

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Lyle Howard Peters DPM PC Trust, Dr. Lyle Peters c/f Wendy Peters, Dr. Lyle Peters c/f Alyssa Peters, Dr. Lyle Peters c/f Eric Peters, Dr. Lyle Peters c/f Adam Peters, Beth Peters, and Dr. Lyle Peters, (Claimants) vs. Smith Barney, Inc. and Stuart Reyman, (Respondents)

Case Number: 98-00366

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimants, Lyle Howard Peters DPM PC Trust ("Trust"), Dr. Lyle Peters c/f Wendy Peters ("Wendy/Custodial"), Dr. Lyle Peters c/f Alyssa Peters ("Alyssa/Custodial"), Dr. Lyle Peters c/f Eric Peters ("Eric/Custodial"), Dr. Lyle Peters c/f Adam Peters ("Adam/Custodial"), Beth Peters ("B. Peters"), and Dr. Lyle Peters (L. Peters"), hereinafter collectively referred to as "Claimants": Shephard Lane, Esq., Slatt & Lane, New York, NY.

Respondent, Smith Barney, Inc. ("Smith Barney"): Brian F. Amery, Esq., Bressler, Amery, Smith Barney, & Ross, Morristown, NJ. Previously represented by: Harry T. Walters, Esq., Senior Vice President and Associate General Counsel, Salomon Smith Barney, New York, NY.

Respondent, Stuart Reyman ("Reyman"): Ruthann G. Niosi, Esq., Law Offices of Ruthann G. Niosi, Esq., P.C., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: January 30, 1998.

Trust signed the Uniform Submission Agreement: October 21, 1998.

Wendy/Custodial signed the Uniform Submission Agreement: October 21, 1998.

Alyssa/Custodial signed the Uniform Submission Agreement: October 21, 1998.

Eric/Custodial signed the Uniform Submission Agreement: October 21, 1998.

Adam/Custodial signed the Uniform Submission Agreement: October 21, 1998.

B. Peters signed the Uniform Submission Agreement: October 21, 1998.

L. Peters signed the Uniform Submission Agreement: October 21, 1998.

Joint Statement of Answer filed by Respondents on or about: March 13, 1999.

Smith Barney signed the Uniform Submission Agreement: March 12, 1999.

Reyman signed the Uniform Submission Agreement: March 23, 1999.

CASE SUMMARY

Claimants asserted the following causes of action: failure to properly supervise; unsuitability; misrepresentation; failure to properly diversify Claimants' portfolios; breach of the Securities and Exchange Act of 1934; breach of fiduciary duty; violation of the common law proscription against fraud; violation of NASD mandates; breach of NASD prohibitions on excessive transactions; breach of the NASD Rules of Fair Practice; omission of material information; breach of contract; violation of the Rules of the New York Stock Exchange; breach of the covenant of good faith and fair dealing; gross negligence under common law; material departure from industry customs, practices, and standards; breach of the implied warranty that services would be provided in a good and workmanlike manner; unconscionable conduct; and conduct that constituted a malicious and/or reckless disregard towards Claimants' interests. Claimants' claims involved the securities of Acclaim Entertainment, Invitro, Page American, and Datascope.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants' demand for damages is improper as a matter of law and without foundation as a matter of fact; Claimants have failed to state a claim for which relief can be granted; any losses suffered by Claimants are the result of market losses and they are not entitled to recovery thereof from Respondents; Claimants failed to use diligence with respect to the transactions and acts complained of and, accordingly, are barred from asserting or recovering for any such transactions or acts; the alleged losses of Claimants were proximately caused by their own conduct or negligence in relation to the transactions complained of and, therefore, Claimants are precluded from recovery herein; Claimants are not entitled to punitive damages or attorneys' fees as a matter of law; any damages suffered by Claimants were caused or contributed to by persons, conditions, or events beyond the control of Respondents; Respondents deny that they had full, complete, ongoing, and contemporaneous knowledge of the acts complained of by Claimants, or that they ratified said acts; Claimants did have full, complete, and contemporaneous knowledge of the acts complained of and did ratify said acts; Claimants authorized and directed the execution of all transactions in their securities accounts; Respondents acted in good faith and exercised at least that degree of care, diligence, and skill which ordinarily prudent persons would exercise in similar circumstances and like positions; Claimants knowingly, willingly, and voluntarily assumed the risks attendant to the activity in their accounts and cannot now selectively disavow unprofitable trading; Claimants have failed to state a claim for fraud; Claimants' fraud claims are barred by the statute of limitations; Claimants have failed to establish a cognizable claim under Section 10(b) or Rule 10b-5; Claimants' allegations that Respondents allegedly stated that "their investment activity would eventually be profitable" provides no basis for securities fraud liability; a fiduciary relationship did not exist between Claimants and Respondents; Claimants have failed to state a claim for unsuitability; Claimants have failed to alternatively adequately plead common law

negligent misrepresentation; Claimants have failed to prove the elements necessary for a churning claim; and Claimants ratified their transactions in the least by failing to mitigate their alleged losses.

