
**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimants

Penny L. and Robert E. Bollinger,
Lynda M. Arnold and Daniel Arnold

Case Number: 04-05147

Name of the Respondents

David M. Rieck and SII Investments, Inc.

Hearing Site: St. Louis, Missouri

Nature of the Dispute: Customers vs. Associated Person and Member Firm

REPRESENTATION OF PARTIES

Claimants, Penny L. and Robert E. Bollinger (the "Bollingers"), Lynda M. Arnold and Daniel Arnold (the "Arnolds"), hereinafter collectively referred to as "Claimants": Gregory H. Wolk, Esq. of Berg Borgmann Wilson & Wolk, LLC, located in St. Louis, Missouri.

Respondent, David M. Rieck, hereinafter referred to as "Respondent Rieck": Charles A. James, Esq. located in Ferguson, Missouri.

Respondent, SII Investments, Inc., hereinafter referred to as "Respondent SII": Eric Martin, Esq. and Carrie J. Bechtold, Esq. of Blackwell Sanders Peper Martin, located in St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on July 16, 2004. Claimants Bollingers and Arnolds jointly signed the Uniform Submission Agreement on June 4, 2004 and May 26, 2004, respectively.

Statement of Answer filed by Respondent SII filed on November 17, 2004. SII signed the Uniform Submission Agreement on September 20, 2004.

Statement of Answer filed by Respondent Rieck on January 26, 2005. Rieck signed the Uniform Submission Agreement on January 26, 2005.

Respondent SII filed a Motion to Dismiss on November 17, 2004. Claimants filed a Response on December 7, 2004. SII filed a Reply to Claimants' Response on December 28, 2004, and Claimants' filed a Sur-Response to SII's Motion to Dismiss on December 31, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: misrepresentations, fraud, unsuitability and failure to supervise. The causes of action relate to Unitas, Inc. stock. Claimants asserted that

Unitas was an unsuitable investment for the Claimants and that SII failed to monitor the actions of Respondent Rieck.

Unless specifically admitted in its Answer, Respondent SII denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimants have failed to state a claim upon which relief can be granted.
2. Claimants have failed to mitigate their damages, if any, and therefore, Claimants are barred from recovering in this action any such damages as could have been prevented had Claimants acted properly to mitigate such damages.
3. Claimants' alleged damages, if any, were caused by superseding and intervening cause over which SII Investments had no control.
4. Claimants' claims are barred in whole and in part by the doctrines of waiver, estoppel, ratification and laches.
5. Claimants' claims are barred by the applicable statute of limitations.
6. The damages, if any, of Claimants were caused by the acts or omissions of third parties over which SII Investments had no control.
7. The investment at issue was a suitable investment for Claimants in that Claimants are accredited investors and the investment is exempt from registration under § 4(2) of the Securities Act of 1933 (Regulation D), the intrastate exemption of § 3(b)(11) of the Securities Act of 1933, and/or Missouri's first twenty-five persons exemption as provided in R.S. Mo. § 409.402.
8. SII Investments did not know and in the exercise of reasonable care could not have known of the existence of the facts upon which the Claimants base their claims of liability and, therefore, Claimants' claims are barred.
9. The damages, if any, sustained by Claimants were caused, in whole or in part, as a direct and proximate result of the negligence and/or fault of Claimants.
10. Claimants failed to state a claim for punitive damages and in any event, Claimants are barred from recovering punitive damages since any award of punitive damages would violate SII's constitutional rights under the Due Process Clause of the Fourteenth Amendment and Excessive Penalties Clause of the Eighth Amendment to the United States Constitution.
11. Claimants' claims are barred by the doctrine of *in pari delicto*.

Unless specifically admitted in its Answer, Respondent Rieck denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimants have failed to state a claim upon which relief can be granted.
2. Claimants have failed to mitigate their damages, if any, and therefore, Claimants are barred from recovering in this action any such damages as could have been prevented had Claimants acted properly to mitigate such damages.
3. Claimants' alleged damages, if any, were caused by superseding and intervening cause over which Rieck and Unitas had no control.
4. Claimants' claims are barred in whole or in part by the doctrines of waiver, estoppel, ratification and laches.
5. Claimants' claims are barred by the applicable statute of limitations.
6. The investment at issue was a suitable investment for Claimants in that Claimants are accredited investors and the investment is exempt from registration under

Section 4(2) of the Securities Act of 1933 (Regulation D), the intrastate exemption of Section 3(b)(11) of the Securities Act of 1933 and/or Missouri's first twenty-five exemption as provided in R.S.Mo. Section 409.402.

