

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

James Rau and Joyce Rau, Claimants v. Stipek Securities, LLC, Leslie C. Stipek, Stipek Financial Services LLC, Sunshine Ventures 1 LLC, Roanoke Equities LLC, and Virginia Equities, Inc., Respondents

Case Number: 05-02261

Hearing Site: Los Angeles, California

Nature of the Dispute: Customers v. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimants:

Richard Bryson, Esq.
Richard Bryson APC
Lakewood, California

For Respondents:

Leslie C. Stipek
Stipek Securities LLC
Tustin, California

CASE INFORMATION

Statement of Claim filed: April 27, 2005

Claimants' Joint Uniform Submission Agreement signed: April 18, 2005

Joint Statement of Answer filed by Respondents Stipek Securities, LLC and Leslie C. Stipek: July 15, 2005

Respondent Stipek Securities, LLC's ("Stipek Securities") Uniform Submission Agreement signed: June 24, 2005

Respondent Leslie C. Stipek's ("Stipek") Uniform Submission Agreement signed: June 24, 2005

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty, failure to supervise, fraud, misrepresentation, conversion, breach of contract, negligence, and elder abuse. The causes of action relate to the investment of Claimants' funds in viaticals and in timeshares and pre-fabricated homes.

Unless specifically admitted in their Answer, Respondents denied the allegations of

wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested \$868,000.00 in compensatory damages, punitive damages in the amount of \$132,000.00, rescission of trades, disgorgement of commissions, interest, and costs, including attorney's fees.

Respondents requested dismissal of Claimants' Statement of Claim in its entirety and costs.

OTHER ISSUES CONSIDERED AND DECIDED

On July 15, 2005, Respondents filed a Third-Party Claim naming Michael Kelly as a Third-Party Respondent. Respondents did not provide proof of service of the Third-Party Claim on Michael Kelly. On July 20, 2005, NASD Dispute Resolution (NASD DR) sent Respondents a letter advising them that their Third-Party Claim was deficient and would not be deemed filed until Respondents provided NASD DR with proof of service of the Third-Party Claim on Michael Kelly. Respondents did not provide such proof. On April 5, 2006, Respondents filed a Notice of Withdrawal of Third-Party Claim against Michael Kelly.

On July 15, 2005, Respondents filed a Motion to Dismiss Certain Causes of Action in Claimants' Statement of Claim. On April 3, 2006, Claimants filed a Brief in Opposition to Motion to Dismiss Certain Causes of Action. On April 12, 2006, the Panel issued an Order denying Respondents' motion and affirming Claimants' dismissal of their elder abuse claim, which had been incorporated in their Brief in Opposition to the Motion to Dismiss.

On April 6, 2006, Respondent Stipek filed a Motion to Dismiss Claimants' Allegation that He, as an Individual, is Liable for Claimants' Alleged Damages and a Declaration in Support. On June 26, 2006, Claimants filed a Brief in Opposition to the motion. On July 12, 2006, the Panel issued an Order denying Stipek's Motion to Dismiss.

During the hearing, Claimants made a Motion to Amend their Statement of Claim to add Stipek Financial Services LLC, Sunshine Ventures 1 LLC, Roanoke Equities LLC, and Virginia Equities, Inc. as Respondents. Respondents did not oppose the motion and consented to the addition of the named entities. After due deliberation, the Panel granted the motion.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

