

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimants

Charles and Carol Quenneville

and

03-03042  
Phoenix, Arizona

Name of Respondents

Berry-Shino Securities, Inc.  
Richard D. Sheneman

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

Charles and Carol Quenneville ("Claimants") were represented by Richard A. Nervig, Esq., Fallbrook, California.

Berry-Shino Securities, Inc. ("**Respondent Berry-Shino**") and Richard D. Sheneman ("**Respondent Sheneman**") were represented by Timothy Feil, Esq., Finkelstein & Feil, LLP, Garden City, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 25, 2003. Claimants' Motion to Preclude Answer Pursuant to Rule 10314(b)(2)(C) was filed on or about September 2, 2003. Reply in Support of their Motion to Preclude was filed on or about September 18, 2003. Submission Agreement of Claimant Charles and Carol Quenneville was signed on April 19, 2003.

Statement of Answer was filed by Respondents Berry-Shino Securities, Inc. and Richard D. Sheneman on or about September 11, 2003. Opposition to Claimant's Motion to Preclude was filed on or about September 18, 2003. Submission Agreement of Respondent Berry-Shino Securities, Inc. was signed by R. Matthew Shino.

### CASE SUMMARY

Claimants alleged that

The instant action involves the recommendation and sale of a single security. Said security involved a speculative \$100,000.00 promissory note issued by Life School College Preparatory which was recommended and sold to the Quennevilles on April 17, 2001. Besides being wholly unsuitable for the Quennevilles, respondents' sale of the security in question was further made via the use of misrepresentations and/or omissions of material fact in violation of A.R.S. §44-1991 of the Arizona Securities Act. The Quennevilles are asserting claims against Respondents based upon negligence, breach of fiduciary duty and for violations of the Arizona Securities Act.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated:

This arbitration presents another example of an all too common scenario: an investor who knowingly invests in the market now seeks a scapegoat for losses sustained as a result of agreed upon investment activity and adverse market forces. Claimant transferred his holdings from Berry-Shino to that of another brokerage firm with Richard Sheneman as his broker in August 2001, and the first payment under the note was not due until October 2001. Upon information and belief, Claimant maintained the Note at a different broker firm(s) before the first scheduled payment was due.

The facts will also show that Claimants were active participants in the market and were very experienced investors. In fact, Mr. Quenneville represented himself to be a real estate broker who frequently traded in securities. The purchase of the notes was suitable and consistent with Claimants' stated and recorded investment objectives, namely, "speculation" and "growth" for the account... Despite ample opportunity to do so, Claimants never complained to Berry-Shino that the purchase of the Notes were inappropriate, unsuitable, or that there were any problems with the handling of the account. It is significant for this panel to understand that Claimants are not alleging that the notes were purchased without their authorization. Notwithstanding, Respondents are being sued for the alleged losses that Claimant incurred, but fails to discern that such losses were due to overall market conditions and the unfortunate (but unpredictable) financial distress of the Debtor, and not any purported wrongdoing by that of Respondents.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of

- A. Actual damages in the amount of \$100,000; plus well managed account damages based upon the returns Claimants should have earned had their funds been invested suitably; plus, the illicit commissions generated by Sheneman in connection with the sales of the investments in question;
- B. As an alternative to actual damages, Claimants request rescissory relief pursuant to A.R.S. §44-2001 which includes an award of statutory interest, costs and reasonable attorneys' fees;
- C. Statutory interest, costs and reasonable attorneys' fees;
- D. Punitive damages due to Respondents' wanton, willful and malicious conduct in an amount to be determined by the panel.
- E. Any other relief the panel deems appropriate.

Respondents requested that the claims asserted against them be dismissed in all respects, including the claim for treble damages, which are not permitted by law, and that all disbursements and costs in defending this action be assessed against Claimants.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent Richard D. Sheneman did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration 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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Berry-Shino Securities, Inc. and Richard D. Sheneman shall be and hereby are jointly and severally liable for and shall pay to Claimants Charles and Carol Quenneville the sum of \$50,000.00 (**Fifty Thousand Dollars and No Cents**) as compensatory damages.
2. Respondents Berry-Shino Securities, Inc. and Richard D. Sheneman shall be and hereby are jointly and severally liable for and shall pay to Claimants Charles and Carol Quenneville the sum of \$4,000.00 (**Four Thousand Dollars and No Cents**) as costs.
3. Respondents Berry-Shino Securities, Inc. and Richard D. Sheneman shall be and hereby are jointly and severally liable for and shall pay to Claimants Charles and Carol Quenneville the sum of \$15,000.00 (**Fifteen Thousand Dollars and No Cents**) as attorneys' fees.
4. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
5. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

#### **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

##### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Berry-Shino Securities, Inc.

Member surcharge	\$ 1,100.00
Pre-hearing process fee	\$ 750.00
Hearing process fee	\$ 1,700.00
<b>Total Member Fees</b>	<b>\$ 3,550.00</b>

### **Adjournment Fees**

Adjournments requested during these proceedings:

Hearing Date(s), May 12-14, 2004, adjournment requested by Berry-Shino Securities, Inc. = \$750.00

### **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:

1	Pre-hearing session(s) with a single arbitrator	x	\$450.00	\$	450.00
	May 10, 2004	1	session		
1	Pre-hearing session(s) with Panel	x	750.00	\$	750.00
	November 3, 2003	1	session		
7	Hearing sessions	x	750.00	\$	5,250.00
	June 15, 2004	2	sessions		
	June 16, 2004	3	sessions		
	June 23, 2004	2	sessions		
	Total Forum Fees			\$	<u>6,450.00</u>

The Arbitration Panel has assessed \$2,580.00 of the forum fees to Charles and Carol Quenneville.

