

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

---

In the Matter of the Arbitration Between

**Names of Claimants**

Walter F. and Paulina M. Sulewski

and

Case Number: 04-06027

Hearing Site: Milwaukee, Wisconsin

**Names of Respondents**

SII Investments, Inc.,  
Warren Jack Berg and  
Warren J. Berg & Associates

---

**NATURE OF DISPUTE**

Customers v. Member Firm, Associated Person and Non-Member

**REPRESENTATION OF PARTIES**

Walter F. and Paulina M. Sulewski ("**Claimants**") were represented by Paul R. Erickson, Esq., Gutglas Erickson Bonville & Seibel, Milwaukee, Wisconsin.

SII Investments, Inc. ("**SII**"), Warren Jack Berg ("**Berg**"), Warren J. Berg & Associates ("**Berg & Associates**") were represented by Ross A. Anderson, Esq., Whyte Hirschboeck Dudek, Milwaukee, Wisconsin.

**CASE INFORMATION**

The Statement of Claim was filed on or about August 24, 2004. The Submission Agreement of Claimants, Walter F. and Paulina M. Sulewski, was signed on or about August 18, 2004.

The Statement of Answer was filed by Respondents, SII Investments, Inc., Warren Jack Berg and Warren J. Berg & Associates, on or about November 24, 2004. The Submission Agreement of Respondent, SII Investments, Inc., was signed on or about September 20, 2004. The Submission Agreement of Respondent, Warren Jack Berg, was signed on or about October 11, 2004.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract, breach of fiduciary duty, negligence and misrepresentations. The causes of action related to the recommendation and purchase of various unspecified securities. Claimant alleged that Respondents placed their entire retirement savings into unsuitable, high-risk investments, Claimants alleged that Respondents purchased various investments and made various trades without obtaining Claimants' informed consent and without disclosing that the alleged purchases and trades were not consistent with Claimants' investment needs and objectives.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim failed to state a claim upon which relief can be granted; Claimants' claims are barred by the statute of limitations; Claimants failed to mitigate their damages; and Respondents did not proximately cause Claimants' alleged damages.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$336,447.38
Punitive/Exemplary Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

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

Respondent, Warren J. Berg & Associates, 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.

Respondent filed a Motion to Change Venue on or about January 17, 2006. Claimants filed their Response to this Motion on or about January 24, 2006. On or about January 27, 2006, the Panel denied Respondents' Motion to Change Venue.

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 NASD Dispute Resolution ("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, SII Investments, Inc., Warren Jack Berg and Warren J. Berg & Associates, are jointly and severally liable for and shall pay to Claimants, Walter F. and Paulina M. Sulewski, the sum of \$180,000.00 in compensatory damages;
- 2.) Respondents, SII Investments, Inc., Warren Jack Berg, and Warren J. Berg & Associates, are jointly and severally liable for and shall pay to Claimants, Walter F. and Paulina M. Sulewski, interest at the rate of 5% pursuant to Wisconsin statute from and including April 2000 through and including August 2004, which totals \$39,000.00;
- 3.) Respondents, SII Investments, Inc., Warren Jack Berg and Warren J. Berg & Associates, are jointly and severally liable for and shall pay to Claimants, Walter F. and Paulina M. Sulewski, the sum of \$300.00 in costs; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 300.00

### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is SII Investments, Inc.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

### **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 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 Panel x \$1,125.00	= \$ 1,125.00
Pre-hearing conference: June 15, 2005	1 session
Six (6) Hearing sessions x \$1,125.00	= \$ 6,750.00
Hearing Dates: February 27, 2006	2 sessions
February 28, 2006	2 sessions
March 1, 2006	2 sessions
Total Forum Fees	= \$ 7,875.00

The Arbitration Panel has assessed \$7,875.00 of the forum fees jointly and severally to SII Investments, Inc., Warren Jack Berg and Warren J. Berg & Associates.

### **Fee Summary**

Claimants, Walter F. and Paulina M. Sulewski, are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 1,425.00
Refund Due to Claimants	= \$ 1,125.00

Respondent, SII Investments, Inc., is liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, SII Investments, Inc., Warren Jack Berg and Warren J. Berg & Associates, are jointly and severally liable for:

Forum Fees	= \$ 7,875.00
Total Fees	= \$ 7,875.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 7,875.00

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

**ARBITRATION PANEL**

Gordon B. Shneider, Esq. - Public Arbitrator, Presiding Chair  
Thomas Robert Riek - Public Arbitrator  
Ramona V. Larson - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Gordon B. Shneider, Esq.  
Gordon B. Shneider, Esq.  
Public Arbitrator, Presiding Chair

March 3, 2006  
Signature Date

/s/ Thomas Robert Riek  
Thomas Robert Riek  
Public Arbitrator

March 3, 2006  
Signature Date

/s/ Ramona V. Larson  
Ramona V. Larson  
Non-Public Arbitrator

March 2, 2006  
Signature Date

March 3, 2006  
Date of Service (For NASD office use only)

Respondents, SII Investments, Inc., Warren Jack Berg and Warren J. Berg & Associates,  
are jointly and severally liable for:

Forum Fees	= \$ 7,875.00
Total Fees	= \$ 7,875.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 7,875.00

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

**ARBITRATION PANEL**

Gordon B. Schneider, Esq. - Public Arbitrator, Presiding Chair  
Thomas Robert Riek - Public Arbitrator  
Ramona V. Larson - Non-Public Arbitrator

Concurring Arbitrators:

Gordon B. Schneider  
Gordon B. Schneider, Esq.  
Public Arbitrator, Presiding Chair

3/2/06  
Signature Date

Thomas Robert Riek  
Thomas Robert Riek  
Public Arbitrator

                      
Signature Date

Ramona V. Larson  
Ramona V. Larson  
Non-Public Arbitrator

                      
Signature Date

                      
Date of Service (For NASD office use only)

Respondents: SII Investments, Inc., Warren Jack Berg and Warren J. Berg & Associates,  
are jointly and severally liable for:

Forum Fees	= \$ 7,875.00
Total Fees	= \$ 7,875.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 7,875.00

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

**ARBITRATION PANEL**

Gordon B. Schneider, Esq. - Public Arbitrator, Presiding Chair  
Thomas Robert Riek - Public Arbitrator  
Ramona V. Larson - Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Gordon B. Schneider, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
*Thomas R. Riek*

Thomas Robert Riek  
Public Arbitrator

\_\_\_\_\_  
3-3-06

Signature Date

\_\_\_\_\_  
Ramona V. Larson  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD office use only)

Respondents, SII Investments, Inc., Warren Jack Berg and Warren J. Berg & Associates,  
are jointly and severally liable for:

Forum Fees	= \$ 7,875.00
Total Fees	= \$ 7,875.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 7,875.00

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

**ARBITRATION PANEL**

Gordon B. Schneider, Esq. - Public Arbitrator, Presiding Chair  
Thomas Robert Riek - Public Arbitrator  
Ramona V. Larson - Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Gordon B. Schneider, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Thomas Robert Riek  
Public Arbitrator

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

\_\_\_\_\_  
Ramona V. Larson  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD office use only)