

**NASD DISPUTE RESOLUTION AWARD**  
**NASD DISPUTE RESOLUTION**

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CASE: 05-06517

Mohamed Bin Sheikh Ishaq, (Claimant) vs. Brill Securities, Inc. and Joseph Nazor,  
(Respondents)

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**ATTORNEYS:**

For Claimant appeared Kevin P. Conway, Esq., of the firm Conway & Conway, New  
York, NY.

For Respondents appeared Charles M. O'Rourke, Esq., of the firm O'Rourke and  
Lawlor Attorneys-at-Law, Woodbury, NY.

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**NATURE OF DISPUTE:** Customer v. Member and Associated Person

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**DATE FILED:** December 21, 2005

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**CASE SUMMARY:** Claimant alleged that Respondents placed him in investments that  
were unsuitable for his needs, breached their fiduciary duty and breached their contract.  
Claimant further alleged failure to supervise, conversion, fraud unauthorized trading and  
negligence. Claimant maintained that due to Respondents' actions, he suffered a  
financial loss. Claimant's claim involved various common stock.

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**ARBITRATOR'S REPORT:** See attached Exhibit A.

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**Claim Data**

Claim: \$25,000.00  
Interest: Unspecified  
Attorney Fees: Unspecified  
Filing Fees: Unspecified  
Punitive: Unspecified

**Award Data**

Award: \$4,000.00  
Interest: \$.00  
Attorney Fees: \$.00  
Filing Fees: \$.00  
Punitive: \$.00

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**AWARD:** The undersigned arbitrator has decided and determined in full and final  
resolution of the issues submitted for determination as follows: 1) Respondent, Joseph  
Nazor, is liable and shall pay to the Claimant \$3,000.00. 2) Respondent, Brill  
Securities, Inc., is liable and shall pay to the Claimant \$1,000.00. 3) All requests for  
attorney fees are denied. 4) All requests for punitive damages are denied. 5) All  
requests for interest are denied. 6) All other relief requests are denied. 7) NASD  
Dispute Resolution shall retain the \$425.00 filing fee that the Claimant deposited  
previously.

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**OTHER FEES:** Pursuant to Rule 10333 of the Code, Respondent Brill Securities, Inc.  
has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously  
invoiced.

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Award 05-06517

Roberta Frost

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Sole Public Arbitrator

AFFIRMATION

I, Roberta Frost, 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.

*Roberta Frost*

Roberta Frost

*July 21, 2006*

(Signature Date)

July 28, 2006

Date of Service (For NASD-DR office use only)

# EXHIBIT A

AWARD: Case No. NASD-DR Arb. No. 05-06517

7/7/06

CASE NAME: MOHAMED BIN SHEIKH ISHAQ V. JOSEPH NAZOR AND BRILL SECURITIES, INC.

## AWARD:

This arbitrator has examined the Statement of Claim presented by Mohamed Bin Sheikh Ishaq and the responses of Joseph Nazor and Brill Securities, Inc., as well as their exhibits and answers to questions that all parties have made available. The presentation of such well-organized material and the timely answers to questions requested were very much appreciated. Determination of damages was based on an assessment of the actions by the Respondents Joseph Nazor and Brill Securities Inc. and the shared responsibilities of the Claimant, Mohamed Bin Sheikh Ishaq.

The request for damages of \$25,000 is denied, but an award of \$4,000 is to be made to the Claimant by Joseph Nazor and Brill Securities in recognition of the fact that damages were incurred not totally explainable by market fluctuations but by the actions or inactions of the respondents.. Determining responsibility for these is somewhat obscured by the lack of documentation, particularly during the early trading in this account, and Claimant bears some responsibility for this, having released the initial \$25,000 to open this account before supplying clear documentation expressing his requirements. This was critical here because of difficulties in communicating that were not only due to telephonic limitations or travel schedules but also to the need for great sensitivity in negotiating across different languages and cultures and mitigates some of the relief from damages.

