

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

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In the Matter of the Arbitration Between

Name of Claimant

Ella Veverka

and

05-00623  
Chicago, Illinois

Name of Respondents

Securities America, Inc.  
Ronald A. Harczak

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

Ella Veverka ("**Claimant**") was represented by Edward A. Scott, III, Esq., Riffner, Barber Rowden & Manassa, P.C., Schaumburg, Illinois.

Securities America, Inc. ("**Respondent Securities America**") and Ronald A. Harczak ("**Respondent Harczak**") hereinafter referred to as ("**Respondents**") were represented by Harvey R. Herman, Esq., Clausen Miller PC, Chicago, Illinois.

**CASE INFORMATION**

The Statement of Claim was filed on or about February 4, 2005. Submission Agreement of Claimant Ella Veverka was signed on January 31, 2005.

Respondents' Answer and Affirmative Defenses to Statement of Claim was filed by Respondents Securities America, Inc. and Ronald A. Harczak on or about May 20, 2005. Submission Agreement of Respondent Securities America, Inc. was signed on March 16, 2005 by Kevin J. Miller. Submission Agreement of Respondent Ronald A. Harczak was signed on February 15, 2005.

**CASE SUMMARY**

Claimant alleged as follows:

1. Unsuitability. The purchase of B Funds for Ms. Veverka's portfolio was clearly unsuitable given her advanced age, her virtual lack of any other financial assets, and her inability to sell B Funds without penalty. In addition, use of B funds was inappropriate

and unsuitable since A funds would have resulted in a lower net cost to the customer as a result of break points. The portfolio sold by Mr. Harczak and approved by Securities America, Inc. was far too aggressive considering the needs and circumstances of Ms. Veverka. Mr. Harczak's recommendation to invest in an aggressive portfolio was unsuitable and an egregious breach of his obligation to know his clients since Mr. Veverka was 83 years old and suffering from blindness, Parkinson's disease, dementia and small vessel disease and Mrs. Veverka was an 83 year old woman with lymphoma, with no sophistication or understanding of financial or investment matters. She repeatedly told Harczak that she didn't really understand what she was doing but trusted him to do the right thing.

2. Misrepresentation. Mr. Harczak represented to Ms. Veverka that the purchase of B Funds would be made without commission and that the B Funds could be sold without penalty.
3. Professional Negligence. At the time Ms. Veverka became a client of Mr. Harczak, he advised them to liquidate their stock holdings and transfer all proceeds to him for investment. This advice was given without any consideration to the tax consequences of the sale of stock. As a result of this advice Ms. Veverka sustained a tax liability in the approximate amount of \$26,000.00.
4. Failure to Supervise. Securities America, Inc. breached its duty to Ms. Veverka under the Rules by failing to supervise and prevent the unsuitable trades and errors and omissions committed by Mr. Harczak as is more fully set forth above in paragraphs 1-3.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated

The Statement of Claim is based on investments which were made pursuant to and in accordance with the expressed investment objectives of the Claimant. The Claimant purports to assert that the Respondents provided unsuitable investment advice, made misrepresentations concerning charges that would be incurred with certain investments, acted negligently and that SAI failed to supervise Mr. Harczak.

The Respondents deny all of these allegations and assert that the allegations made by the Claimant are unfounded both factually and legally. The claim is an attempt to seek compensation for alleged account value declines which occurred over an approximate three year time period. The Respondents, as will be demonstrated, provided full disclosures to the Claimant and acted in accordance with the expressed investment objectives of the Claimant. As such, the Claimants will be unable to demonstrate any misconduct by the Respondents in connection with the investments. The Respondents therefore request that this claim be dismissed in its entirety and that the Claimant be held responsible for the appropriate fees and costs incurred with this proceeding.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested an award as follows:

As a direct and proximate result of the errors and omission of Ronald Harczak and Securities America, Inc., Ella has suffered substantial financial loss. The exact amount of that loss is unknown. The claim, however, does exceed the sum of \$50,000.00. The claim includes actual compensatory damages, punitive damages, attorneys' fees, forum fees, and all other costs associated with the proceeding.

Respondents requested that the claims asserted against them be denied in their entirety; that the records against Mr. Harczak be completely expunged of all references to this matter; and that Claimant be assessed all appropriate costs of this proceeding.

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

At the conclusion of the presentation of evidence, respondents requested a directed verdict on the allegations of unsuitability, misrepresentation, and failure to supervise. After hearing argument, the Arbitration Panel decided to hold their decision until the conclusion of closing arguments and their determination on the merits.

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 the NASD Dispute Resolution (the "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. Award in favor of all Respondents and against the Claimant on all counts.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Ronald A. Harczak's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Ronald A. Harczak must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Unless specifically waived in writing by the 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.

4. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
5. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

### **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 = \$225.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Securities America, Inc.

Member surcharge	\$	1,100.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	1,700.00
Total Member Fees	\$	<u>3,550.00</u>

#### **Adjournment Fees**

Adjournments requested during these proceedings:

Hearing Date(s), March 1-3, 2006 adjournment requested by Respondents = \$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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

1	Decisions on discovery-related motions on the papers with a single arbitrator	x	\$200.00	\$	200.00
		1 session			
1	Pre-hearing session(s) with Panel	x	750.00	\$	750.00
	August 3, 2005	1 session			
6	Hearing sessions	x	750.00	\$	4,500.00
	April 25, 2006	2 sessions			
	April 26, 2006	2 sessions			
	April 27, 2006	2 sessions			
Total Forum Fees				\$	<u>5,450.00</u>

The Arbitration Panel has assessed \$2,725.00 of the forum fees to Ella Veverka.

The Arbitration Panel has assessed \$2,725.00 of the forum fees to Ronald A. Harczak.

### **Fee Summary**

Claimant, Ella Veverka, is liable for:

Initial Filing Fee	= \$	225.00
<u>Forum Fees</u>	= \$	<u>2,725.00</u>
Total Fees	= \$	2,950.00
<u>Less payments</u>	= \$	<u>-1,250.00</u>
Balance Due NASD Dispute Resolution	= \$	1,700.00

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

Member Fees	= \$	3,550.00
Total Fees	= \$	3,550.00
<u>Less payments</u>	= \$	<u>-2,625.00</u>
Balance Due NASD Dispute Resolution	= \$	925.00

Respondents, Securities America, Inc., and Ronald A. Hartzak, are jointly and severally liable for:

Adjournment Fee	= \$	750.00
Total Fees	= \$	750.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	750.00

Respondent, Ronald A. Hartzak, is liable for:

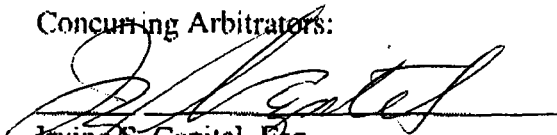
<u>Forum Fees</u>	= \$	2,725.00
Total Fees	= \$	2,725.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	2,725.00

All balances are due to NASD Dispute Resolution

**ARBITRATION PANEL**

Irving S. Capitel, Esq. - Public Arbitrator, Presiding Chair  
Ralph M. Goren, Esq. - Public Arbitrator  
Susan K. Franz - Non-Public Arbitrator

Concurring Arbitrators:

  
Irving S. Capitel, Esq.  
Public Arbitrator, Presiding Chair

April 29, 2006  
Signature Date

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Ralph M. Goren, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Susan K. Franz  
Non-Public Arbitrator

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

5/1/06  
Date of Service (For NASD office use only)

Respondents, Securities America, Inc., and Ronald A. Harczak, are jointly and severally liable for:

Adjournment Fee	= \$	750.00
Total Fees	= \$	750.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	750.00

Respondent, Ronald A. Harczak, is liable for:

<u>Forum Fees</u>	= \$	2,725.00
Total Fees	= \$	2,725.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	2,725.00

All balances are due to NASD Dispute Resolution

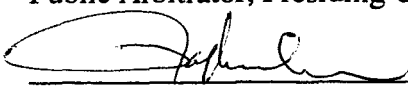
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Ralph M. Goren, Esq. - Public Arbitrator  
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Concurring Arbitrators:

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Irving S. Capitel, Esq.  
Public Arbitrator, Presiding Chair

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

  
\_\_\_\_\_  
Ralph M. Goren, Esq.  
Public Arbitrator

April 24, 2006  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Susan K. Franz  
Non-Public Arbitrator

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

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Date of Service (For NASD office use only)

Respondents, Securities America, Inc., and Ronald A. Hartzak, are jointly and severally liable for:

Adjournment Fee	= \$	750.00
Total Fees	= \$	750.00
Less payments	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	750.00

Respondent, Ronald A. Hartzak, is liable for:

Forum Fees	= \$	2,725.00
Total Fees	= \$	2,725.00
Less payments	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	2,725.00

All balances are due to NASD Dispute Resolution

**ARBITRATION PANEL**

Irving S. Capitel, Esq. - Public Arbitrator, Presiding Chair  
Ralph M. Goren, Esq. - Public Arbitrator  
Susan K. Franz - Non-Public Arbitrator

Concurring Arbitrators:

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Irving S. Capitel, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Ralph M. Goren, Esq.  
Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
Susan K. Franz  
Non-Public Arbitrator

05-01-2006  
\_\_\_\_\_  
Signature Date

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Date of Service (For NASD office use only)