

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Gail J. Spicuzza, Claimant v. Jerome E. Liss, Jeffrey W. Dean, John R. Susnik, and Liss Financial Services, Respondents

Jerome E. Liss, Jeffrey W. Dean, and John R. Susnik, Third Party Claimants v. Edward and Diane Godec, Third Party Respondents

Case Number: 04-08249

Hearing Site: Seattle, Washington

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Nature of the Dispute: Customer v. Member and Associated Persons

Nature of the Dispute: Associated Persons v. Customers

**REPRESENTATION OF PARTIES**

For Claimant Gail J. Spicuzza:

Louis F. Doyle, Esq.  
Law Office of Louis F.  
Doyle  
San Martin, California

For Respondents/Third Party Claimants Jerome E. Liss,  
Jeffrey W. Dean, and John R. Susnik:

Maria S. Lazar, Esq.  
Galanis, Pollack, Jacobs &  
Johnson  
Milwaukee, Wisconsin

For Respondent Liss Financial Services:

Jerome E. Liss  
Liss Financial Services  
Belgium, Wisconsin

For Third Party Respondents Edward and Diane Godec:

Timothy A. Canning, Esq.  
Novato, California

**CASE INFORMATION**

Statement of Claim filed: December 3, 2004

Claimant Gail Spicuzza's Uniform Submission Agreement signed: January 19, 2005

Joint Statement of Answer filed by Respondents Jerome E. Liss, Jeffrey Dean, and  
John R. Susnik: April 19, 2005

Amended Statement of Claim filed: May 20, 2005

Joint Statement of Answer to Claimant's Amended Statement of Claim filed by Respondents Jerome E. Liss, Jeffrey Dean, and John R. Susnik: June 8, 2005

Respondents Jerome E. Liss, Jeffrey W. Dean, and John R. Susnik's Joint Uniform Submission Agreement signed but not dated

Third Party Claim filed by Third Party Claimants Jerome E. Liss, Jeffrey W. Dean, and John R. Susnik: April 19, 2005

### **CASE SUMMARY**

In her initial and Amended Statements of Claim, Claimant asserted the following causes of action: failure to supervise, breach of fiduciary duty, unauthorized trading, churning, and unsuitable recommendations. Claimant's allegations involved the purchase of various unspecified securities for her account as well as the purchase of shares of American Charitable Management Corporation.

Unless specifically admitted in their initial Answer and Answer to Claimant's Amended Statement of Claim, Respondents Liss, Dean, and Susnik denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

In their Third Party Claim, Third Party Claimants alleged breach of the terms of a settlement agreement by Third Party Respondents.

### **RELIEF REQUESTED**

In her initial and Amended Statements of Claim, Claimant requested \$94,149.00 in compensatory damages, unspecified punitive damages, \$55,200.00 in pre-judgment interest, \$950.00 in costs, and \$32,952.00 in attorney's fees.

In their initial Answer and Answer to Claimant's Amended Statement of Claim, Respondents Jerome E. Liss, Jeffrey W. Dean, and John R. Susnik requested dismissal of Claimant's Statement of Claim in its entirety and costs, including attorney's fees.

In their Third Party Claim, Third Party Claimants requested the greater of any damages that might be awarded to Claimant in the instant arbitration proceeding or the amounts paid by each Third Party Claimant to the Third Party Respondents pursuant to the settlement agreement previously entered into by these parties. Third Party Claimants also requested costs, including attorney's fees.

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

Respondent Liss Financial Services did not file with NASD Dispute Resolution a properly executed submission agreement, but it is required to submit to arbitration pursuant to NASD's Code of Arbitration Procedure ("Code"). Accordingly, it is bound by the determination of the Panel on all issues submitted.

