

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Johnny L. Timm

Case Number: 05-02772

Names of the Respondents  
National Securities Corp.  
Dwayne Samboy  
Joon Rhee

Hearing Site: Atlanta, Georgia

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

**REPRESENTATION OF PARTIES**

For Johnny L. Timm, hereinafter referred to as "Claimant": Greg L. Thorpe, Esq., Law Offices of G. Lynn Thorpe, New Rochelle, New York, until his withdrawal as counsel on or about August 14, 2006. Thereafter, Robert E. Karoly of Investor's Recovery Specialists, Inc., Vero Beach, Florida, appeared on behalf of Claimant.

For Respondent National Securities Corp. ("National"): Diana Golbeck, Esq., Golbeck, Roth, PLLC, Seattle, Washington until her withdrawal as counsel on or about August 15, 2006. Thereafter, Timothy Feil, Esq. and Scott Wassmuth, Esq., Finkelstein & Feil, LLP, Bay Shore, New York, appeared on behalf of Respondent National.

For Respondents Dwayne Samboy ("Samboy") and Joon Rhee ("Rhee"): Timothy Feil, Esq. and Scott Wassmuth, Esq., Finkelstein & Feil, LLP, Bay Shore, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: May 23, 2005.

Claimant signed the Uniform Submission Agreement: May 17, 2005.

Statement of Answer filed by Respondent National on or about: August 3, 2005.

Respondent National signed the Uniform Submission Agreement: August 3, 2005.

Statement of Answer filed by Respondents Samboy and Rhee on or about: August 9, 2005.

Respondent Samboy signed the Uniform Submission Agreement: August 10, 2005.

Respondent Rhee signed the Uniform Submission Agreement: August 10, 2005.

Respondents Samboy and Rhee's Joint Motion to Dismiss and to Expunge the Statement of Claim filed on or about: December 6, 2005.

Claimant's Motion to Vacate Order and Reinstate Claimant's Claim filed on or about: December 26, 2005.

Respondent National's Response to Claimant's Motion to Vacate Order and Reinstate Claimant's Claim filed on or about: January 12, 2006.

Respondents Samboy and Rhee's Opposition to Claimant's Motion to Vacate Order and Reinstate Claimant's Claim filed on or about: January 12, 2006.

Respondents National, Samboy and Rhee's Motion to Dismiss filed on or about: September 15, 2006.

Claimant's Response to Respondents' Motion to Dismiss filed on or about: November 3, 2006.

Supplement to Respondents National, Samboy and Rhee's Motion to Dismiss filed on or about: November 7, 2006.

Respondents National, Samboy and Rhee's Sur-Reply to Claimant's Opposition to Respondents' Motion to Dismiss filed on or about: November 15, 2006.

### **CASE SUMMARY**

Claimant asserted the following causes of action: (1) failure to supervise; (2) breach of fiduciary duty; (3) unsuitable recommendations; (4) inappropriate investment advice; (5) failure to communicate; and, (6) churning. The causes of action relate to the purchase and sale of various securities in Claimant's account, including, but not limited to, Linkton LTD ADR and Chesapeake Energy Corp.

Unless specifically admitted in their Answers, Respondents denied the allegations contained in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimant requested: 1) compensatory converted losses in the amount of \$117,672.00; 2) interest in the amount of \$98,427.00, representing loss of interest on \$546,816.00 at 6% which equals \$32,809.00 per year for three years; 3) arbitration preparation costs in the amount of \$5,000.00, representing management fees, expert witness fees and hearing deposits; 4) an estimate of legal fees chargeable to Claimant in the amount of \$77,385.00, representing 35% of the awarded amount; and, 5) an unspecified amount in punitive damages.

Respondent National requested: 1) that Claimant's assertions be rejected; and, 2) that the relief that Claimant seeks be denied in full by the arbitration Panel, with costs awarded to Respondent National.

Respondents Samboy and Rhee requested: 1) a dismissal of the Statement of Claim, in all respects, including the claim for punitive damages; 2) that Claimant be directed to submit a more "definite statement"; and, (3) that all disbursements and costs in defending this action be assessed against Claimant, including NASD fees and reasonable attorneys' fees.

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

Claimant did not appear at the pre-hearing conference conducted on November 23, 2005. Upon review of the file and the representations by/on behalf of Respondents, the Panel determined that Claimant had received due notice of the pre-hearing. The Panel issued an Order dated November 23, 2005, which stated that Claimant had ten (10) days from receipt of the Panel's Order to show why his claim should not be dismissed.

Claimant did not file a response.

Thereafter, Respondents Samboy and Rhee filed a Motion to Dismiss and to Expunge the Statement of Claim on the basis that Claimant had failed to prosecute his case and for Claimant's alleged willful disregard of the Panel's Order dated November 23, 2005. Claimant did not file a response to this motion. In their Joint Motion to Dismiss and to Expunge the Statement of Claim, Respondents Samboy and Rhee requested that the Panel recommend the expungement of this matter from their NASD Central Registration Depository ("CRD") records and that Claimant be ordered to pay the attorneys' fees and costs that said Respondents have incurred in defending this claim, which amount is not less than \$15,000.00.

