

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of Claimants

Thomas G. Cain and Patricia Jones Cain,
Charles D. Snyder and Marilou Snyder, and
Ronald Shall and Jerry L. Shall

vs.

Case Number: 04-08770
Hearing Site: Dallas, Texas

Names of Respondents

Securities America, Inc.,
Robert P. Gormly, Jr.,
Securities America Advisors, Inc., and
The Gormly Company

NATURE OF THE DISPUTE

Customers vs. Member, Associated Person, and Non-Members

REPRESENTATION OF PARTIES

Thomas G. Cain and Patricia Jones Cain ("Cains"), Charles D. Snyder and Marilou Snyder ("Snyders"), and Ronald Shall and Jerry L. Shall ("Shalls"), hereinafter collectively referred to as "Claimants," were represented by Lee Bowie, Esq., Davidson, Bowie & Sims, PLLC, Jackson, Mississippi.

Securities America, Inc. ("SAI"), Robert P. Gormly, Jr. ("Gormly"), Securities America Advisors, Inc. ("SAA"), and The Gormly Company, hereinafter collectively referred to as "Respondents," were represented by Burton W. Wiand, Esq. and Elaine M. Rice, Esq., Fowler White Boggs Banker P.A., Tampa, Florida.

CASE INFORMATION

The Statement of Claim was filed on or about December 29, 2004. The Submission Agreement of Claimant, Thomas G. Cain, was signed on or about November 22, 2004. The Submission Agreement of Claimant, Patricia Jones Cain, was signed on or about November 23, 2004. The Submission Agreement of Claimants, Charles D. Snyder and Marilou Snyder, was signed on or about November 23, 2004. The Submission Agreement of Claimants, Ronald Shall and Jerry L. Shall, was signed on or about November 22, 2004.

The Statement of Answer was filed jointly by Respondents, SAI, Gormly, SAA and The Gormly Company, on or about March 29, 2005. The Submission Agreement of Respondent, SAI, was signed on or about February 7, 2005. The Submission Agreement of Respondent, Gormly, was signed on or about February 15, 2005. The Submission Agreement of Respondent, SAA, was signed on or about March 29, 2005. The Submission Agreement of Respondent, The Gormly Company, was signed on or about February 12, 2005.

A Pre-Hearing Brief was filed by Claimants on or about April 7, 2006. A Pre-Hearing Brief and Exhibit Books were filed by Respondents on or about April 7, 2006.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; negligence; breach of contract; common law fraud; misrepresentation; violation of the Texas Securities Laws; violation of the Texas Deceptive Trade Practices Act; violation of the Texas Business and Commerce Code; and control person liability for SAA and SAI. The causes of action related to the recommendation and purchase of Rydex funds, an index based mutual fund with high fees and trading costs. As alleged in the claim, Gormly initially recommended and purchased for Claimants retirement accounts the American funds group of mutual funds. It was further alleged that beginning in 1998, Gormly began liquidating these funds and purchasing more aggressive funds until by 2003, Respondents had liquidated every investment vehicle Claimants held and were actively trading Rydex leveraged funds on a nearly daily basis.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants were fully advised of and understood the nature of the investments purchased in their accounts; the Claimants received prospectuses for their investments, which disclosed the investments' nature and associated risks; the claims are barred by the doctrines of estoppel, ratification, and waiver; Claimants' losses were caused by acts, events, and/or conditions beyond Respondents' control; Claimants failed to act with due diligence in connection with their investments and failed to timely disaffirm the transactions and acts complained of in the Statement of Claim despite their knowledge of these alleged actions and transactions; Claimants failed to mitigate their damages; the claims are barred by the doctrine of unclean hands; Claimants' losses were proximately caused by their own decisions, conduct, and/or negligence, and the claims are barred, in whole or proportion, to their negligence that contributed to their losses; Claimants' claims arise out of a contractual relationship and, as a result, all of the non-contractual claims are barred by the economic loss doctrine; none of the losses claimed in this matter were caused by any of the actions of the Respondents; Claimants' claims are barred by the doctrine of express assumption of risk; Claimants' claims are barred by the principles of comparative negligence; Respondents had in place procedures and a system for applying such procedures which was reasonably designed to prevent and detect the alleged securities violations; Claimants'

claims are barred, in whole or in part, by the statute of limitations and/or laches; Claimants are not entitled to recovery against the Respondents because they acted in good faith at all times and exercised reasonable diligence; and Respondents did not know and in the exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist and did not directly or indirectly induce any violation of the Texas Securities Act.