FINDINGS OF FACT

1. Stipek was the president and/or managing member of the following limited liability companies: Stipek Securities, Stipek Financial Services LLC ("Stipek Financial"), Sunshine Ventures 1 LLC ("Sunshine"), and Roanoke Equities LLC ("Roanoke").
2. Stipek was also the president and/or managing member of Virginia Equities, Inc. ("Virginia Equities"), which is a California corporation.
3. Stipek did business with James and Joyce Rau not only under his own name and in the name of Stipek Securities, but also in the names of Stipek Financial, Sunshine, Roanoke, and Virginia Equities.
4. Beginning in or about July 2000, Stipek, Stipek Securities, and/or Stipek Financial offered and sold securities to the Raus in the state of California in the forms of investment contracts, limited partnership interests, and/or limited liability interests, as follows:
 - a. LifeTime Capital, Inc.: The transactions were for purported viatical settlement agreements. The California Department of Corporations had issued a desist and refrain order against LifeTime Capital, Inc. for selling unqualified securities on February 9, 1999. The sales transactions to James Rau occurred in October 2000.
 - b. Beneficial Assistance: The transactions were for purported viatical settlement agreements. Stipek, Stipek Securities, and Stipek Financial failed to provide material information relating to the financial condition and history of the company and the risks of the investment.
 - c. Yucatan Resorts and Resort Holdings International, Inc.: Stipek, Stipek Securities, and Stipek Financial failed to provide material information relating to the financial condition and history of the company and the risks of the investment, including the facts that Michael Kelly, owner-operator and sole shareholder of Yucatan had two administrative orders issued against him (May 18, 1999 by the New Mexico Securities Division for the sale of unqualified, non-exempt securities and a second order by South Carolina Division of Securities on July 26, 1999) prior to the transactions for Joyce Rau. Furthermore, Stipek, Stipek Securities, and Stipek Financial promised there would be a 9% to 11% rate of return and that the transactions could be liquidated at any time. Both promises were false.
 - d. Branson City Limits and Resort Hotels, Inc.: Stipek, Stipek Securities, and Stipek Financial failed to provide material information relating to the financial condition and history of the company and the risks of the investment, in that as of September, 1999, the Commissioner of Commerce and Insurance issued a Cease and Desist Order enjoining the co-owner and founder (Dennis Weaver) from selling unqualified securities and acting as an agent of an unregistered

broker-dealer and enjoining an entity controlled by Weaver from acting as an unregistered broker-dealer. In addition, in October 1999, the Franklin, Kentucky Circuit Court issued an Order of Permanent Injunction enjoining Weaver from offering and selling unqualified securities. Furthermore, Stipek, Stipek Securities, and Stipek Financial promised the Raus that they would never suffer any losses and that Stipek, Stipek Securities, and Stipek Financial would personally reimburse the Raus for their losses. No such reimbursements were ever made to either James or Joyce Rau.

- e. **Sunshine Ventures:** Stipek is the chief executive officer of Sunshine Ventures and Concord Pacific, Inc., which were created to sell interests in South Carolina real estate. Such real estate was to be purchased through a joint venture with Sunshine Real Estate Development, Inc. Stipek, as manager and sole owner of Sunshine Ventures, would receive approximately 20% of the proceeds from the sale of the units. The Texas State Securities Board issued a cease and desist order against Jules Fleder and Sunshine Real Estate Development, Inc. on October 23, 2002. In December, 2004, the Securities and Exchange Commission took over Sunshine Real Estate Development, Inc., alleging that the sale of unqualified securities and other actions taken by the corporation amounted to a Ponzi scheme.
 - f. **Roanoke and Virginia Equities:** Stipek was the sole owner of both Roanoke and Virginia Equities. Virginia Equities was the managing company. The purported purpose was to raise money to acquire real property. Stipek, as manager and sole owner of Roanoke, would receive up to 50% of the proceeds from the sale of the initial units.
 - g. **Nexstar Communication, LLC:** The purported purpose of this investment was to sell ownership interests in point of sale distribution terminals designed to process credit cards at merchant locations. Stipek, Stipek Securities, Stipek Financial, and Nexstar promised investors a fixed 12% rate of return. Nexstar was issued summary cease and desist orders by both the Maryland Attorney General and the Pennsylvania Securities Commission on November 17, 2003. On February 14, 2006, the Securities and Exchange Commission obtained a Permanent Injunction and Freezing of Assets against Nexstar.
5. These securities were sold by Stipek, Stipek Securities, Stipek Financial, Sunshine, Roanoke, and Virginia Equities to the Raus when none of these Respondents had been issued a permit or other form of qualification authorizing any person to offer or sell these securities in California.
 6. In connection with the offers and sales, Stipek, Stipek Securities, Stipek Financial, Sunshine, Roanoke, and Virginia Equities represented to James and Joyce Rau that:
 - a. The investments were safe and not risky. In fact, the investments were very risky, and James and Joyce Rau lost their entire savings.

- b. James and Joyce Rau could withdraw their principal investment amount after a specified minimum number of years. In fact, James and Joyce Rau were unable to withdraw any of their principal investment.
 - c. James and Joyce Rau would receive a specified return on their investment for a specified number of years. In fact, James and Joyce Rau received only a few of the promised interest payments.
 - d. Stipek is a California Certified Public Accountant or used to be a Certified Public Accountant, when in fact he has not held such a license for many years.
7. Stipek conducted unlicensed broker-dealer activity through Stipek Financial which is not a registered broker-deal in the State of California.

