

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

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In the Matters of the Arbitration Between:

David L. Katz Living Trust, David L. Katz, Trustee, Claimant v. Syndicated Capital, Inc. and Michael J. DeCoux, Respondents

Michael J. DeCoux, Counter-Claimant v. David L. Katz Living Trust, David L. Katz, Trustee, Counter-Respondent

Michael J. DeCoux, Cross-Claimant v. Syndicated Capital, Inc., Cross-Respondent

Michael J. DeCoux, Third-Party Claimant v. Faith Li Lee, Third-Party Respondent

Case Number: 04-06041

Hearing Site: Los Angeles, California

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Nature of the Disputes:

Customer v. Member and Associated Person

Associated Person v. Customer

Associated Person v. Member

Associated Person v. Associated Person

**REPRESENTATION OF PARTIES**

For Claimant/Counter-Respondent  
(hereinafter Claimant):

Gregory J. Sherwin, Esq.  
Fields, Fehn & Sherwin  
Los Angeles, California

For Respondent/Cross-Respondent  
Syndicated Capital, Inc. (hereinafter  
Respondent Syndicated Capital, Inc.),

For Respondent/Counter-Claimant/  
Cross-Claimant/Third-Party Claimant  
Michael J. DeCoux (hereinafter Respondent  
Michael J. DeCoux), and,

For Third-Party Respondent Faith Li Lee  
(hereinafter Respondent Faith Li Lee):

Jeffrey K. Riffer, Esq.  
Jeffer, Mangels, Butler & Marmaro, LLP  
Los Angeles, California

### CASE INFORMATION

Statement of Claim filed: August 20, 2004

Claimant's Uniform Submission Agreement signed: August 12, 2004

Statement of Answer filed by Respondent Syndicated Capital, Inc.: October 27, 2004

Statement of Answer filed by Respondent Michael J. DeCoux: December 7, 2004

Counterclaim filed by Respondent Michael J. DeCoux: December 13, 2004

Cross-claim and Third-Party Claim filed by Respondent Michael J. DeCoux: December 13, 2004

Amended Statement of Answer filed by Respondent Michael J. DeCoux: January 3, 2005

Joint Statement of Answer to Cross-claim and to Third-Party Claim filed by Respondents Syndicated Capital, Inc. and Faith Li Lee: February 3, 2005

Respondent Syndicated Capital, Inc.'s Uniform Submission Agreement signed: October 27, 2004

Respondent Michael J. DeCoux's Uniform Submission Agreement signed: November 6, 2004

Respondent Faith Li Lee's Uniform Submission Agreement signed: None Filed

### CASE SUMMARY

Claimant alleged unsuitability, misrepresentations, and breach of fiduciary duty involving transactions in unspecified securities.

In its Statement of Answer to the Statement of Claim, Respondent Syndicated Capital, Inc. denied the allegations of wrongdoing set forth.

In his Statements of Answer to the Statement of Claim, Respondent Michael J. DeCoux denied the allegations of wrongdoing set forth and asserted various affirmative defenses.

In his Counterclaim, Respondent Michael J. DeCoux alleged untruthful statements, defamation, slander, and false, malicious, reckless and inaccurate charges of material facts.

In his Cross-claim and Third-Party Claim, Respondent Michael J. DeCoux alleged breach of contract, wrongful termination, interference with contractual relationships with customers, slander, defamation, and false, malicious, reckless and inaccurate charges of material facts.

In their Joint Statement of Answer to the Cross-claim and Third-Party Claim, Respondents Syndicated Capital, Inc. and Faith Li Lee denied the allegations set forth.

### **RELIEF REQUESTED**

Claimant requested \$70,000.00 in compensatory damages, unspecified punitive damages, return on his portfolio to be calculated in accordance with the Well Managed Account Theory, and costs, including attorney's fees.

In its Statement of Answer to the Statement of Claim, Respondent Syndicated Capital, Inc. requested dismissal of the Claim in its entirety.

In his Statement of Answers to the Statement of Claim, Respondent Michael J. DeCoux requested dismissal of the Claimant's Statement of Claim in its entirety and costs, including legal fees.

In his Counter-claim, Respondent Michael J. DeCoux requested \$120,000.00 in compensatory damages, \$1,000,000.00 in punitive damages, unspecified exemplary damages, interest, costs, legal fees, and expungement of inaccurate and untruthful information placed on his registration records maintained by the NASD Central Registration Depository ("CRD"), DRP, and U-5.

In his Cross-claim and Third-Party Claim, Respondent Michael J. DeCoux requested \$240,000.00 in compensatory damages, \$1,000,000.00 in punitive damages, interest, costs, legal fees, expungement of inaccurate and untruthful information placed on his registration records maintained by CRD, DRP, and reclassification of his termination from Syndicated Capital Inc. as "voluntary" on his Form U-5.

In their Joint Statement of Answer to the Cross-claim and Third-Party Claim, Respondents Syndicated Capital, Inc. and Faith Li Lee requested dismissal of the claims in their entirety.