RELIEF REQUESTED

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$3,500,000.00
Exemplary/Punitive 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

On or about April 20, 2006, the Claimants dismissed the claims of Patricia Jones Cain, Marilou Snyder, and Jerry L. Shall.

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.

AWARD

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

- 1.) Respondents, Securities America, Inc., Robert P. Gormly, Jr., Securities America Advisors, Inc., and The Gormly Company, are jointly and severally liable for and shall pay to Claimant, Thomas G. Cain, the sum of \$1,250,368.00 in compensatory damages;
- 2.) Respondents, Securities America, Inc., Robert P. Gormly, Jr., Securities America Advisors, Inc., and The Gormly Company, are jointly and severally liable for and shall pay to Claimant, Charles D. Snyder, the sum

of \$1,081,918.00 in compensatory damages;

- 3.) Respondents, Securities America, Inc., Robert P. Gormly, Jr., Securities America Advisors, Inc., and The Gormly Company, are jointly and severally liable for and shall pay to Claimant, Ronald Shall, the sum of \$1,514,706.00 in compensatory damages;
- 4.) Respondents, Securities America, Inc., Robert P. Gormly, Jr., Securities America Advisors, Inc., and The Gormly Company, are jointly and severally liable for and shall pay to Claimants, Thomas G. Cain, Charles D. Snyder, and Ronald Shall, interest on the above-stated sums at the rate of 5% per annum from and including January 1, 2007 through and including the date the award is paid in full;
- 5.) Respondents, Securities America, Inc. and Securities America Advisors, Inc., are jointly and severally liable for and shall pay to Claimant, Thomas G. Cain, the sum of \$1,000,000.00 in punitive damages pursuant to NASD Rules 2310, 2330 and 2510; TEX. CIV. PRAC. & REM. CODE ANN. 41.008(b) (Vernon 1997); *McCoun v. Rhea*, 245 B.R. 77,88-90 (Bankr. N.D. Tex 2000); *Jones v. Blume*, 196 S.W.3d 440, 447 (Tex Ct. App.-Dallas 2006); *Konkel v. Otwell*, 65 S.W.3d 183, 187-88 (Tex. Ct. App.-Eastland 2001); and *In Re: Jack H. Stein*, 2003 W.L.431870, SEC Release No. 47335 (February 10, 2003);
- 6.) Respondents, Securities America, Inc. and Securities America Advisors, Inc., are jointly and severally liable for and shall pay to Claimant, Charles D. Snyder, the sum of \$1,000,000.00 in punitive damages pursuant to NASD Rules 2310, 2330 and 2510; TEX. CIV. PRAC. & REM. CODE ANN. 41.008(b) (Vernon 1997); *McCoun v. Rhea*, 245 B.R. 77,88-90 (Bankr. N.D. Tex 2000); *Jones v. Blume*, 196 S.W.3d 440, 447 (Tex Ct. App.-Dallas 2006); *Konkel v. Otwell*, 65 S.W.3d 183, 187-88 (Tex. Ct. App.-Eastland 2001); and *In Re: Jack H. Stein*, 2003 W.L.431870, SEC Release No. 47335 (February 10, 2003);
- 7.) Respondents, Securities America, Inc. and Securities America Advisors, Inc., are jointly and severally liable for and shall pay to Claimant, Ronald Shall, the sum of \$1,000,000.00 in punitive damages pursuant to NASD Rules 2310, 2330 and 2510; TEX. CIV. PRAC. & REM. CODE ANN. 41.008(b) (Vernon 1997); *McCoun v. Rhea*, 245 B.R. 77,88-90 (Bankr. N.D. Tex 2000); *Jones v. Blume*, 196 S.W.3d 440, 447 (Tex Ct. App.-Dallas 2006); *Konkel v. Otwell*, 65 S.W.3d 183, 187-88 (Tex. Ct. App.-Eastland 2001); and *In Re: Jack H. Stein*, 2003 W.L.431870, SEC Release No. 47335 (February 10, 2003);
- 8.) Respondents, Securities America, Inc., Robert P. Gormly, Jr., Securities America Advisors, Inc., and The Gormly Company, are jointly and

- severally liable for and shall pay to Claimant, Thomas G. Cain , the sum of \$20,000.00 in costs;
- 9.) Respondents, Securities America, Inc., Robert P. Gormly, Jr., Securities America Advisors, Inc., and The Gormly Company, are jointly and severally liable for and shall pay to Claimant, Charles D. Snyder, the sum of \$20,000.00 in costs;
- 10.) Respondents, Securities America, Inc., Robert P. Gormly, Jr., Securities America Advisors, Inc., and The Gormly Company, are jointly and severally liable for and shall pay to Claimant, Ronald Shall, the sum of \$20,000.00 in costs;
- 11.) Respondents, Securities America, Inc., Robert P. Gormly, Jr., Securities America Advisors, Inc., and The Gormly Company, are jointly and severally liable for and shall pay to Claimants, Thomas G. Cain, Charles D. Snyder, and Ronald Shall, the sum of \$2,417,447.00 in attorneys' fees pursuant to §27.01 of the Texas Business and Commerce Code; and
- 12.) Any relief not specifically enumerated 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	= \$	600.00
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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. In this matter, the member firm is Securities America, Inc.

