

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Dennis M. Nigro, The Dennis M. Nigro Trust, The Dennis & Brenda M. Nigro Living Trust,  
and Dennis M. Nigro, MD, Inc., Claimants v. Mutual Service Corporation, Charles W.  
Leitzke, Leonard G. Voisen, and Michael E. Poston, Respondents

Case Number: 05-02417

Hearing Site: San Diego, California

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

**REPRESENTATION OF PARTIES**

For Claimants Dennis M. Nigro,  
The Dennis M. Nigro Trust,  
The Dennis & Brenda M. Nigro Living Trust,  
and Dennis M. Nigro, MD, Inc. (hereinafter  
collectively referred to as "Claimants"):

Timothy C. Karen, Esq.  
Law Offices of Timothy C. Karen  
Del Mar, California

For Respondents Mutual Service Corporation,  
Charles W. Leitzke and Leonard G. Voisen:

G. Thomas Fleming, III, Esq.  
Brian G. Mulherin, Esq.  
Jones, Bell, Abbott, Fleming  
& Fitzgerald LLP  
Los Angeles, California

For Respondent Michael E. Poston:

Theodore C. Peters, Esq.  
Edgerton & Weaver  
Hermosa Beach, California

**CASE INFORMATION**

Statement of Claim filed: June 30, 2005

Claimants' Joint Uniform Submission Agreement signed: June 15, 2005

Joint Statement of Answer filed by Respondents Mutual Service Corporation, Charles W. Leitzke, Leonard G. Voisen, and Michael E. Poston: September 29, 2005

Respondent Mutual Service Corporation's Uniform Submission Agreement signed:  
July 13, 2005

Respondent Charles W. Leitzke's Uniform Submission Agreement signed:  
October 4, 2005

Respondent Leonard G. Voisen's Uniform Submission Agreement signed:  
October 4, 2005

Respondent Michael E. Poston's Uniform Submission Agreement filed:  
Not Dated

### **CASE SUMMARY**

Claimants alleged breach of contract, breach of fiduciary duty, unsuitability, unauthorized trading, churning, misrepresentation of material facts, violation of NASD and NYSE rules, and failure to supervise. Claimants' allegations involved transactions in securities, including but not limited to 3Com Corporation, Activision, Inc., Advanced Micro Devices, Agile Software Corporation, Applera Corporation, Applied Micro Circuit Corporation, Ariba, Inc., Amtel Corporation, Bea Systems, Inc., Brocade Communications, Cepheid, Check Point Software Technologies Corporation, Cirrus Logic, Cisco Systems, Converse Technology, Inc., Cymer, Inc., Cypress Semiconductor Corporation, Doubleclick, E Digital Corporation, E Spire Communication, Inc., Flextronics, Glenayre Technologies, JDS Uniphase Corporation, Nextel Communications, Inc., Palm, Inc., RF Micro Devices, and Qualcomm, Inc.

Respondents Mutual Service Corporation, Charles W. Leitzke, Leonard G. Voisen, and Michael E. Poston denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested \$2,000,000.00 in compensatory damages, unspecified punitive damages, and costs, including attorney's fees.

Respondents Mutual Service Corporation, Charles W. Leitzke, Leonard G. Voisen, and Michael E. Poston requested dismissal of Claimants' Statement of Claim in its entirety and costs.

**OTHER ISSUES CONSIDERED AND DECIDED**

On August 11, 2006, Claimants brought a Motion for Leave to File a Motion for Summary Adjudication. Respondents filed an Opposition to the motion on August 28, 2006. On September 7, 2006, a telephonic pre-hearing conference was held, attended by Timothy C. Karen, Esq. on behalf of Claimants, Brian G. Mulherin, Esq. and Theodore C. Peters, Esq., on behalf of Respondents, and the Panel. After due deliberation, the Panel denied the motion.

On November 22, 2006, Arbitrator James F. Schmidt withdrew from the Panel. The parties unanimously agreed to continue the hearing with only two arbitrators.

On December 27, 2006, Respondents Mutual Service Corporation, Charles W. Leitzke, and Leonard G. Voisen filed an Emergency Motion for Sanctions for Claimants' Violation of the Chairman's Prior Discovery order; and, for Further Orders Regarding Production of Documents and Information. On January 7, 2007, Claimants filed an opposition, part of which requested sanctions against Respondents for having filed the motion. The Panel made certain orders regarding the discovery documents and took under submission until the conclusion of this hearing the parties' respective requests for sanctions. After due deliberation, the Panel orders Claimants to pay Respondents Mutual Service Corporation, Charles W. Leitzke, and Leonard G. Voisen the sum of \$5,000.00 in sanctions.

During the hearing, Respondent Michael E. Poston requested the expungement of all reference to the above-captioned arbitration from his registration records maintained by the Central Registration Depository.