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

Respondent Faith Li Lee did not file with NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the *NASD Code of Arbitration Procedure* ("Code") and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On September 24, 2004, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On November 6, 2004, Respondent Michael J. DeCoux's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to IM-10100 of the Code, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On November 8, 2004, Respondent Michael J. DeCoux filed a Motion to Disqualify Counsel of Claimant. No response to the motion was filed.

On December 13, 2004, Respondent Michael J. DeCoux filed a Motion for Summary Disposition. No response to the motion was filed.

On January 3, 2005, Respondent Michael J. DeCoux filed an Amended Statement of Answer pursuant to Rule 10328(a) of the Code.

On March 10, 2005, Respondent Michael J. DeCoux filed a Motion to Dismiss the Statement of Claim. On March 25, 2005, Claimant filed an opposition to Respondent Michael J. DeCoux's Motion to Dismiss. On March 31, 2005, Respondents Syndicated Capital, Inc. and Faith Li Lee filed a Joinder to Respondent Michael J. DeCoux's Motion to Dismiss.

On May 11, 2005, Claimant filed a Motion to Compel Documents and Information and Request for Sanctions from Respondent Syndicated Capital, Inc. On May 11, 2005, Respondent Syndicated Capital, Inc. filed an opposition to the motion.

On June 5, 2005, a telephonic pre-hearing conference was held, attended by the parties and the Panel. After due deliberation, the Panel dismissed without prejudice Respondent Syndicated Capital, Inc.'s Joinder to Respondent Michael J. DeCoux's Motion to Dismiss and continued all other pending motions to the time of the arbitration.

By letter dated June 10, 2005, Respondent Michael J. DeCoux dismissed without prejudice his Cross-claim against Respondent Syndicated Capital, Inc. and his Third-Party Claim against Respondent Faith Li Lee.

At the hearing on June 23, 2005, the parties informed the Panel that all pending motions were resolved at or prior to the hearing.

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

- 1) Respondents Syndicated Capital, Inc. and Michael J. DeCoux are liable to and shall pay Claimant the sum of \$49,000.00 in compensatory damages.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) Any and all other 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 received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 225.00
Respondent Michael J. DeCoux's Counterclaim/ Cross-claim/Third-Party Claim	= \$ 500.00

#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Syndicated Capital, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,100.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 5,000.00
<b>Total Member Fees</b>	<b>= \$ 6,850.00</b>

#### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences:	
February 7, 2005	1 session
June 6, 2005	1 session
Four (4) Hearing sessions @ \$1,200.00/session	= \$ 4,800.00
Hearings:	
June 23, 2005	2 sessions
June 24, 2005	2 sessions
<b>Total Forum Fees</b>	<b>= \$ 7,200.00</b>

The Panel assessed \$7,200.00 of the forum fees jointly and severally to Respondents Syndicated Capital, Inc. and Michael J. DeCoux.

**Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Respondents requested 60 photocopies @\$0.50	= \$	30.00
Respondent Syndicated Capital, Inc. administrative cost	= \$	15.00

**Fee Summary**

1. Claimant David L. Katz Living Trust, David L. Katz, Trustee is charged with the following fees and costs:

Initial Filing Fee	= \$	225.00
Less payments	= \$	(975.00)
<b>Refund Due Claimant</b>	<b>= \$</b>	<b>(750.00)</b>

2. Respondent Syndicated Capital, Inc. is charged with the following fees and costs:

Member Fees	= \$	6,850.00
Administrative Costs	= \$	15.00
Total Fees	= \$	6,865.00
Less payments	= \$	(6,850.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$</b>	<b>15.00</b>

3. Respondent Michael J. DeCoux is charged with the following fees and costs:

Counterclaim/Cross-Claim/Third-Party Claim Filing Fee	= \$	500.00
Less payments	= \$	(0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$</b>	<b>500.00</b>

4. Respondents Syndicated Capital, Inc. and Michael J. DeCoux are charged jointly and severally with the following fees and costs:

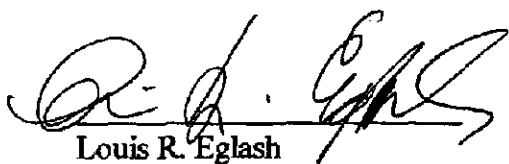
Forum Fees	= \$	7,200.00
Administrative Costs	= \$	30.00
Total Fees	= \$	7,230.00
Less payments	= \$	(0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$</b>	<b>7,230.00</b>

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

**ARBITRATION PANEL**


Louis R. Eglash	-	Public Arbitrator, Presiding Chair
Robert S. Granas	-	Public Arbitrator
James R. Duncan	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



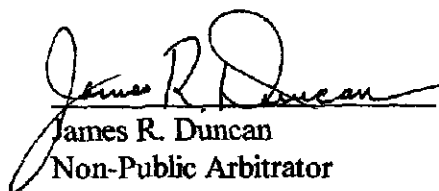
Louis R. Eglash  
Chair, Public Arbitrator

6-24-05  
Signature Date



Robert S. Granas  
Public Arbitrator

6/24/05  
Signature Date



James R. Duncan  
Non-Public Arbitrator

6.24.05  
Signature Date

JUNE 27, 2005  
Date of Service