

## **Stipulated Award NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

Gloria Fink  
Estate of Izak Fink

Case Number: 03-08252

Names of the Respondents

Sands Brothers & Co., Ltd.  
SSI Securities, Inc. f/k/a Shochet  
Securities, Inc.  
Leila Kay Shuminer

Hearing Site: Boca Raton, Florida

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

### **REPRESENTATION OF PARTIES**

For Gloria Fink ("Fink") and Estate of Izak Fink, hereinafter referred to as "Claimants":  
Curtis Carlson, Esq., Carlson & Lewittes, P.A., Miami, Florida.

For Sands Brothers & Co., Ltd. ("Sands"): N. Sandy Konigsberg, Esq., N. Sandy  
Konigsberg, P.A., Coral Springs, Florida.

For Leila Kay Shuminer ("Shuminer"): Jeffrey Tew, Esq., Tew Cardenas, LLP, Miami,  
Florida.

SSI Securities, Inc. f/k/a Shochet Securities, Inc. ("SSI"), a terminated NASD member,  
did not appear.

### **CASE INFORMATION**

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

Claimant Fink signed the Uniform Submission Agreement on: November 15, 2003.

Answer to Statement of Claim and First Discovery Request filed by Respondent Sands  
on or about: February 23, 2004.

Statement of Answer filed by Respondent Shuminer on or about: March 1, 2004.

Respondent Shuminer signed the Uniform Submission Agreement on: May 14, 2004.

Amended Statement of Claim filed by Claimants on or about: July 7, 2004.

Respondent Sands did not file an executed Uniform Submission Agreement.

### **CASE SUMMARY**

Claimants asserted the following causes of action: 1) breach of fiduciary duty; 2)  
negligence; 3) gross negligence; 4) churning; 5) unauthorized trading; 6) unsuitability;  
and, 7) failure to supervise. The causes of action relate to Claimants' investment in

common stock including, but not limited to, Consecro, Inc., Avnet, Inc., Motorola, Inc., Unisys Corp., Micron Technology, Inc., and Yahoo, Inc.

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

### **RELIEF REQUESTED**

Claimants requested: 1) compensatory damages in the amount of \$600,000.00; 2) unspecified punitive damages; 3) expert witness fees and costs; and 4) attorneys' fees.

Respondent Sands requested that the Panel dismiss the Statement of Claim in its entirety.

Respondent Shuminer requested that the Panel: 1) dismiss the Statement of Claim in its entirety; 2) award Respondent Shuminer the costs of this proceeding; 3) assess all forum fees against Claimants; and 4) award such other and further relief as the Panel deems just and proper.

No responses were submitted to the Amended Statement of Claim.

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

Respondent Sands did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code"), and is bound by the determination of the Panel on all issues submitted.

Claimants asserted claims against a terminated NASD member SSI whose submission to the jurisdiction of the NASD Dispute Resolution was voluntary. The terminated NASD member, SSI, did not appear.

No responses to the Amended Statement of Claim were filed.

On or about August 18, 2004, the Panel entered an order wherein it accepted Claimants' Amended Statement of Claim.

On or about July 19, 2006, the parties notified NASD Dispute Resolution that the parties settled this matter and requested a Stipulated Award.

On or about August 3, 2006, the parties submitted a Joint Motion for the Entry of a Stipulated Award. On or about August 9, 2006 the Panel granted the motion.

SSI did not appear in this proceeding and the claims made by Claimants against SSI are dismissed without prejudice.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated 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 a motion of the parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. Shuminer shall pay Fink the sum total of \$84,000.00. \$10,000.00 shall be paid by July 21, 2006; \$40,000.00 shall be paid by July 31, 2006; and the balance of \$34,000.00 shall be paid over a 24 month period with payments commencing on September 1, 2006. The \$34,000.00 shall be paid in 23 equal monthly installments of \$1,425.00 due on the first of each month with the 24<sup>th</sup> payment to be made in the amount of \$1,225.00. The payments shall be subject to a 10 day grace period. In the event of (i) a default in the timely payment of any amount due by Shuminer to Fink, or (ii) Shuminer's institution of or consent to a bankruptcy, insolvency or equivalent state law proceeding or the appointment of a trustee, assignee, or receiver over her property or an assignment for the benefit of creditors, Fink shall have the immediate right to enforce a consent judgment dated as of the date of this award in her favor against Shuminer in the amount of \$339,000.00 with Shuminer receiving a credit for any payments previously received by Fink from Shuminer.

2. Sands shall pay Fink the sum total of \$25,000.00. \$15,000.00 shall be paid by Sands on or before August 20, 2006 and an additional \$10,000.00 shall be paid by Sands on or before September 20, 2006. The payments shall be subject to a 10 day grace period. In the event of (i) a default in the timely payment of any amount due by Sands to Fink, or (ii) Sands' institution of or consent to a bankruptcy, insolvency or equivalent state law proceeding or the appointment of a trustee, assignee, or receiver over its property or an assignment for the benefit of creditors, Fink shall have the immediate right to enforce a consent judgment dated as of the date of this Stipulated Award in her favor against Sands in the amount of \$50,000.00 with Sands receiving a credit for any payments previously received by Fink from Sands.