7. The damages, if any sustained by Claimants were caused, in whole or in part, as a direct and proximate result of the negligence and/or fault of Claimants.
8. Claimants failed to state a claim for punitive damages and in any event, Claimants are barred from recovering punitive damages since any award of punitive damages would violate Respondent's rights under the Due Process Clause of the Fourteenth Amendment and Excessive Penalties Clause of the Eighth Amendment to the United States Constitution.

RELIEF REQUESTED

Claimants requested \$538,250.00 in total compensatory damages; \$100,000.00 in punitive damages; for costs, attorney's fees and for such further and other equitable relief as the Panel deems just and proper.

Respondents SII Investments, Inc. and David M. Rieck requested dismissal of the Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

During the hearing on August 23, 2005, the Panel addressed the pending Motion to Dismiss filed by SII. The Panel allowed parties to make arguments on SII Investment's Motion to Dismiss. In addition to its Motion to Dismiss, SII further moved for directed verdict. After review of the pleadings and hearing testimony and arguments presented by the parties, the Panel granted SII's motion for dismissal and directed verdict.

Further, during the hearing on August 23, 2005, Respondent David Rieck made an oral motion for directed verdict. After hearing testimony and arguments presented by the parties, the Panel denied Rieck's motion.

On the final day of hearing, the remaining parties informed the Panel that Claimants have dismissed Respondent Rieck with prejudice in 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

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

1. Pursuant to the Panel's ruling on Respondent SII's Motion to Dismiss, any and all claims asserted by Claimants, Penny L. and Robert E. Bollinger, Lynda M. Arnold and Daniel Arnold, against Respondent SII Investments, Inc. are dismissed with prejudice.
2. Pursuant to Claimant's dismissal of remaining Respondent, David M. Rieck, any and all claims asserted by Claimants, Penny L. and Robert E. Bollinger,

Lynda M. Arnold and Daniel Arnold, against Respondent David M. Rieck are dismissed with prejudice.

3. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
4. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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

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, SII Investments, Inc. is a party and is assessed the following fees:

Member surcharge = \$ 2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 4,000.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. 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 = \$ 450.00

Pre-hearing conference: August 3, 2005 1 session

Two (2) Pre-hearing sessions with Panel @ \$1,200.00 = \$ 2,400.00

Pre-hearing conferences: January 20, 2005 1 session

March 1, 2005 1 session

Seven (7) Hearing sessions @ \$1,200.00 = \$ 8,400.00

Hearing Dates: August 22, 2005 2 sessions

August 23, 2005 3 sessions

August 24, 2005 2 sessions

Total Forum Fees = \$11,250.00

* Notwithstanding the fact that the Panel granted SII's motion for directed verdict, the Chairman, on a prior motion to compel filed by Claimant, had ordered SII to deliver all compliance manuals. At the hearing, the compliance officer for SII acknowledged that SII did not produce all of the compliance manuals through no apparent fault of its local counsel. Therefore, the Panel will assess all forum fees against SII.

1. The Panel assessed 100% of the total forum fees in the amount of \$11,250.00 solely to SII Investments, Inc.

FEE SUMMARY

1. Claimants, Penny L. Bollinger and Robert E. Bollinger, are solely liable for:
- | | |
|------------------------------------|----------------------|
| Initial Filing Fee | = \$ 375.00 |
| <u>Less payments</u> | <u>= \$ 1,575.00</u> |
| Refund Due NASD Dispute Resolution | = \$ 1,200.00 |
2. Respondent, SII Investments, Inc. is solely liable for:
- | | |
|-------------------------------------|----------------------|
| Member Fees | = \$ 7,000.00 |
| <u>Forum Fees</u> | <u>= \$11,250.00</u> |
| Total Fees | = \$18,250.00 |
| <u>Less payments</u> | <u>= \$ 7,000.00</u> |
| Balance Due NASD Dispute Resolution | = \$11,250.00 |

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

ARBITRATION PANEL

Anthony J. Soukenik, Esq.	-	Public Arbitrator, Presiding Chairperson
Thomas J. Ray, Esq.	-	Public Arbitrator
Kevin N. Flatt	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Anthony J. Soukenik, Esq.
Anthony J. Soukenik, Esq.
Public Arbitrator, Presiding Chairperson

8/31/05
Signature Date

/s/ Thomas J. Ray, Esq.
Thomas J. Ray, Esq.
Public Arbitrator

9/1/05
Signature Date

/s/ Kevin N. Flatt
Kevin N. Flatt
Non-Public Arbitrator

9/1/05
Signature Date

9/1/05
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

Arbitration No. 04-05147

Award Page 5 of 5

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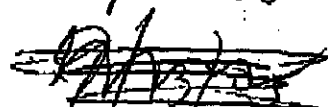
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