#### **Preliminary Determinations by the Director of Arbitration**

On May 2, 2005, Respondents Jerome E. Liss, Jeffrey W. Dean, and John R. Susnik filed a Request for Transfer of Hearing Location from Washington to Wisconsin. On May 16, 2005, Claimant filed an objection to the Motion for Transfer of Hearing Location. On May 20, 2005, Third Party Respondents filed an Opposition to Motion to Transfer Hearing Location, Respondents Liss, Dean, and Susnik filed a Reply in Support of the Request for Transfer of Hearing Location, and Third Party Respondents filed a Sur-Reply in Opposition to Motion to Transfer Hearing Location. On May 24, 2005, NASD notified the parties of the Director of Arbitration's preliminary decision to deny Respondents' Request for Transfer of Hearing Location.

On May 9, 2005, Third Party Respondents filed a motion requesting that NASD decline the use of its forum for the third party claim pursuant to NASD's Code of Arbitration Rule 10301(b). On June 2, 2005, Third Party Claimants filed an Opposition to the Godecs' Motion to Decline Jurisdiction. On June 10, 2005, NASD notified the parties of the Director of Arbitration's preliminary decision to deny Third Party Respondents' Rule 10301(b) request.

On May 20, 2005, Claimant filed an Amended Statement of Claim pursuant to NASD Code of Arbitration Procedure Rule 10328(a).

On June 8, 2005, Respondents filed an Amended Answer pursuant to Rule 10328(a).

#### **Arbitration Panel Decisions**

On September 7, 2005, Respondents Liss, Dean, and Susnik filed a Request for Change of Venue. On September 8, 2005, Claimant filed an Objection to Respondents' Request for Change of Venue. On September 12, 2005, Third Party Respondents filed an Opposition to Respondents' Motion to Change Venue.

On September 7, 2005, Third Party Respondents filed a Motion to Dismiss and for Sanctions and a Reservation of Objection to Jurisdiction and Arbitrability and Response to Frivolous Third Party Claim. On September 12, 2005, Respondents Liss, Dean, and Susnik filed a Response to Motion to Dismiss and Initial Response to Motion for Sanctions and Request for Additional Time to Respond to Motion for Sanctions.

On September 15, 2005, the Panel heard oral argument from the parties regarding the various motions that had been filed. On September 27, 2005, the Panel issued an Order denying Respondents' Motion to Change Venue and granting Third Party Respondents' Motion to Dismiss with Prejudice the third party claims that had been filed against them.

On November 7, 2005, Claimant filed a Motion to Adjourn the November 15 – 17, 2005 hearing. On November 8, 2005, Respondents Liss, Dean, and Susnik filed an opposition to the motion. On November 14, 2005, the Panel issued an Order granting Claimant's motion. The Panel assessed Claimants a fee of \$50.00 payable to NASD to cover the cost of a Panel member's airline cancellation charge and a fee of \$300.00 payable to Respondents Liss, Dean, and Susnik to cover the cost of their airline cancellation charges. The Panel further ordered that Respondent Jerome E. Liss need not appear in person at the rescheduled hearing but must make himself available for a deposition by Claimant at a mutually convenient time. Claimant and Respondents were requested to cooperate in good faith and make their witnesses available for depositions.

On February 27, 2006, Claimant filed a Motion for Reconsideration on Required Attendance of Jerome E. Liss. On March 7, 2006, Respondents Liss, Dean, and Susnik filed an Opposition to Claimant's motion. In an Order dated March 16, 2006, the Panel reaffirmed its prior ruling that Respondent Jerome E. Liss need not personally appear at the evidentiary hearing. In this Order, the Panel reminded the parties of the provision in its November 14, 2005 Order concerning the use of depositions in this matter. On April 13, 2006, Claimant sent NASD a letter regarding the Panel's ruling that Jerome E. Liss need not personally appear at the hearing but must make himself available for a deposition. In an Order dated April 19, 2006, the Panel reaffirmed its prior rulings on this point.

