

---

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

---

In the Matter of the Arbitration Between:

Name of the Claimant  
Patrick Diesu

Case Number: 04-03101

Names of the Respondents

Hearing Site: Orlando, Florida

Rocco Spaccio  
Sunpoint Asset Managers, Inc. d/b/a Sunpoint Asset Management, Inc.  
LaSalle Street Securities, L.L.C.

---

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

**REPRESENTATION OF PARTIES**

For Patrick Diesu, hereinafter referred to as "Claimant": Allan P. Whitehead, Esq., Frese, Nash & Hansen, P.A., Melbourne, Florida.

For Respondent LaSalle Street Securities, L.L.C. ("LaSalle Street"): James E. Judge, Esq., Vanasco, Genelly & Miller, Chicago, Illinois.

For Respondents Rocco Spaccio ("Spaccio") and Sunpoint Asset Managers, Inc. d/b/a Sunpoint Asset Management, Inc. ("Sunpoint"): Respondent Spaccio.

**CASE INFORMATION**

Statement of Claim filed on or about: April 22, 2004.

Claimant signed the Uniform Submission Agreement: March 12, 2004.

Statement of Answer and Counterclaim filed by Respondent LaSalle Street on or about: July 2, 2004.

Respondent LaSalle Street signed the Uniform Submission Agreement on or about: July 15, 2004.

Statement of Answer and Counterclaim filed jointly by Respondents Spaccio and Sunpoint on or about: July 12, 2004.

Respondent Spaccio signed the Uniform Submission Agreement: July 9, 2004.

Respondent Sunpoint did not file an executed Uniform Submission Agreement.

Closing Argument filed by Respondents Spaccio and Sunpoint on or about: January 8, 2006.

Closing Argument filed by Respondent LaSalle Street on or about: January 13, 2006.

Closing Argument filed by Claimant on or about: January 16, 2006.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; negligence; common law fraud; and, violation of Florida Statute 517.301 (2001). The causes of action relate to the following: the sale of various unspecified equities from Claimant's account and the purchase in their place of

two unspecified variable annuities; and, short term trading in Claimant's account of various unspecified equities, some of which were purchased on margin.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses. Additionally, Respondents asserted counterclaims for punitive or exemplary damages.

### **RELIEF REQUESTED**

Claimant requested: compensatory damages in the amount of \$200,000.00; punitive damages in the amount of \$800,000.00; interest; attorneys' fees pursuant to Fla. Stat. 517.211(6); and, the costs of this action.

Respondent LaSalle Street requested that Claimant take nothing and further requested that the Panel: dismiss any and all claims against Respondent LaSalle Street; recommend the expungement, pursuant to NASD Rule 2130(1) or (3), of all references to Claimant's claims or this arbitration proceeding from the NASD Central Registration Depository ("CRD") records of Respondent LaSalle Street; award Respondent LaSalle Street its actual costs for defending this action, including attorneys' fees, in an amount to be determined at the hearing; award Respondent LaSalle Street punitive or exemplary damages in an amount to be determined, but no less than twice the reasonable value of its costs and attorneys' fees for this arbitration; and, award such other and further relief, as deemed just and proper.

Respondents Spaccio and Sunpoint requested that Claimant take nothing and further requested that the Panel: dismiss any and all claims against Respondents Spaccio and Sunpoint; recommend the expungement, pursuant to NASD Rule 2130(1) or (3), of all references to Claimant's claims or this arbitration proceeding from the NASD CRD records of Respondent Spaccio; award Respondents Spaccio and Sunpoint their actual costs for defending this action, including attorneys' fees, in an amount to be determined at the hearing; award Respondents Spaccio and Sunpoint punitive or exemplary damages in an amount to be determined, but no less than twice the reasonable value of their costs and attorneys' fees for this arbitration; and, award such other and further relief, as deemed just and proper.

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

Respondent Sunpoint is a non-member of NASD. However, pursuant to the Order Compelling Arbitration issued on January 21, 2004 by the Circuit Court of the Eighteenth Judicial Circuit, in and for Brevard County, Florida, Respondent Sunpoint was compelled to participate in this arbitration proceeding. Additionally, Respondent Sunpoint filed a Statement of Answer. Therefore, Respondent Sunpoint is bound by all determinations made by the Panel.

At the conclusion of the evidentiary hearings, the Panel ordered the parties to file written closing arguments no later than January 16, 2006.

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**

After considering the pleadings and the testimony and evidence presented at the hearing, as well as the post-hearing submissions filed by the parties, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondents are jointly and severally liable on the claims of breach of fiduciary duty and negligence and shall pay to Claimant compensatory damages in the amount of \$56,200.00, inclusive of all costs and pre-judgment interest.

The Panel does not find that Respondent Spaccio falsified, altered and forged documents, as alleged, nor did Respondent Spaccio trade on margin without disclosing so to Claimant. Further, the Panel does not find that Respondents LaSalle Street and Sunpoint initiated and executed margin trading without disclosing to Claimant the risks inherent in margin trading and having Claimant review and execute required margin disclosure statements.

Respondent LaSalle Street's counterclaim is denied in its entirety.

Respondents Spaccio and Sunpoint's counterclaims are denied in their entirety.

Each party shall bear their own attorneys' fees.

Any and all claims for relief not specifically addressed herein, including Claimant's claim for relief pursuant to Chapter 517.301 of the Florida Statutes, the parties' respective requests for punitive damages, and Respondents LaSalle Street and Spaccio's respective requests for expungement, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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
Respondent LaSalle Street's Counterclaim filing fee	= \$ 500.00
Respondents Spaccio and Sunpoint's Counterclaim filing fee	= \$ 250.00

#### **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, Respondent LaSalle Street is a member firm and a party.

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

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

June 28, 29, and 30, 2005; adjournment by Claimant. = \$1,200.00

The Panel has assessed the total adjournment fee of \$1,200.00 to Claimant.