Since it is Registered Representative Joseph Nazor who, with his agency, Brill Securities Inc., has the greater responsibility for these damages by the services provided, we ask that \$3,000 be granted to Claimant Mohamed Bin Sheikh Ishaq, by Joseph Nazor, inclusive of attorney fees and filing fees, for damages related to unsuitable advice, and an award of \$1,000 be provided by Brill Securities Inc. for a lack of supervision in handling this account, particularly when it was engaged for Brill Securities as a referral that might need attention because of an unsettled litigation at another brokerage agency involving the Claimant, and because of inadequate protocols for ensuring understanding of margin trading by clients from different cultures who are more proficient in languages other than English.

Award 05-06517  
STATE OF NEW YORK


SS:

COUNTY OF NEW YORK

ARBITRATOR  
Roberta Frost - Sole Public Arbitrator

AFFIRMATION

I, ROBERTA FROST, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument which is my oath and award.

  
Roberta Frost

Date of Decision: July 7, 2006

## CAUSES OF ACTION

### On Suitability:

In looking at the seven causes for action presented by the Claimant, the overriding impression was that trading was made on unsuitable advice, given the difficulties of language comprehension, communication, poor documentation and possibly even waning physical capacity.

When examining the speed with which trades were sometimes bought and sold, we questioned the heavy reliance on trades in very low-priced stocks, which are acknowledged to be most volatile. If a broker recommends a small amount of trading in low-priced stock, that could hardly seem improper, but to risk an entire account and then some on an account where communication is limited is questionable at best.

Communications difficulties, whether caused by Claimant unavailability or Respondent unresponsiveness, were as important here as the evaluations of kinds of trades executed. The fast buying and selling may well have been attempts to extricate the account from a losing situation, yet they certainly did not lend themselves to the measured decision-making Claimant seemed to expect and resulted in an expeditious depletion of funds in the account.

Misunderstandings appeared to persist regarding trading on margin in a Type 1 Cash Account and a Type 2 Margin Account, which could have been alleviated with up-to-date, documented information regarding Claimant's requirements, particularly regarding his attitude toward trading on margin.

### Failure to Supervise:

There was little indication that the firm failed in its responsibility to take action for this account once it learned of a Claimant's complaint, though it's possible that systems were in place that support an attitude of reluctance to report a customer's complaint to a supervisor. There are somewhat vague written indications of some dissatisfaction by the Claimant early on, yet Brill Securities does not recognize the receipt of any complaints.

Damages were involved to some extent in the overall supervision of this account, which needed special attention not only because it came from a referral in which there was still an ongoing litigation from a case at another firm, but where there was a level of negligence in the precipitous trading when this account was opened that saw little documentation of objectives or strategies.

### Fraud and Conversion

Although there were questionable activities in the trading for this account, they did not reach a level of wrongdoing that could be considered intentionally fraudulent. They were primarily confined to trades made at the outset, when transactions were pursued vigorously without documentation and prior to the signing of a Customer Agreement. There were several

very low-priced, short-term trades made which fall just short of the definition of churning and could have been legitimate, if misguided, attempts to improve performance of the account.. While churning may not have been the motivation here, there are indications that there were times when Joseph Nazor's transactions on behalf of Sheikh Ishaq's account were overly intense. Stock trades were executed with such speed that ethical responsibility required that conditions and risks be well documented, if only to cover Respondent's own responsibilities regarding client needs.

For whatever reason, the Claimant did not seem to understand the nuances of trading where additional funds had to be provided, however the account was identified. This was critical to the operation of this account. NASD and federal regulations clearly charge responsibility for obtaining clarity with the Respondents.

Most responsibilities, however, are shared since Mohamed Bin Sheikh Ishaq was unable to document his own requirements for handling this account for almost nine months. He did sign a Customer Agreement that allowed margin trading, but how aware he was of that fact is open to question. It was buried on the second page of the agreement in very small print. The exhibit copy was badly smudged. Earlier indications were that he would not want to negotiate on margin trading, See Claimant's fax question, dated August 13, 2002, regarding purchase of Sanmina-Sci, where he asks how stock was purchased "in excess of funds available with you."

