

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of Claimants

Thomas D. Christiansen and Stephanie Christiansen

vs.

Case Number: 06-00451  
Hearing Site: Omaha, Nebraska

Name of Respondent

Securities America, Inc.

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**NATURE OF THE DISPUTE**

Customers vs. Member

**REPRESENTATION OF PARTIES**

Thomas D. Christiansen and Stephanie Christiansen ("Claimants") were represented by Lawrence J. Klayman, Esq., Klayman & Toskes, PA, Boca Raton, Florida.

Securities America, Inc. ("Respondent") was represented by James M. Bausch, Esq., Cline, Williams, Wright, Johnson & Oldfather, LLP, Lincoln, Nebraska.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 18, 2006. The Submission Agreement of Claimants, Thomas D. Christiansen and Stephanie Christiansen, was signed on or about January 6, 2006. Claimants filed an Opposition to Respondent's Motion to Dismiss on or about November 15, 2006.

A Statement of Answer and Motion to Dismiss was filed by Respondent, Securities America, Inc., on or about March 23, 2006. The Submission Agreement of Respondent, Securities America, Inc., was signed on or about February 28, 2006. Respondents filed a Brief in Support of its Motion to Dismiss on or about October 9, 2006.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty; constructive fraud; failure to supervise; negligence; and violation of NASD Conduct Rules. Claimants alleged that Respondent and its employees did not diversify and left their accounts overly-concentrated in Level 3 Communication stock. Claimants alleged that Respondent had

available risk management strategies that would have protected the Claimants' concentrated accounts, but those strategies were never implemented nor offered to the Claimants for their consideration. Claimants further alleged that because Respondent and its financial advisors failed to diversify or implement the risk management strategies, their accounts sustained damages.

Unless specifically admitted in its Answer, Respondent, Securities America, Inc., denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants' claims are barred by the relevant statutes of limitation; Respondent had no duty, legal or otherwise, to advise the Christiansens to sell all or a portion of the shares of Level 3 stock that they had acquired before they opened their account with Respondent, even though Respondent's employees advised Mr. Christiansen on a number of occasions; Claimants' claims are all barred because they ratified the conduct of which they now complain; Claimants' claims are all barred by the doctrines of laches, estoppel, and waiver; Claimants failed to mitigate their alleged damages, and also failed to avoid the consequences of the wrongdoing they allege; Claimants' claims are barred by their assumption of the risk of holding any of the shares of Level 3 stock they deposited into their account at Respondent; to the extent that the Claimants' claim that Respondent was negligent, Claimants' claims are barred by their own contributory negligence; and Claimants' breach of contract claims are barred by failure of consideration.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$ 2,000,000.00
Exemplary/Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Costs	Unspecified
Other Monetary Relief	Unspecified

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

On or about December 7, 2006, the Panel granted Respondent's Motion to Dismiss on the basis that all of Claimants' claims are barred by the applicable statutes of limitation.

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 the arguments presented at the pre-hearing conference call, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimants' claims, each and all, are hereby denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial Claim filing fee = \$ 500.00

#### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Securities America, Inc.

Member surcharge = \$ 2,800.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 5,000.00

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

The Panel has assessed forum fees for each hearing 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 last four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$ 1,200.00 = \$ 2,400.00

Pre-hearing conferences: September 18, 2006 1 session  
November 28, 2006 1 session

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Total Forum Fees = \$ 2,400.00

The Panel has assessed \$ 1,200.00 of the forum fees jointly and severally to Thomas D. Christiansen and Stephanie Christiansen.

The Panel has assessed \$ 1,200.00 of the forum fees to Securities America, Inc.

### **FEE SUMMARY**

Claimants, Thomas D. Christiansen and Stephanie Christiansen, are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 1,200.00
Total Fees	= \$ 1,700.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent, Securities America, Inc., is liable for:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 1,200.00
Total Fees	= \$ 9,750.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 1,200.00

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

**ARBITRATION PANEL**

Richard M. Duxbury, Esq. – Public Arbitrator, Presiding Chair  
Thomas C. Lauritsen, Esq. - Public Arbitrator  
Gerald J. Stratman - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

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Richard M. Duxbury, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Thomas C. Lauritsen, Esq.  
Public Arbitrator

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Signature Date

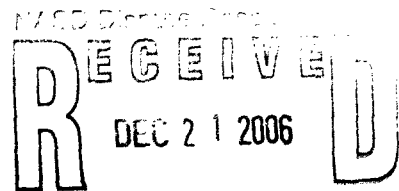
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Gerald J. Stratman  
Non-Public Arbitrator

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Signature Date

12/21/06  
Date of Service (For NASD office use only)



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Richard M. Duxbury, Esq. - Public Arbitrator, Presiding Chair  
Thomas C. Lauritsen, Esq. - Public Arbitrator  
Gerald J. Stratman - Non-Public Arbitrator

Concurring Arbitrators' Signatures:



Richard M. Duxbury, Esq.  
Public Arbitrator, Presiding Chair

12-13-06  
Signature Date

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Thomas C. Lauritsen, Esq.  
Public Arbitrator

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Gerald J. Stratman  
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Richard M. Duxbury, Esq.  
Public Arbitrator, Presiding Chair



Signature Date

12-14-06

Signature Date

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Public Arbitrator

Gerald J. Stratman  
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Public Arbitrator, Presiding Chair

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Signature Date

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Thomas C. Lauritsen, Esq.  
Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
Gerald J. Stratman  
Non-Public Arbitrator

Dec. 13, 2006  
\_\_\_\_\_  
Signature Date

12/21/06  
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Date of Service (For NASD office use only)