**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:

The Panel has assessed the total three-day cancellation fee of \$300.00 to Claimant.

**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. A 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:

One (1) Pre-hearing session with the Panel @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference: September 29, 2004 1 session	
One (1) Pre-hearing session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: April 8, 2005 1 session	
One (1) Decision on a discovery-related motion by a single arbitrator @ \$200.00	= \$ 200.00
Eight (8) Hearing sessions @ \$1,200.00/session	= \$9,600.00
Hearing Dates: December 19, 2005 2 sessions	
December 20, 2005 3 sessions	
December 21, 2005 3 sessions	
<hr/> Total Forum Fees	<hr/> = \$11,450.00

The Panel has assessed forum fees of \$5,725.00 to Claimant.

The Panel has assessed forum fees of \$5,725.00 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 assessed during these proceedings.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
Adjournment Fee	= \$ 1,200.00
Three-day Cancellation Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 5,725.00
Total Fees	= \$ 7,600.00
<u>Less payments</u>	= \$ 3,240.80
Balance Due NASD Dispute Resolution	= \$ 4,359.20

Respondent LaSalle Street is solely liable for:

Member Fees	= \$ 7,000.00
<u>Counterclaim Filing Fee</u>	= \$ 500.00
Total Fees	= \$ 7,500.00
<u>Less payments</u>	= \$ 7,465.80
Balance Due NASD Dispute Resolution	= \$ 34.20

Respondents Spaccio and Sunpoint are jointly and severally liable for:

<u>Counterclaim Filing Fee</u>	= \$ 250.00
Total Fees	= \$ 250.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 250.00

Respondents LaSalle Street, Spaccio and Sunpoint are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 5,725.00
Total Fees	= \$ 5,725.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 5,725.00

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

**ARBITRATION PANEL**

Richard J. Fuller, CPA	-	Public Arbitrator, Presiding Chairperson
John P. Cullem, Esq.	-	Public Arbitrator
Robert S. Natiss	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Richard J. Fuller, CPA  
Public Arbitrator, Presiding Chairperson

January 26, 2006  
Signature Date

/s/  
John P. Cullem, Esq.  
Public Arbitrator

January 27, 2006  
Signature Date

/s/  
Robert S. Natiss  
Non-Public Arbitrator

January 26, 2006  
Signature Date

January 27, 2006  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

Arbitration No. 04-03101

Award Page 5 of 6**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
Adjournment Fee	= \$ 1,200.00
Three-day Cancellation Fee	= \$ 300.00
Forum Fees	= \$ 5,725.00
<u>Total Fees</u>	= \$ 7,600.00
<u>Less payments</u>	= \$ 3,240.80
Balance Due NASD Dispute Resolution	= \$ 4,359.20

Respondent LaSalle Street is solely liable for:

Member Fees	= \$ 7,000.00
Counterclaim Filing Fee	= \$ 500.00
<u>Total Fees</u>	= \$ 7,500.00
<u>Less payments</u>	= \$ 7,465.80
Balance Due NASD Dispute Resolution	= \$ 34.20

Respondents Spaccio and Sunpoint are jointly and severally liable for:

Counterclaim Filing Fee	= \$ 250.00
<u>Total Fees</u>	= \$ 250.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 250.00

Respondents LaSalle Street, Spaccio and Sunpoint are jointly and severally liable for:

Forum Fees	= \$ 5,725.00
<u>Total Fees</u>	= \$ 5,725.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 5,725.00

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

**ARBITRATION PANEL**

Richard J. Fuller, CPA

John P. Cullen, Esq.

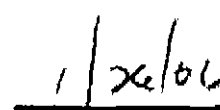
Robert S. Natiss

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**


Richard J. Fuller, CPA

Public Arbitrator, Presiding Chairperson



Signature Date

John P. Cullen, Esq.

Public Arbitrator

Signature Date

Jan. 26. 2006 9:29AM Resolution

Arbitration No. 04-03101

Award Page 5 of 6

No. 0420 P. 6

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
Adjournment Fee	= \$ 1,200.00
Three-day Cancellation Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 5,725.00
<u>Total Fees</u>	= \$ 7,600.00
<u>Less payments</u>	= \$ 3,240.80
Balance Due NASD Dispute Resolution	= \$ 4,359.20

Respondent LaSalle Street is solely liable for:

Member Fees	= \$ 7,000.00
<u>Counterclaim Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 7,500.00
<u>Less payments</u>	= \$ 7,465.80
Balance Due NASD Dispute Resolution	= \$ 34.20

Respondents Spaccio and Sunpoint are jointly and severally liable for:

<u>Counterclaim Filing Fee</u>	= \$ 250.00
<u>Total Fees</u>	= \$ 250.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 250.00

Respondents LaSalle Street, Spaccio and Sunpoint are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 5,725.00
<u>Total Fees</u>	= \$ 5,725.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 5,725.00

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

**ARBITRATION PANEL**

Richard J. Fuller, CPA	-	Public Arbitrator, Presiding Chairperson
John P. Cullem, Esq.	-	Public Arbitrator
Robert S. Natiss	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Richard J. Fuller, CPA  
Public Arbitrator, Presiding Chairperson

Signature Date

John P. Cullem, Esq.

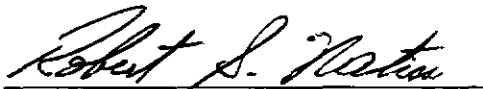
Signature Date



NASD Dispute Resolution

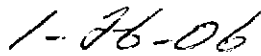
Arbitration No. 04-03101

Award Page 6 of 6



Robert S. Natiss

Non-Public Arbitrator



Signature Date

---

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