As soon as the Customer Agreement was signed, there was a round of speculative investing. Although margin trading was perfectly legal at this point, it was not clear that Claimant understood what he had signed, nor whether he anticipated adding funds to cover losses in transactions in this round. Since Claimant was a still-working businessman, we anticipate that he had some awareness of pressures when they were being used to convince him to buy a stock. Damages for fraud or conversion in this case not entirely provable.

#### Breach of Contract

While Respondent found no complaints from Claimant, fax transmissions indicate there were indeed several queries particularly regarding trading with more money than was in his account and regarding what he suggested were excessive commission charges. These may not have reached the attention of the firm's supervisor of this account, but there were concerns expressed as early as August 2002 regarding commission cost and the possibility of unauthorized trading.

Joseph Nazor apparently used inflated enthusiasm about the expectations for stocks he was recommending, but since Claimant would have had experience with such language during negotiations with other American firms, it is reasonable to believe he was able to discern what was truth and what was sales rhetoric.

While sales hyperbole can be dismissed, promises of low commissions need to be addressed. Respondent did adjust his commission in one instance, but it is unclear that the lower rate was maintained in subsequent activity.

We fault Brill Securities Inc. for not recognizing that there might be issues regarding this account that would require supervision and care with respect to recommendations as well as overseeing interpretations so as to avoid any perception of misrepresentation

Damages are assessed as unsuitability of recommendations because of the high level of ambivalence, as well as due to an inability to communicate adequately.

#### Unauthorized Trading

While solicitation for this account was prolonged, the first trades weren't accomplished until July 25, 2002, which may tell us something about the Claimant's level of interest in opening this account. Then stocks were bought and sold within a few days and prompted the transfer of \$25,000 to Brill Securities.

By the time shares in Sanmina-Sci Corp. were purchased, in August 2002, a lot of activity had taken place about which Claimant may or may not have been aware. The buying and selling of this stock was done while Claimant was trying to meet the date-of-settlement requirements of a Type 1 cash account and found the account short of money to cover the amount of stock being purchased. The amount of stock and settlement dates had to be adjusted, which makes it look as if there were a number of transactions during this period.

Actually there was not a lot of additional trading going on during August 2002 beyond Sanmina, though. However, the quick depletion of funds in an account that was newly opened is troublesome and gives some indication that Sheikh Ishaq may not have been fully cognizant of how his money was being managed. Since there were indications of Claimant conversations with Respondent during this period, as well as monthly statements (which would have given Claimant knowledge only after the fact), we cannot say with assurance that this trading was unauthorized. Transactions made in 2003 were covered by the Customer Agreement for margin trading. Claim for damages limited.

#### Breach of Fiduciary Duty

Indeed, Sheikh Ishaq placed his trust and confidence in Mr. Nazor to protect his investments, which could be expected to place Respondents in a fiduciary relationship to the Claimant. By expression and past experience the Claimant had some knowledge of his own responsibility to keep abreast of actions on his account. While we have limited documentation, it does appear that sometimes Claimant gave Respondent an informal option to buy and sell for his account in the absence of written assent or rejection. Given the problems that occur as money moves across countries and possibly differing financial practices, suitability of trading in volatile, low-priced stocks becomes the concern here rather than any other breach of fiduciary duty. See Suitability for reference to damages.

#### Negligence

Respondent entered into trading for Claimant precipitously once Claimant agreed to open an account. A Type 1 Cash Account was opened without a documented, full profile of Claimant. Information available from a past broker may or may not have been outdated, and we know that Claimant was in litigation with one firm when he was contacted by a Brill representative. He did have other accounts with American firms, though.

We see little recognition in the exhibits or statements that consideration was given to cultural differences in conducting financial transactions or how language difficulties might have been handled to avoid any laxity in reading warnings on margin trading that appeared only

Causes of Action

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occasionally on monthly statements, prior to signing the Customer Agreement, and were in small print.

Attempts to maintain contacts were limited by geography, costs and travel schedules.

Little documentation is available regarding beforehand discussions or confirmation agreements. Responsibility is considered shared.

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