At the commencement of the hearing on May 9, 2006, Claimant's counsel requested permission to have Robert Karoly, whom Claimant's counsel referred to as a forensic expert/consultant, participate in the hearing by telephone. The Panel granted this request. Mr. Karoly joined the hearing via teleconference and advised the Panel that he would be asking questions of some of the witnesses. The Panel asked Mr. Karoly whether he was an attorney, and he answered that he was not. The Panel advised him that he could listen to the hearing via teleconference and confer with Claimant and her counsel during breaks but that he could not question witnesses because he was not Claimant's co-counsel; he had not been listed as such on any pleadings, and he is not an attorney. Mr. Karoly then terminated his teleconference connection, and filed a request for reconsideration of the Panel's ruling regarding the scope of his participation at the hearing. The Panel considered Mr. Karoly's request and reaffirmed its decision.

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 Jerome E. Liss and Liss Financial Services are jointly and severally liable to and shall pay Claimant Gail J. Spicuzza the sum of \$20,000.00 in compensatory damages.
- 2) Claimant's claims against Respondents John R. Susnik and Jeffrey W. Dean are denied in their entirety.
- 3) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent John R. Susnik's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent John R. Susnik must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative finding of fact: the registered person was not involved in the alleged investment-related sales practice violation.

- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) Any and all relief not specifically addressed herein 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
Respondents Jerome E. Liss, Jeffrey W. Dean, and John R. Susnik's third party claim filing fee	= \$ 250.00

#### **Adjournment Fees**

The following adjournment fees are assessed:

November 15-17, 2005, adjournment requested by Claimant	= \$ 750.00
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The Panel assessed the adjournment fee to Claimant.

#### **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. The following forum fees are assessed:

Two (2) pre-hearing conference sessions with the Panel			
@ \$1,000.00/session			= \$2,000.00
Pre-hearing conferences:	July 28, 2005	1 session	
	September 15, 2005	1 session	
Five (5) Hearing sessions @ \$750.00/session			= \$3,750.00
Hearings:	May 9, 2006	2 sessions	
	May 10, 2006	2 sessions	
	May 11, 2006	1 session	
<b>Total Forum Fees</b>			<b>= \$5,750.00</b>

1. The Panel assessed \$2,375.00 of the forum fees to Claimant.
2. The Panel assessed \$3,375.00 of the forum fees jointly and severally to Respondents Jerome E. Liss, Liss Financial Services, and Jeffrey W. Dean.

#### **Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services or was assessed certain costs by an

arbitration panel. 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.

Claimant was ordered to pay a panel member's airline  
cancellation charge: =\$ 50.00

**Fee Summary**

1. Claimant Gail J. Spicuzza is charged with the following fees and costs:

Initial Filing Fee	= \$ 225.00
Adjournment Fee	= \$ 750.00
Forum Fees	= \$ 2,375.00
Administrative Cost	= \$ 50.00
Total Fees	= \$ 3,400.00
Less payments	= \$ (975.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,425.00</b>

2. Respondents Jerome E. Liss, Liss Financial Services, and Jeffrey W. Dean are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 3,375.00
Less Payments by Jerome E. Liss	= \$(1,500.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,875.00</b>

3. Respondents Jerome E. Liss, Jeffrey W. Dean, and John R. Susnik are charged jointly and severally with the following fees and costs:

Third Party Claim Filing Fee	= \$ 250.00
Less Payments by Jerome E. Liss	= \$ (250.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</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**

<b>Richard E. Keefe</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>Linda M. Deola</b>	-	<b>Public Arbitrator</b>
<b>Robert Lewis Brown</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**

  
Richard E. Keefe  
Chair, Public Arbitrator

5.16.06  
Signature Date

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Linda M. Deola  
Public Arbitrator

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

\_\_\_\_\_  
Robert Lewis Brown  
Non-Public Arbitrator

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

5/16/06  
Date of Service

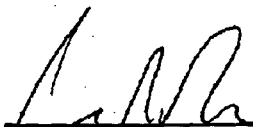


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Linda M. Deola  
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Signature Date

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Signature Date

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Public Arbitrator

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Signature Date

  
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Non-Public Arbitrator

5-15-2006  
Signature Date

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Date of Service