signed the Uniform Submission Agreement: July 28, 2003.

Respondent Rex signed the Uniform Submission Agreement: July 28, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitable recommendations, negligence, breach of contract, breach of fiduciary duty, and failure to supervise. Claimants' claims involved AOL, EMC, AtHome, CMGI, Knight Trimark, Idex/Pilgrim Tech Fund; Pioneer Growth Fund; Warburg Pincus Japan Growth Fund (Class A) as well as other unspecified securities.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted the following defenses: The claimants were sophisticated investors, the purchases were ratified, the claims were barred by the applicable

statute of limitations, the subject accounts did not experience any decline beyond market losses, and, in fact, most of the Swanstroms' accounts appreciated in value, the accounts were well-diversified among various mutual funds.

RELIEF REQUESTED

Claimants requested an unspecified amount of compensatory damages; statutory interest; reasonable attorneys' fees and costs; punitive damages; and any other remedy that the Panel deems appropriate.

Respondents requested dismissal of the Statement of Claim in its entirety and expungement of their records before the Central Registration Depository (CRD).

OTHER ISSUES CONSIDERED AND DECIDED

On or about September 15, 2004, the parties notified NASD Dispute Resolution that they settled this matter.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for entry of an Award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. The parties have entered into a confidential settlement agreement resulting in the payment of a monetary amount which is less than the reportable threshold for disclosing a settlement to the NASD pursuant to NASD Code Section 3070 (a) (7).
2. The Claimants have dismissed all claims with prejudice against Respondents O'Neill, Rex, and Summit.
3. All other requests by Claimants for relief, including punitive damages, are hereby denied.
4. The Panel recommends the expungement of all reference to the above captioned arbitration from registration records maintained by the NASD Central Registration Depository ("CRD") with respect to Respondents Kevin Rex, Peter O'Neill, and Summit Equities, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Rex, O'Neill, and Summit must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. The statement of claim was filed prior to April 12, 2004, and the case is therefore not subject to amended NASD Rule 2130. However, even under the Amended Rule 2130, the Panel would recommend expungement based upon the

following factors:

- a. The total settlement amount was less than the reportable monetary threshold pursuant to NASD Code Section 3070 (a) (7).
- b. The individual named Respondents were not involved in forgery, theft, misappropriation, churning or conversion of funds.
- c. Both registered representatives, O'Neill and Rex, have no prior history of customer complaints and have never been sanctioned or disciplined by the NASD or any other regulatory body. They have not been previously named in a customer-initiated arbitration or lawsuit.
- d. Expungement would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements.

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	= \$250.00
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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 persons at the time of the events giving rise to the dispute. In this matter, Summit Equities is a party.

Member Surcharge	= \$1,500.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,200.00
Total Member Fees	= \$4,450.00

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$1,000.00
Total Fees	= \$1,250.00
Less payments	= \$1,250.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Pursuant to Rule 10332(f) of the NASD Code of Arbitration Procedure, NASD is retaining the total initial amount of the hearing session deposited by the Claimants because this office was

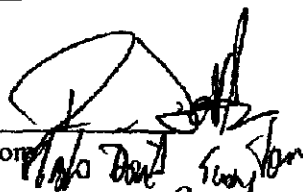
notified by the parties that they settled this matter within 8 business days of the first scheduled hearing.


2. Respondent Summit is solely liable for:


<u>Member Fees</u>	= \$4,450.00
<u>Total Fees</u>	= \$4,450.00
<u>Less payments</u>	= \$4,450.00
Balance Due NASD Dispute Resolution	= \$ 0.00

All balances are due and payable to NASD Dispute Resolution

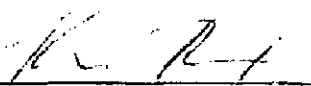
Parties' Signatures


David Swanstrom
Claimant



Signature Date


Pamela Swanstrom
Claimant

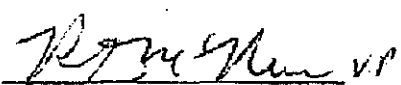

Signature Date


Kevin Rex
Respondent


Signature Date


Peter O'Neill
Respondent


Signature Date

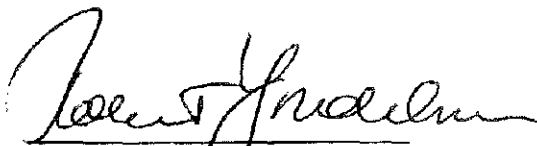

Summit Equities
Respondent


Signature Date

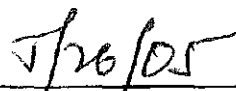
ARBITRATION PANEL

Robert Youdelman, Esq.	-	Public Arbitrator, Presiding Chair
Richard L. Muney	-	Public Arbitrator
Anthony P. Reres	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Robert Youdelman, Esq.
Public Arbitrator, Presiding Chair



Signature Date

Richard L. Muney
Public Arbitrator

Signature Date

Anthony P. Reres
Non-Public Arbitrator

Signature Date

JULY 6, 2005

Date of Service (For NASD office use only)

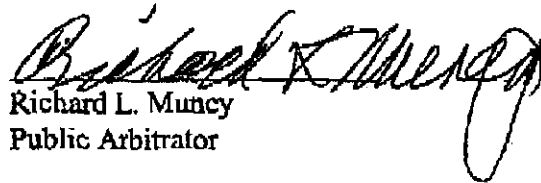
ARBITRATION PANEL

Robert Youdelman, Esq.	-	Public Arbitrator, Presiding Chair
Richard L. Muncy	-	Public Arbitrator
Anthony P. Reres	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Robert Youdelman, Esq.
Public Arbitrator, Presiding Chair

Signature Date


Richard L. Muncy
Public Arbitrator

7/27/05
Signature Date

Anthony P. Reres
Non-Public Arbitrator

Signature Date

JULY 6, 2005
Date of Service (For NASD office use only)

ARBITRATION PANEL

Robert Youdelman, Esq.	-	Public Arbitrator, Presiding Chair
Richard L. Muney	-	Public Arbitrator
Anthony P. Reres	-	Non-Public Arbitrator

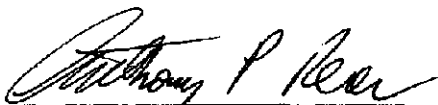
Concurring Arbitrators' Signatures

Robert Youdelman, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Richard L. Muney
Public Arbitrator

Signature Date



Anthony P. Reres
Non-Public Arbitrator

April 29, 2005 no changes
Signature Date

JULY 6, 2005

Date of Service (For NASD office use only)