On or about December 22, 2005, the Panel entered an Order which dismissed Claimant's claims in their entirety, without prejudice, and denied Respondents Samboy and Rhee's requests for expungement and attorneys' fees. Thereafter, Claimant moved to vacate the Panel's Order of December 22, 2005 and to reinstate his claims, on the basis of miscommunication between the parties and between Claimant and NASD Dispute Resolution, which Claimant asserted resulted in lack of notice to Claimant. Respondents Samboy and Rhee objected to this motion. On or about January 30, 2006, the Panel issued an Order which granted Claimant's request and reinstated Claimant's claims.

Respondents Samboy and Rhee and Respondent National filed motions to compel dated May 24, 2006 and June 1, 2006, respectively. Claimant's response to Respondents' respective motions to compel was filed on or about June 19, 2006. On or about June 1, 2006, Claimant filed a motion to compel. Respondent National and Respondents Samboy and Rhee's responses to this motion were filed on June 14, 2006 and June 16, 2006, respectively. On or about June 26, 2006, the Panel issued an Order in which it directed the parties to provide specific documents and information in response to the parties' respective motions to compel.

Thereafter, Respondents National, Samboy and Rhee filed a second Motion to Dismiss in which they asserted the following: (1) that Claimant had failed to abide by the Panel's Order dated June 26, 2006, concerning production of documents in connection with Respondents' previous motions to compel; and, (2) that Claimant continually delayed in prosecuting his case. In his response, Claimant asserted the following: (1) that he provided all documents in his possession in connection with the Panel's Order dated June 26, 2006, and that any documents not produced were destroyed in a house fire; and, (2) that any delay in the prosecution of this matter by Claimant was caused by the use of the wrong address in sending correspondence to Claimant.

In their Sur-Reply to Claimant's Opposition to Respondents' Motion to Dismiss, Respondents National, Samboy and Rhee asserted that Claimant's continued refusal to provide specific responses to each discovery request as directed by the Panel left Respondents without knowledge as to what documents Claimant may have possessed but no longer possesses, or the custodians of same. Further, Respondents National,

Samboy and Rhee contended that Claimant could not keep using the fire as a shield from disclosing what documents existed or were in his possession. On or about November 27, 2006, the Panel issued an Order which granted respondents' Motion to Dismiss, without prejudice.

### **AWARD**

After considering the pleadings and oral argument made by the parties during the pre-hearing conference conducted on November 2, 2006, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims are dismissed, without prejudice.

Respondents Samboy and Rhee's requests for expungement of this matter from their NASD CRD records are denied.

Any and all claims for relief not specifically addressed herein, including Claimant's request for legal fees and punitive damages and Respondents Samboy and Rhee's requests for attorneys' fees, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 300.00
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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. In this matter, the member firm National Securities Corp. is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total member Fees	= \$5,200.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

**Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

**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) pre-hearing session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: June 23, 2006	1 session

Three (3) Pre-hearing sessions with the Panel @ \$1,125.00/ session	= \$ 3,375.00
Pre-hearing conferences: November 23, 2005	1 session
February 16, 2006	1 session
November 2, 2006	1 session

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Total Forum Fees	= \$ 3,825.00
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The Panel waived \$1,125.00 of the forum fees.  
The Panel has assessed \$1,350.00 of the forum fees to Claimant.  
The Panel has assessed \$1,350.00 of the forum fees jointly and severally to Respondents National, Samboy and Rhee.

**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 are not limited to: additional copies of arbitrator awards; copies of audio transcripts; retrieval of documents from archives; interpreters; and, security.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,350.00
Total Fees	= \$ 1,650.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 225.00

Respondent National is solely liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents National, Samboy and Rhee are jointly and severally liable for:

Forum Fees	= \$ 1,350.00
Total Fees	= \$ 1,350.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,350.00

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

**ARBITRATION PANEL**

N. John Garcia	-	Public Arbitrator, Presiding Chairperson
Helen E. Huyler, Esq.	-	Public Arbitrator
Jeannie B. Wright	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

11/28/06

\_\_\_\_\_  
N. John Garcia  
Public Arbitrator, Presiding Chairperson

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

/s/

11/28/06

\_\_\_\_\_  
Helen E. Huyler, Esq.  
Public Arbitrator

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

/s/

11/28/08

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Jeannie B. Wright  
Non-Public Arbitrator

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

November 29, 2006

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Date of Service (For NASD Dispute Resolution office use only)

**Concurring Arbitrators' Signatures**



N. John Garcia  
Public Arbitrator, Presiding Chairperson

11-28-06  
Signature Date

Helen E. Huyler, Esq.  
Public Arbitrator

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Jeannie B. Wright  
Non-Public Arbitrator

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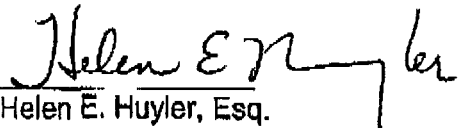
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Public Arbitrator, Presiding Chairperson

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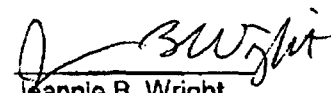
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