The Arbitration Panel has assessed \$3,870.00 of the forum fees jointly and severally to Berry-Shino Securities, Inc. and Richard D. Sheneman.

### **Fee Summary**

Claimants, Charles and Carol Quenneville shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$	225.00
<u>Forum Fees</u>	= \$	<u>2,580.00</u>
Total Fees	= \$	2,805.00
<u>Less payments</u>	= \$	<u>-1,425.00</u>
Balance Due NASD Dispute Resolution	= \$	1,380.00

Respondent, Berry-Shino Securities, Inc., shall be and hereby is liable for:

Member Fees	= \$	3,550.00
Adjournment Fee	= \$	750.00
Total Fees	= \$	4,300.00
<u>Less payments</u>	= \$	-3,550.00
Balance Due NASD Dispute Resolution	= \$	750.00

Respondents, Berry-Shino Securities, Inc. and Richard D. Sheneman, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$	3,870.00
Total Fees	= \$	3,870.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	3,870.00

All balances are due to NASD Dispute Resolution

**ARBITRATION PANEL**

Robert S Mautner, Esq. - Public Arbitrator, Presiding Chair  
Howard W. Shannon - Public Arbitrator  
Lehman W. Williams - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Robert S. Mautner  
Robert S Mautner, Esq.  
Public Arbitrator, Presiding Chair

July 1, 2004  
Signature Date

/s/ Howard W. Shannon  
Howard W. Shannon  
Public Arbitrator

July 1, 2004  
Signature Date

/s/ Lehman W. Williams  
Lehman W. Williams  
Non-Public Arbitrator

June 30, 2004  
Signature Date

NASD Dispute Resolution  
Arbitration No: 03-03042  
Award Page 4 of 6

Respondent, Berry-Shino Securities, Inc., shall be and hereby is liable for:

Member Fees	= \$	3,150.00
Adjournment Fee	= \$	750.00
Total Fees	= \$	4,300.00
Less payments	= \$	-3,550.00
Balance Due NASD Dispute Resolution	= \$	750.00

Respondents, Berry-Shino Securities, Inc. and Richard D. Sheneman, shall be and hereby are jointly and severally liable for:

Forum Fees	= \$	3,870.00
Total Fees	= \$	3,870.00
Less payments	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	3,870.00

All balances are due to NASD Dispute Resolution

**ARBITRATION PANEL**

Robert S Mautner, Esq. - Public Arbitrator, Presiding Chair  
Howard W. Shannon - Public Arbitrator  
Lehman W. Williams - Non-Public Arbitrator

Concurring Arbitrators:

Robert S Mautner Esq  
Robert S Mautner, Esq.  
Public Arbitrator, Presiding Chair

July 1, 2004  
Signature Date

\_\_\_\_\_  
Howard W. Shannon  
Public Arbitrator

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

\_\_\_\_\_  
Lehman W. Williams  
Non-Public Arbitrator

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

NASD Dispute Resolution  
Arbitration No. 03-03042  
Award Page 6 of 6

Respondent, Berry-Shino Securities, Inc., shall be and hereby is liable for:

Member Fees	= \$	3,550.00
Adjournment Fee	= \$	750.00
Total Fees	= \$	4,300.00
Less payments	= \$	-3,550.00
Balance Due NASD Dispute Resolution	= \$	750.00

Respondents, Berry-Shino Securities, Inc. and Richard D. Sheneman, shall be and hereby are jointly and severally liable for:

Forum Fees	= \$	3,870.00
Total Fees	= \$	3,870.00
Less payments	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	3,870.00


All balances are due to NASD Dispute Resolution

**ARBITRATION PANEL**

Robert S Mautner, Esq. - Public Arbitrator, Presiding Chair  
Howard W. Shannon - Public Arbitrator  
Lehman W. Williams - Non-Public Arbitrator

Concurring Arbitrators:

Robert S Mautner, Esq.  
Public Arbitrator, Presiding Chair

  
Howard W. Shannon  
Public Arbitrator

Lehman W. Williams  
Non-Public Arbitrator

Signature Date

  
Signature Date

Signature Date



ATT: ED ANDERSON

NASD Dispute Resolution  
Arbitration No 03-03042  
Award Page 4 of 6

Respondent, Berry-Shino Securities, Inc., shall be and hereby is liable for:

Member Fees	= \$	3,550.00
Adjournment Fee	= \$	750.00
Total Fees	= \$	4,300.00
Less payments	= \$	-3,550.00
Balance Due NASD Dispute Resolution	= \$	750.00

Respondents, Berry-Shino Securities, Inc. and Richard D. Sheneman, shall be and hereby are jointly and severally liable for:

Forum Fees	= \$	3,870.00
Total Fees	= \$	3,870.00
Less payments	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	3,870.00

All balances are due to NASD Dispute Resolution

**ARBITRATION PANEL**

Robert S. Maurer, Esq. - Public Arbitrator, Presiding Chair  
Howard W. Shannon - Public Arbitrator  
Lehman W. Williams - Non-Public Arbitrator

Concurring Arbitrators:

Robert S. Maurer, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

Howard W. Shannon  
Public Arbitrator

Signature Date

Lehman W. Williams  
Lehman W. Williams  
Non-Public Arbitrator

06-30-2004  
Signature Date