CONCLUSIONS

The Panel finds that after consideration of all of the evidence that the named Respondents Stipek and Stipek Securities did business as Stipek Financial, Sunshine, Roanoke, and Virginia Equities. When Claimants moved to add the names of Stipek Financial, Sunshine, Roanoke, and Virginia Equities as Respondents liable for the Raus Statement of Claim, Stipek did not oppose the motion and, in fact, agreed that the entities should be added as named Respondents. Therefore, Stipek Financial, Sunshine, Roanoke, and Virginia Equities are deemed additional respondents.

The Panel finds that Stipek, Stipek Securities, Stipek Financial, Sunshine, Roanoke, and Virginia Equities acted with fraud, deceit, concealment, and suppression of material facts with the intent to defraud James and Joyce Rau in the sale of securities as to each of the following transactions:

1. Two LifeTime Capital Viatical transactions, both in October 2000, to James Rau in the amount of \$50,000.00 each;
2. Four Beneficial Assistance Viatical transactions in October 2000, to James Rau, in the following amounts: two transactions in the amount of \$25,000.00 each; one transaction in the amount of \$18,448.00; and one transaction in the amount of \$31,669.00.
3. Two Branson transactions to James Rau, as follows: The first in July 2001 in the amount of \$67,500.00 and the second in November 2001 in the amount of \$76,500;
4. Three Sunshine transactions to James Rau, as follows: The first in November 2001 in the amount of \$75,000.00, the second in May 2002 in the amount of \$33,000.00, and the third in July 2002 in the amount of \$60,000.00.
5. The Roanoke transaction in April 2003 to James Rau in the amount of \$28,000.00.

6. The Nexstar transaction in September 2003 to James Rau in the amount of \$20,000.00.
7. Three Beneficial Assistance Viatical transactions in October 2000, to Joyce Rau, in the following amounts: one transaction in the amount of \$13,187.00; a second transaction in the amount of \$50,000.00; and a third transaction in the amount of \$15,974.00.
8. Two Yucatan Resort transactions to Joyce Rau, as follows: the first in September 2001 in the amount of \$50,000.00 and the second in February 2002 in the amount of \$49,500.00.
9. The Sunshine transaction in July 2002 to Joyce Rau in the amount of \$60,000.00.
10. The Branson transaction in July 2002 to Joyce Rau in the amount of \$49,500.00.
11. The Nexstar transaction in September 2003 to Joyce Rau in the amount of \$15,000.00.

The Panel finds that neither James nor Joyce Rau would have entered into the transactions enumerated above if they had known of the facts concealed or suppressed by Stipek, Stipek Securities, Stipek Financial, Sunshine, Roanoke, and Virginia Equities.

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 Leslie C. Stipek, Stipek Securities, LLC, Stipek Financial Services, LLC, Sunshine Ventures 1, LLC, Roanoke Equities, LLC, and Virginia Equities, Inc. are jointly and severally liable to and shall pay Claimant James Rau the sum of \$614,000.00 in compensatory damages.
- 2) Respondents Leslie C. Stipek, Stipek Securities, LLC, Stipek Financial Services, LLC, Sunshine Ventures 1, LLC, Roanoke Equities, LLC, and Virginia Equities, Inc. are jointly and severally liable to and shall pay Claimant Joyce Rau the sum of \$278,000.00 in compensatory damages.
- 3) Respondents Leslie C. Stipek, Stipek Securities, LLC, Stipek Financial Services, LLC, Sunshine Ventures 1, LLC, Roanoke Equities, LLC, and Virginia Equities, Inc. are jointly and severally liable to and shall pay Claimants James Rau and Joyce Rau the sum of \$446,000.00 in punitive damages.

