

## **AWARD**

### **NASD Regulation, Inc. Office of Dispute Resolution**

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In the Matter of Arbitration Between

Jack and Betty Mason,  
Trustees for the Mason Living Trust

Claimants,

and

Case No. 96-03566

Securities Service Network, Inc.,  
Summit Brokerage Services, Inc. and  
Richard L. Parker

Respondents.

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### **REPRESENTATION OF PARTIES**

Claimants, Jack and Betty Mason, Trustees for the Mason Living Trust ("Mason"), was represented by Richard C. Downing, Esq. of Richard C. Downing P.A. in Little Rock Arkansas.

Respondent, Securities Service Network, ("SSN") was represented by Christopher G. Lazarini, Esq. of Martin, Tate, Marrow & Marston, P.C. in Memphis Tennessee.

### **CASE INFORMATION**

Claimant Masons' Statement of Claim was filed on or about: November 7, 1996.  
Claimant Masons' Submission Agreement was signed by on: October 14, 1996.

Respondent SSN's Statement of Answer was filed on or about: January 9, 1996.  
Respondent SSN's Submission Agreement was signed on: January 2, 1997.

Claimant Masons' Amended Statement of the Claim was filed on or about: March 31, 1997.

### **HEARING INFORMATION**

A pre-hearing conference was held on: August 14, 1997 for one (1) pre-hearing session.

The hearing was held on: August 26, 1997 for two (2) hearing sessions;  
August 27, 1998 for three (3) hearing sessions; and  
August 28, 1997 for two (2) hearing sessions.

The hearing was held in: Little Rock, Arkansas.

### **CASE SUMMARY**

Claimant Mason, brought this action against Respondent SSN alleging: unauthorized trading, churning, negligence, common law fraud, breach of fiduciary duty and failure to supervise. Specifically, Mason contended that: for years they had purchased shares of common stock of Wal-Mart, valued in 1990 at approximately \$300,000.00. At a luncheon meeting, Mrs. Mason expressed her desire to retire by January, 1996. Mr. Parker, who at that time was employed by Anchor Securities Services, allegedly advised Mrs. Mason that if she transferred the Wal-Mart stock to him, he could fulfill her desire and make Claimants a lot of money.

Subsequently, the account was opened, and Mr. Parker sent the Masons' blank SSN "New Account Form" and "Options Trading Agreement" with instructions on forms highlighted by Mr. Parker where the Masons were to sign. The Masons signed and returned both forms to Parker yet Claimants alleged the information regarding income, net worth, and prior experience on these forms was completed by other person(s). As alleged, this account was Claimants' first securities account, they had no prior experience with either margin or options accounts and their total financial net worth consisted of home and the Wal-Mart stock. Mr. Parker allegedly exercised complete and total discretion regarding the investment decisions of the Masons' account, and the Masons' relied totally and completely upon Parker's expertise and advice.

In 1993, the Masons created an irrevocable living trust called the Mason Living Trust. They transferred all of their assets into the trust and named themselves the trustees. Their reasons were primarily for preservation of assets and avoidance of probate and estate planning. Due to this change, Parker sent the Masons another "New Account Form" and "Options Agreement". As before, Parker highlighted the appropriate places where the Masons were to sign and instructed them to return. The Masons signed and returned both to Parker where the remaining information, experience, income and net worth were completed by person(s) other than the Masons. In May, 1994, Parker terminated his affiliation with SSN and was registered with Summit Brokerage Services, Inc ("Summit"). The Masons' account and their securities were transferred to Summit, and Parker continued as their account representative. Throughout this period, the Mason's Wal-Mart stock was used as collateral

for the trading activity. As a result of Respondents' actions or inactions, the Masons had suffered \$180,328.00 in trading losses along with additional losses for margin interest in the amount of \$54,985.00. Because the Masons allegedly believed their account was profitable, they withdrew cash from the account to furnish a new home, make monthly payments, and to donate to their church yet, unknown to them, they were borrowing money and incurring interest expense. Claimants contended that Mr. Parker failed to explain the situation and that Respondents SSN and Summit were liable for the actions of their agent, Mr. Parker, under the principle of respondeat superior.

In sum, the Respondents' alleged acts of unauthorized trading resulted in substantial losses to the Masons' account. As alleged, Mr. Parker negligently recommended the purchase of securities, the use of margin and the trading stock options. As further alleged, Mr. Parker, knowingly and recklessly, misrepresented the facts, failed to disclose material facts, engaged in unauthorized and unsuitable trading, made misrepresentations and omissions that the Masons justifiably relied upon to their detriment, and breached its fiduciary duty of trust and confidence to the Masons.