The parties 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, 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 Mutual Service Corporation, Charles W. Leitzke, and Leonard G. Voisen are jointly and severally liable to and shall pay Claimants Dennis M. Nigro, the Dennis M. Nigro Trust, the Dennis & Brenda M. Nigro Living Trust, and Dennis M. Nigro, MD, Inc., the sum of \$200,000.00 in compensatory damages.
- 2) Respondents Mutual Service Corporation, Charles W. Leitzke, and Leonard G. Voisen are jointly and severally liable to and shall pay Claimants Dennis M. Nigro, the Dennis M. Nigro Trust, the Dennis & Brenda M. Nigro Living Trust, and Dennis M. Nigro, MD, Inc., simple interest in the amount of 6% per annum on \$200,000.00 from June 30, 2005, until payment of this Award is made in full.
- 3) Respondent Michael E. Poston is liable to and shall pay Claimants Dennis M. Nigro, the Dennis M. Nigro Trust, the Dennis & Brenda M. Nigro Living Trust, and Dennis M. Nigro, MD, Inc., the sum of \$50,000.00 in compensatory damages.
- 4) Respondent Michael E. Poston is liable to and shall pay Claimants Dennis M. Nigro, the Dennis M. Nigro Trust, the Dennis & Brenda M. Nigro Living Trust, and Dennis M. Nigro, MD, Inc., simple interest in the amount of 6% per annum on \$50,000.00 from June 30, 2005, until payment of this Award is made in full.
- 5) Claimants Dennis M. Nigro, the Dennis M. Nigro Trust, the Dennis & Brenda M. Nigro Living Trust, and Dennis M. Nigro, MD, Inc. are jointly and severally liable to and shall pay Respondents Mutual Service Corporation, Charles W. Leitzke, and Leonard G. Voisen sanctions in the amount of \$5,000.00.
- 6) The parties shall bear their respective costs, including attorney's fees.
- 7) All other relief requested and not expressly granted, including Claimants' request for punitive and RICO damages and Respondent Michael E. Poston's request for expungement, 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	= \$ 500.00
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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 Mutual Service Corporation is a party and the following fees are assessed:

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$5,000.00
<b>Total Member Fees</b>	<b>= \$8,550.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

July 31, August 1-4, August 7-8, and August 30-31, and September 1, 2006 adjournment requested by Respondent Michael E. Poston	= \$1,200.00
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The Panel assessed the adjournment fee to Respondent Michael E. Poston.

#### **Forum Fees and Assessments**

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

Three (3) Pre-hearing conference sessions with a single arbitrator @ \$450.00/session		= \$1,350.00
Pre-hearing conference:	April 25, 2006	1 session
	June 5, 2006	1 session
	June 27, 2006	1 session

Five (5) Pre-hearing conference sessions  
with the Panel @ \$1,200.00/session = \$ 6,000.00

Pre-hearing conferences:	November 18, 2005	1 session
	February 6, 2006	1 session
	August 2, 2006	1 session
	September 7, 2006	1 session
	January 12, 2007	1 session

Twenty-eight (28) Hearing sessions @ \$1,200.00/session = \$33,600.00

Hearings:	November 20, 2006	2 sessions
	November 21, 2006	2 sessions
	November 22, 2006	2 sessions
	December 11, 2006	2 sessions
	December 12, 2006	2 sessions
	December 13, 2006	2 sessions
	December 14, 2006	2 sessions
	December 15, 2006	2 sessions
	December 18, 2006	2 sessions
	January 15, 2007	2 sessions
	January 16, 2007	2 sessions
	January 17, 2007	2 sessions
	January 18, 2007	2 sessions
	January 19, 2007	2 sessions

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**Total Forum Fees = \$40,950.00**

1. The Panel assessed \$8,190.00 of the forum fees jointly and severally to Claimants Dennis M. Nigro, the Dennis M. Nigro Trust, the Dennis & Brenda M. Nigro Living Trust, Dennis M. Nigro, MD, Inc.
2. The Panel assessed \$24,570.00 of the forum fees jointly and severally to Respondents Mutual Service Corporation, Charles W. Leitzke, Leonard G. Voisen.
3. The Panel assessed \$8,190.00 of the forum fees to Respondent Michael E. Poston.

**Fee Summary**

1. Claimants Dennis M. Nigro, Dennis M. Nigro Trust, Dennis & Brenda M. Nigro Living Trust, Dennis M. Nigro, MD, Inc. are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 8,190.00
Total Fees	= \$ 8,690.00
Less payments	= \$(1,700.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 6,990.00</b>

2. Respondent Mutual Service Corporation is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
Less payments	= \$(8,550.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents Mutual Service Corporation, Charles W. Leitzke, and Leonard G. Voisen, are charged jointly and severally with the following fees and costs:

Forum Fees	= \$24,570.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$24,570.00</b>

4. Respondent Michael E. Poston is charged with the following fees and costs:

Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$ 8,190.00
Total Fees	= \$ 9,390.00
Less payments	= \$ (1,500.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 7,890.00</b>

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.

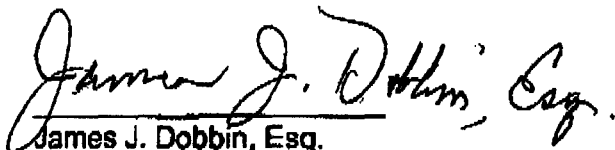
**ARBITRATION PANEL**

James J. Dobbin, Esq.  
Ronald O. Bub, Sr.

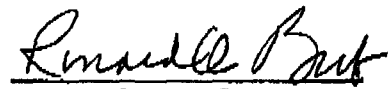
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Public Arbitrator, Presiding Chair  
Public Arbitrator

**Concurring Arbitrators' Signatures**

  
James J. Dobbin, Esq.  
Chair, Public Arbitrator

JANUARY 22, 2007  
Signature Date

  
Ronald O. Bub, Sr.  
Public Arbitrator

22 Jan 2007  
Signature Date

JANUARY 23, 2007  
Date of Service