3. All payments due pursuant to this Stipulated Award shall be made payable to the Carlson & Lewittes, P.A. Trust Account c/o Carlson & Lewittes, P.A., One S.E. Third Avenue, Suite 1200, Miami, Florida 33131.

4. Shuminer and Sands have or shall provide affidavits or declarations identifying their respective financial conditions to Fink. The parties acknowledge and have agreed that the settlement reached was predicated upon the accuracy and truthfulness of representations made by Shuminer and Sands as to their respective financial conditions.

5. In entering into the settlement, neither Shuminer nor Sands admits to any fault or wrongdoing.

6. Shuminer's settlement with Fink is not dependent upon Sands fulfillment of its obligations. Likewise, Sand's settlement with Fink is not dependent upon Shuminer's fulfillment of her obligations.

7. Fink shall execute a general release in favor of Shuminer to be held by Carlson & Lewittes, P.A. in escrow pending Shuminer's payment of all amounts due pursuant to this Stipulated Award. After receipt of all such payments, the general release shall be delivered to Shuminer.

8. Fink shall execute a general release in favor of Sands to be held by Carlson & Lewittes, P.A. in escrow pending Sand's payment of all amounts due pursuant to this Stipulated Award. After receipt of all such payments, the general release shall be delivered to Sands.

9. The parties agree that this Stipulated Award/Judgment shall be enforceable by the courts of the State of Florida and shall be governed by Florida law without regard to conflicts of law. The parties have stipulated their consent to personal and subject matter jurisdiction by such courts. The prevailing party in any such action shall be entitled to her/its reasonable attorney fees.

10. Each party shall bear its own costs and expenses associated with the above-referenced arbitration provided.

11. Any and all relief not specifically addressed herein is denied except for any claims made by Fink against SSI. Such claims are 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	= \$ 375.00
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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 firms that employed the associated person at the time of the events giving rise to the dispute. Respondent Sands is not presently a member firm of NASD. However, Respondent Sands was a member firm at the time of the events giving rise to the dispute and is a party in these proceedings. Accordingly, the following member fees are assessed to Respondent Sands:

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00
Total Member Fees	= \$7,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during these proceedings.

**Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

There were no injunctive relief fees assessed during these proceedings.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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 a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: November 15, 2004	1 session
Two (2) Pre-hearing sessions with Panel @ \$1,200.00/session	= \$2,400.00
Pre-hearing conferences: June 16, 2004	1 session
February 8, 2005	1 session
<hr/> Total Forum Fees	<hr/> = \$2,850.00

The Panel has assessed \$1,425.00 of the forum fees to Claimants, jointly and severally.

The Panel has assessed \$1,425.00 of the forum fees to Respondents, jointly and severally.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$1,425.00

Total Fees	= \$1,800.00
<u>Less payments</u>	<u>= \$1,575.00</u>
Balance Due NASD Dispute Resolution	= \$ 225.00

Respondent Sands is solely liable for:

<u>Member Fees</u>	<u>= \$7,000.00</u>
Total Fees	= \$7,000.00
<u>Less payments</u>	<u>= \$7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Sands and Shuminer are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$1,425.00</u>
Total Fees	= \$1,425.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$1,425.00

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

**ARBITRATION PANEL**

Gloria O. North, Esq.	-	Public Arbitrator, Presiding Chairperson
Burt R. Rose	-	Public Arbitrator
John C. Newsom	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Gloria O. North, Esq.  
Public Arbitrator, Presiding Chairperson

August 15, 2006  
Signature Date

/s/  
Burt R. Rose  
Public Arbitrator

August 14, 2006  
Signature Date

/s/  
John C. Newsom  
Non-Public Arbitrator

August 15, 2006  
Signature Date

August 15, 2006  
Date of Service (For NASD Dispute Resolution office use only)

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Gloria O. North

Gloria O. North, Esq.  
Public Arbitrator, Presiding Chairperson

8-15-06  
Signature Date

Burt R. Rose  
Public Arbitrator

Signature Date

John C. Newsom  
Non-Public Arbitrator

Signature Date

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Public Arbitrator, Presiding Chairperson

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

Burt R. Rose  
Burt R. Rose  
Public Arbitrator

08/14/06  
Signature Date

\_\_\_\_\_  
John C. Newsom  
Non-Public Arbitrator

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Signature Date

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Date of Service (For NASD Dispute Resolution office use only)



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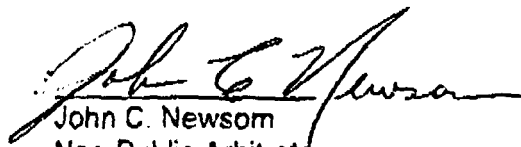
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Public Arbitrator, Presiding Chairperson

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Signature Date

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