

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Larry Deutsch (Claimant) vs. Berry-Shino Securities, Inc. and Albert Brinmore Britton, Jr. (Respondents)

Case Number: 05-01790

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant Larry Deutsch hereinafter referred to as "Claimant": John G. Rich, Esq., Rich Intelisano, LLP, New York, NY.

Respondent Berry-Shino Securities, Inc. ("Berry-Shino"): Timothy Feil, Esq., Finkelstein & Feil, LLP, Bay Shore, NY.

Respondent Albert Brinmore Britton, Jr. ("Britton"): Randy Scott Zelin, Esq., Randy Scott Zelin, PC, Westbury, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: April 5, 2005.

Claimant signed the Uniform Submission Agreement: March 28, 2005.

Statement of Answer filed by Berry-Shino on or about: June 22, 2005.

Berry-Shino signed the Uniform Submission Agreement: June 21, 2005.

Statement of Answer filed by Respondent Britton on or about: July 28, 2005.

Britton did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: misrepresentations, omissions of fact, churning, breach of fiduciary duty, suitability and failure to supervise. The causes of action relate to the purchase of First Virtual Communications, Inc. stock, and other transactions.

Unless specifically admitted in its Answer, Berry-Shino denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Britton denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$100,000.00 plus interest, reimbursement of commissions, punitive damages, attorneys' fees, costs, and expenses.

Berry-Shino requested dismissal of the Statement of Claim in its entirety, disbursements, costs, and attorneys' fees.

Britton requested dismissal of the Statement of Claim in its entirety, costs, attorneys' fees, expungement of this matter from Britton's CRD record, and such other relief as the Panel deems just and proper.

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

Britton did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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. Claimant's claims are denied in their entirety.
2. Any and all 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 will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 225.00
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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 event giving rise to the dispute. Accordingly, Berry-Shino Securities, Inc. is a party.

Member surcharge	= \$	1,100.00
Pre-hearing process fee	= \$	750.00
Hearing process fee	= \$	1,700.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

March 1-3, 2006 adjournment by Berry-Shino	= \$	750.00
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### **Forum Fees and Assessments**

The Panel has assessed forum fees for each 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:

One (1) Decision on discovery-related motion on the papers with one (1) arbitrator @ \$200.00	= \$	200.00
Claimant submitted one (1) discovery-related motion		

Three (3) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$	1,350.00
Pre-hearing conferences:		
December 21, 2005	1 session	
January 9, 2006	1 session	
January 13, 2006	1 session	

One (1) Pre-hearing session with Panel @ \$750.00	= \$	750.00
Pre-hearing conference: August 10, 2005	1 session	

Sixteen (16) Hearing sessions @ \$750.00	= \$	12,000.00
Hearing Date(s):		
March 7, 2006	2 sessions	
March 8, 2006	2 sessions	
March 9, 2006	2 sessions	
June 27, 2006	2 sessions	
June 28, 2006	2 sessions	
June 29, 2006	2 sessions	
June 30, 2006	2 sessions	
August 11, 2006	2 sessions	

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Total Forum Fees	= \$	14,300.00
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1. The Panel has assessed \$14,300.00 of the forum fees to Berry-Shino.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimant requested copies of hearing tapes	= \$	150.00
2. Claimant requested copies of hearing tapes	= \$	225.00

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
Administrative Costs	= \$ 375.00
Total Fees	= \$ 600.00
Less payments	= \$ 1,365.00
Refund Due Claimant	= \$ 765.00

2. Berry-Shino is solely liable for:

Member Fees	= \$ 3,550.00
Adjournment Fee	= \$ 750.00
Forum Fees	= \$14,300.00
Total Fees	= \$18,600.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$15,050.00

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

**ARBITRATION PANEL**

Leona Beane, Esq.	-	Public Arbitrator, Presiding Chairperson
Lori H. Carena, Esq.	-	Public Arbitrator
Jeffrey L. Friedman, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Leona Beane  
Leona Beane, Esq.  
Public Arbitrator, Presiding Chairperson

8/17/06.  
Signature Date

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Lori H. Carena, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Jeffrey L. Friedman, Esq.  
Non-Public Arbitrator

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

August 21, 2006

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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Lori H. Carena, Esq.  
Public Arbitrator

8/18/06  
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8/15/06  
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