

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

David P. Peltier and Sarah Peltier (Claimants) v. Edmund B. Pearson, David Svete, Alexander Chase & Co., Brundyn Financial Group Corp., Brundyn Securities Inc., and A CH. Securities, Inc. (Respondents)

Case Number: 05-01050

Hearing Site: Cleveland, Ohio

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Nature of the Dispute: Customers v. Associated Persons, Non-Members, and Terminated Members

**REPRESENTATION OF PARTIES**

Claimants David P. Peltier ("D. Peltier") and Sarah Peltier ("S. Peltier") hereinafter collectively referred to as "Claimants": Roger W. Van Deusen, Esq., Van Deusen & Wagner, LLC, Cleveland, OH.

Respondent David W. Svete ("Svete") appeared *pro-se*.

Respondent Edmund B. Pearson ("Pearson") did not enter an appearance in this matter.

Respondent Alexander Chase & Co. ("Alexander Chase") did not enter an appearance in this matter.

Respondent Brundyn Financial Group Corp. ("Brundyn Financial") did not enter an appearance in this matter.

Respondent Brundyn Securities Inc. ("Brundyn Securities"): Richard C. Szuch, Esq., and David Butler, Esq., Dillon, Bitar & Luther, L.L.C., Morristown, NJ.

Respondent A CH. Securities, Inc. ("A CH. Securities"): Edmund B. Pierson, A CH. Securities, Inc., Spring Valley, OH.

**CASE INFORMATION**

Statement of Claim filed on or about: March 1, 2005.

D. Peltier signed the Uniform Submission Agreement: February 17, 2005.

S. Peltier signed the Uniform Submission Agreement: February 17, 2005.

Statement of Answer filed by Respondent Svete on or about: November 19, 2005.  
Respondent Svete did not submit a Uniform Submission Agreement.

Respondent Pearson did not file a Statement of Answer or submit a Uniform Submission Agreement.

Respondent Alexander Chase did not file a Statement of Answer or submit a Uniform Submission Agreement.

Respondent Brundyn Financial did not file a Statement of Answer or submit a Uniform Submission Agreement.

Statement of Answer filed by Respondent Brundyn Securities on or about: October 7, 2005.

Respondent Brundyn Securities did not submit a Uniform Submission Agreement.

Respondent A CH. Securities did not file a Statement of Answer or submit a Uniform Submission Agreement.

#### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty, breach of contract, misrepresentations, failure to supervise, respondeat superior, suitability, and negligence. The causes of action relate to preferred stock and variable annuities.

Unless specifically admitted in his Answer, Respondent Svete denied the allegations made in the Statement of Claim.

Unless specifically admitted in its Answer, Respondent Brundyn Securities denied the allegations made in the Statement of Claim.

#### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$556,396.63, unspecified damages under the well-managed portfolio measure of damages, punitive damages, costs, attorneys' fees, and expert fees.

Respondent Svete requested dismissal of the Statement of Claim in its entirety.

Respondent Brundyn Securities requested dismissal of the Statement of Claim in its entirety.

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

Upon review of the file and the representations made on behalf of the Claimants, the undersigned Arbitrators (the "Panel") determined that Respondent Svete, Respondent

Pearson, and Respondent A CH. Securities have been properly served with the Statement of Claim and received due notice of the hearing and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent Svete, Respondent Pearson, Respondent Brundyn Securities, and Respondent A CH. Securities did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

Respondents Alexander Chase and Brundyn Financial are not members of NASD Dispute Resolution and are not subject and chose not to submit to NASD Dispute Resolution's jurisdiction.

A telephonic pre-hearing conference was held on January 27, 2006, during which the Panel heard oral arguments on Respondent Brundyn Securities' Motion to Dismiss. After due deliberation of the parties written submissions and oral arguments, the Panel granted Respondent Brundyn Securities' Motion to Dismiss.

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

1. Respondent Pierson, Respondent Svete, and Respondent A CH. Securities are jointly and severally liable for and shall pay to Claimants compensatory damages in the amount of \$556,196.63 plus interest at a rate of 5% per annum beginning from April 25, 2006 until this Award is paid in full.
2. Respondent Pierson, Respondent Svete, and Respondent A CH. Securities are jointly and severally liable for and shall pay to Claimants punitive damages in the amount of \$556,196.63. The Panel found clear and convincing evidence of common law fraud and cited *Levin v. Shearson Lehman/Am. Exp.*, Fed. Sec. Rep. (CCH) 92,080 (SDNY 1985), *Borkowski v. Borkowski*, 39 NY2d 982 (1976), and *Preston v. Murty*, 32 Ohio St. 3d 334 (1987) as authority for awarding punitive damages.
3. Respondent Pierson, Respondent Svete, and Respondent A CH. Securities are jointly and severally liable for and shall pay to Claimants attorneys' fees and costs in the amount of \$185,398.87, in accordance with the Ohio Revised Code.
4. 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 will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$	375.00
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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. Accordingly, Brundyn Securities Inc. is a party.

Member surcharge	= \$	2,250.00
Pre-hearing process fee	= \$	750.00
Hearing process fee	= \$	4,000.00

#### **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, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$	2,400.00
Pre-hearing conferences: December 21, 2005	1 session	
January 27, 2005	1 session	

One (1) Hearing session with Panel @ \$1,200.00	= \$	1,200.00
Hearing date: April 25, 2006	1 session	

Total Forum Fees	= \$	3,600.00
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1. The Panel has assessed \$600.00 of the forum fees to Claimants.
2. The Panel has assessed \$600.00 of the forum fees to Respondent Brundyn Securities.
3. The Panel has assessed \$2,400.00 of the forum fees to Respondent Pearson, Respondent Svete, and Respondent A CH. Securities jointly and severally.

### **Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$	375.00
Forum Fees	= \$	600.00
Total Fees	= \$	975.00
Less payments	= \$	1,575.00
Refund Due Claimant	= \$	600.00

2. Respondent Brundyn Securities is solely liable for:

Forum Fees	= \$ 600.00
Member Fees	= \$ 7,000.00
Total Fees	= \$ 7,600.00
Less payments	= \$ 3,000.00
Balance Due NASD Dispute Resolution	= \$ 4,600.00

3. Respondent Pearson, Respondent Svete, and Respondent A CH. Securities are jointly and severally liable for:

Forum Fees	= \$ 2,400.00
Total Fees	= \$ 2,400.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,400.00

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

Thomas H. Barnard, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Kevin R. Sehe	-	Public Arbitrator
Terrence Patrick McHugh, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Thomas H. Barnard, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

5/12/06  
Signature Date

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Kevin R. Sehe  
Public Arbitrator

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Signature Date

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Terrence Patrick McHugh, Esq.  
Non-Public Arbitrator

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Signature Date

May 16, 2006

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Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

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Kevin R. Sehe - Public Arbitrator  
Terrence Patrick McHugh, Esq. - Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

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Signature Date

*Kevin R. Sehe*  
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Kevin R. Sehe  
Public Arbitrator

*5-15-06*  
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Signature Date

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Terrence Patrick McHugh, Esq.  
Non-Public Arbitrator

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Signature Date

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