Member surcharge	= \$	2,800.00
Pre-hearing process fee	= \$	750.00
Hearing process fee	= \$	5,000.00

Forum Fees and Assessments

The Panel has assessed forum fees for each hearing session conducted or each decision rendered on a discovery-related motion on the papers. 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:

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

Pre-hearing conferences: June 28, 2005 1 session
August 7, 2006 1 session

Forty Two (42) Hearing sessions x \$1,200.00 = \$ 50,400.00

Hearing Dates: April 24, 2006 2 sessions
April 25, 2006 2 sessions
April 26, 2006 2 sessions
April 27, 2006 2 sessions
April 28, 2006 1 session
May 8, 2006 2 sessions
May 9, 2006 2 sessions
May 10, 2006 2 sessions
August 16, 2006 2 sessions
August 17, 2006 2 sessions
August 18, 2006 2 sessions
August 21, 2006 2 sessions
August 22, 2006 2 sessions
August 23, 2006 2 sessions
August 24, 2006 2 sessions
August 25, 2006 1 session
September 13, 2006 2 sessions
September 14, 2006 2 sessions
September 15, 2006 2 sessions
September 27, 2006 2 sessions
September 28, 2006 2 sessions
September 29, 2006 2 sessions

Total Forum Fees = \$ 52,800.00

The Panel has assessed \$52,800.00 of the forum fees jointly and severally to Respondents, Securities America, Inc., Robert P. Gormly, Jr., Securities America Advisors, Inc., and The Gormly Company.

FEE SUMMARY

Claimants, Thomas G. Cain and Patricia Jones Cain, Charles D. Snyder and Marilou Snyder, and Ronald Shall and Jerry L. Shall, are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Total Fees	= \$ 600.00
Less payments	= \$ 3,050.00

Refund Due Claimants = \$ 2,450.00

Respondent, Securities America, Inc., is liable for:

<u>Member Fees</u>	= \$ 8,550.00
<u>Total Fees</u>	= \$ 8,550.00
<u>Less payments</u>	= \$ 8,550.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondents, Securities America, Inc., Robert P. Gormly, Jr., Securities America Advisors, Inc., and The Gormly Company, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 52,800.00
<u>Total Fees</u>	= \$ 52,800.00
<u>Less payments</u>	= \$ 13,755.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 39,045.00

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

ARBITRATION PANEL

Maryanne M. Esser, Esq. - Public Arbitrator, Presiding Chair
James W. Kerr, Jr. - Public Arbitrator
William Cavalier - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

Maryanne M. Esser, Esq.
Public Arbitrator, Presiding Chair

Signature Date

James W. Kerr, Jr.
Public Arbitrator

Signature Date

William Cavalier
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

Refund Due Claimants = \$ 2,450.00

Respondent, Securities America, Inc., is liable for:

Member Fees	= \$	8,550.00
Total Fees	= \$	8,550.00
Less payments	= \$	8,550.00
Balance Due NASD Dispute Resolution	= \$	0.00

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William Cavalier - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

Maryanne M. Esser, Esq.
Maryanne M. Esser, Esq.
Public Arbitrator, Presiding Chair

21 December 2006
Signature Date

James W. Kerr, Jr.
Public Arbitrator

Signature Date

William Cavalier
Non-Public Arbitrator

Signature Date

12/21/06 Mm
Date of Service (For NASD office use only)

Refund Due Claimants = \$ 2,450.00

Respondent, Securities America, Inc., is liable for:

<u>Member Fees</u>	= \$ 8,550.00
<u>Total Fees</u>	= \$ 8,550.00
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William Cavaller - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

Maryanne M. Esser, Esq.
Public Arbitrator, Presiding Chair

James W. Kerr, Jr.
James W. Kerr, Jr.
Public Arbitrator

Signature Date

Dec. 21, 2006
Signature Date

William Cavaller
Non-Public Arbitrator

Signature Date

12/21/06 MM
Date of Service (For NASD office use only)