Respondent SSN denied the allegations set forth in the Statement of Claim as they related to any wrongdoing on its part. Respondent stated: that although it admitted the allegations concerning Respondent Parker, that Parker was an independent contractor from October 15, 1990 through May 20 1994, and that during that time, Parker was affiliated with Summit Financial Group. SSN denied any affiliation with Parker other than during the time specified, and therefore, argued that there was no basis upon which any wrongdoing of Parker can be imputed to SSN before October 15, 1990 or after May 20, 1994. Furthermore, SSN stated that SSN has never been affiliated with Summit and that there was no basis upon which any of these allegations of wrongdoing can be imputed to SSN.

SSN also argued that the Masons understood that securities contain risks and that many variables, including market and economic fluctuations, might have a substantial negative effect in the value of their securities positions. SSN asserted that Masons were willing to assume the risks and that the Masons were financially able to bear the risks associated with the securities investments. Furthermore, SSN argued that in regards to the Masons trust account, they expressed a desire to be pre-approved to buy or sell securities in the "highest" risk category including short sales, options, private partnerships, transactions on margin, lower priced O.T.C. and non NASDAQ O.T.C. stocks.

Respondent SSN asserted the following affirmative defenses: that since the Masons were estopped from alleging any of the acts of Respondent Parker were imputed to SSN; since Parker was an independent contractor, any actions on his part were outside the scope and affiliation of SSN; the Masons were estopped from alleging any of the acts of wrongdoing by virtue of the execution of and representations in the account opening documents for their joint account and the trust account; the Masons knowingly and voluntarily assumed the risks of the options trading and maintaining a margins account; the Masons were aware of the transactions in their accounts; any losses sustained by the Masons were the result of their own contributory or comparative negligence; the Masons received regular information concerning their account and the confirmations of each transaction;

SSN did not intend to deceive or defraud the Masons, but rather acted in good faith upon reliance if the Masons' representations; and any injury, loss, or damage was the result of superseding or intervening causes beyond the control of SSN; the Masons failed to mitigate the consequences if any alleged wrongdoing by SSN, which they would have done had they exercised ordinary care; the Masons had failed to even attempt to state a factual basis for many of the claims of relief asserted in the Statement of the Claim; and the Masons' fraud claims were barred by the statute of limitations applicable to such claims.

### **RELIEF REQUESTED**

Claimant Mason requested an award for: \$245,313.00, jointly and severally against each Parker and SSN in the amount of \$121,728.00; individually against Parker; and \$113,585.00 jointly and severally against Parker and Summit; an interest rate at the amount of 6% per annum; for their costs and expenses including reasonable attorneys fees of \$75,000.00; and punitive damages in the amount of \$100,000.00.

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

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

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. In either case, the parties have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

On or about August 25, 1997 and before the merits hearing, Claimants, Jack and Betty Mason, Trustees of the Mason Living Trust, settled their claims against Respondents Richard L. Parker and Summit Brokerage Services, Inc. Claimants proceeded with their claims against sole remaining Respondent, Securities Service Network, Inc.

After reviewing Claimant Masons' motion for leave to file an amended claim and all related submissions, the undersigned arbitrators granted the motion on or about May 16, 1997.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing along with the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Securities Service Network, Inc. is liable for and shall pay Claimants, Jack and Betty Mason, Trustees of the Mason Living Trust the sum of \$30,000.00 in actual damages for failure to supervise.
2. The parties shall bear their own costs and attorneys' fees.
3. Other than forum fees which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There was one (1) pre-hearing conference x \$300.00 and there were seven (7) hearing sessions x \$750.00 = \$5,550.00 in forum fees. Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to § 10332(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee of \$200.00 and shall retain as forum fees the hearing session deposit of \$750.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimants.

Pursuant to § 10332(c) of the Code, Securities Service Network, Inc. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$4,800.00 in forum fees. Respondent, Securities Service Network, Inc. is liable for and shall pay to Claimants, Jack and Betty Mason, Trustees of the Mason Living Trust \$750.00 as reimbursement of their hearing session deposit.

Pursuant to § 10333 of the Code, Respondent, Securities Service Network, Inc. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the \$350.00 member surcharge. Respondent Summit Brokerage services, Inc. is liable for and shall pay to the NASD Regulations, Inc. Office of Dispute Resolution the \$350.00 member surcharge.

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The NASD Regulation, Inc. Office of Dispute Resolution shall retain the postponement fee of \$750.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Respondent Securities Service Network, Inc.

**Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

Concurring Arbitrators' Signatures

Thomas A. Prince, Esq.  
Thomas A. Prince, Esq.  
Chairperson  
Public Arbitrator

October 13, 1997  
Dated:

John K. Ulrey  
John K. Ulrey  
Panelist  
Public Arbitrator

October 10, 1997  
Dated:

Richard D. Bingham  
Richard D. Bingham  
Panelist  
Industry Arbitrator

October 13, 1997  
Dated:

For NASD use only:  
Date Award was served on the parties: October 13, 1997