- 4) Respondents Leslie C. Stipek, Stipek Securities, LLC, Stipek Financial Services, LLC, Sunshine Ventures 1, LLC, Roanoke Equities, LLC, and Virginia Equities, Inc. are jointly and severally liable to and shall pay Claimants James Rau and Joyce Rau the sum of \$25,000.00 in attorney's fees.
- 5) With the exception of paragraph 4, the parties shall bear their respective costs, including attorney's fees.
- 6) This Award shall bear interest at the legal rate of interest in California on any balance that remains unpaid thirty (30) days after receipt hereof, unless a motion to vacate has been filed with a court of competent jurisdiction. If this award is the subject of a motion to vacate that is subsequently denied, this award shall bear interest at the legal rate of interest in California on any balance that remains unpaid from date of the court's order denying said motion to vacate.
- 7) 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	= \$ 375.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Stipek Securities, LLC is a party and the following fees are assessed:

Member Surcharge	= \$2,250.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$4,000.00
Total Member Fees	= \$7,000.00

Adjournment Fees

The following adjournment fees are assessed:

April 18, 2006, adjournment requested by Claimant and Respondents	= \$1,200.00
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The Panel assessed adjournment fee jointly and severally to Respondents Stipek Securities, LLC and Leslie C. Stipek.

Three-Day Cancellation Fees

Three-day cancellation fees apply when a hearing on the merits is postponed or settled within three business days before the start of the first scheduled hearing session. The following three-day cancellation fees are assessed:

Cancellation of April 18, 2006 hearing date: = \$ 300.00

The Panel assessed the three day cancellation fee jointly and severally to Respondents Stipek Securities, LLC and Leslie C. Stipek.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, which lasts four (4) hours or less. The following forum fees are assessed:

One (1) pre-hearing conference session with the Panel			
@ \$1,200.00/session			= \$1,200.00
Pre-hearing conference:	October 3, 2005	1 session	
Four (4) Hearing sessions @ \$1,200.00/session			= \$4,800.00
Hearings:	September 25, 2006	2 sessions	
	September 26, 2006	2 sessions	
Total Forum Fees			= \$6,000.00

The Panel assessed the forum fees, in the amount of \$6,000.00, jointly and severally to Respondents Stipek Securities, LLC and Leslie C. Stipek.

Fee Summary

1. Claimants James Rau and Joyce Rau are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 375.00
<u>Less payments</u>	= \$(1,700.00)
Refund Due from NASD Dispute Resolution	= \$(1,325.00)

2. Respondent Stipek Securities, LLC is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
<u>Less payments</u>	= \$(7,000.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Stipek Securities, LLC and Leslie C. Stipek are charged jointly and severally with the following fees and costs:

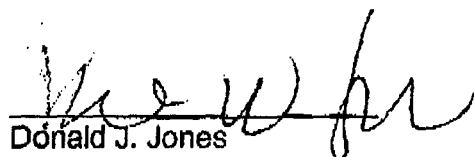
Adjournment Fees	= \$ 1,200.00
Three-Day Cancellation Fees	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 6,000.00</u>
Total Fees	= \$ 7,500.00
<u>Less payments made by Stipek Securities LLC</u>	<u>= \$(1,550.00)</u>
Balance Due NASD Dispute Resolution	= \$ 5,950.00

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

Donald J. Jones	-	Public Arbitrator, Presiding Chair
Anthony F. Sauber	-	Public Arbitrator
Rosalind Anne Salzman	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Donald J. Jones
Chair, Public Arbitrator

10/11/06
Signature Date

Anthony F. Sauber
Public Arbitrator

Signature Date

Rosalind Anne Salzman
Non-Public Arbitrator

Signature Date

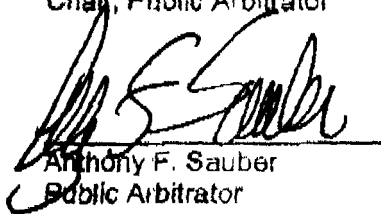
10/11/06
Date of Service

ARBITRATION PANEL

Donald J. Jones	-	Public Arbitrator, Presiding Chair
Anthony F. Sauber	-	Public Arbitrator
Rosalind Anne Salzman	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Donald J. Jones
Chair, Public Arbitrator



Anthony F. Sauber
Public Arbitrator

Signature Date

Oct 9, 2006
Signature Date

Rosalind Anne Salzman
Non-Public Arbitrator

Signature Date

10/11/06
Date of Service

ARBITRATION PANEL

Donald J. Jones	-	Public Arbitrator, Presiding Chair
Anthony F. Sauber	-	Public Arbitrator
Rosalind Anne Salzman	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Donald J. Jones
Chair, Public Arbitrator

Signature Date

Anthony F. Sauber
Public Arbitrator

Signature Date



Rosalind Anne Salzman
Non-Public Arbitrator

10-11-06
Signature Date

10/11/06
Date of Service