RELIEF REQUESTED

Claimants requested:

- a. Actual damages in the amount of \$1,737,274.50, plus the estimated value of the accounts had they been conservatively invested at a yield of 8% per annum during the period in issue, including disgorgement of commissions, such amount to be determined based upon proof of specific damages presented to the Panel;
- b. Punitive damages in the amount of \$25,000,000.00, such damages to be awarded to serve as a meaningful punishment to Respondents;
- c. All of Claimants' costs, expenses, and disbursements, including reasonable attorneys' fees and all expert witness fees and expenses in pursuing this arbitration proceeding; Pre-award and post-award interest; and Such other relief as may be deemed just and proper.

Respondents requested:

- a. That the claims as against them be dismissed in their entirety; and
- b. That the costs of the hearing not be held against Respondents.

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Smith Barney be and hereby is solely liable for and shall pay to Claimants the sum of \$50,000.00 as compensatory damages, for lack of supervision.

2. Upon confirmation of this Award by a court of competent jurisdiction, NASD Regulation, Inc. shall expunge all references to this arbitration, and any complaint previously filed by any of the named Claimants, from the permanent CRD records of Respondent Reyman (CRD # 374575 and NFA # 7396).
3. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 300.00

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 person at the time of the events giving rise to the dispute. In this matter, Smith Barney, Inc. is a party.

Member surcharge = \$ 3,600.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$ 5,000.00

Adjournment Fees

Adjournments requested during these proceedings:

June 2, 2000, adjournment by Respondent Smith Barney (WAIVED) = (\$ 1,500.00)

September 8, 2000, adjournment by Respondent Smith Barney = \$ 1,000.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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 x \$300.00 = \$ 300.00
Pre-hearing conference: July 13, 2000 1 session

One (1) Pre-hearing session with Panel x \$1,500.00 = \$ 1,500.00
Pre-hearing conference: February 11, 2000 1 session

Thirty-nine (39) Hearing sessions x \$1,500.00 = \$58,500.00

Hearing Dates:	May 31, 2000	1 session
	September 6, 2000	2 sessions
	September 7, 2000	2 sessions
	September 12, 2000	2 sessions
	September 13, 2000	2 sessions
	September 14, 2000	2 sessions
	November 6, 2000	2 sessions
	November 7, 2000	2 sessions
	November 21, 2000	2 sessions
	December 14, 2000	2 sessions
	December 15, 2000	2 sessions
	January 9, 2001	2 sessions
	January 10, 2001	2 sessions
	January 16, 2001	2 sessions
	January 18, 2001	2 sessions
	January 19, 2001	2 sessions
	March 1, 2001	2 sessions
	March 2, 2001	2 sessions
	March 12, 2001	2 sessions
	March 13, 2001	2 sessions

Total Forum Fees = \$60,300.00

1. The Panel has assessed \$30,150.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$30,150.00 of the forum fees against Smith Barney.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimants, requested copies, \$86.25.
2. Smith Barney, requested tapes, \$165.00.

Fee Summary

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$30,150.00
Administrative Costs	= \$ 86.25
Total Fees	= \$30,536.25
Less payments (\$3,300 paid, less \$1,500 refund)	= \$ 1,800.00
Balance Due NASD Dispute Resolution, Inc.	= \$28,736.25

2. Smith Barney be and hereby is solely liable for:

Member Fees	= \$ 9,200.00
Adjournment Fees	= \$ 1,000.00
Forum Fees	= \$30,150.00
Administrative Costs	= \$ 165.00
Total Fees	= \$40,515.00
Less payments	= \$ 9,200.00
Balance Due NASD Dispute Resolution, Inc.	= \$31,315.00

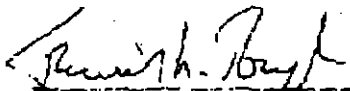
Administrative Costs
Total Fees
Less payments
Balance Due

All balances are due and payable to NASD Dispute Resolution, Inc.

balances are due and payable

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, 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.



Frederick M. Joseph, Esq.
Public Arbitrator, Presiding Chair

4/11/01

Signature Date

Leo Cooperman, CPA
Public Arbitrator

Signature Date

Mark R. Greenberg
Industry Arbitrator

Signature Date

April 9, 2001

Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, 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.

Frederick M. Joseph, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Leo Cooperman
Leo Cooperman, CPA
Public Arbitrator

4/3/01
Signature Date Leo Cooperman, CPA
Public Arbitrator

Mark R. Greenberg
Industry Arbitrator

Signature Date Mark R. Greenberg

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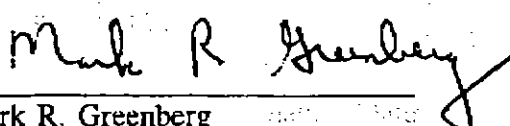
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Frederick M. Joseph, Esq.
Public Arbitrator, Presiding Chair

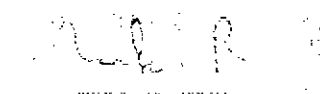
Signature Date

Leo Cooperman, CPA
Public Arbitrator

Signature Date Leo Cooperman, CPA
Public Arbitrator



Mark R. Greenberg
Industry Arbitrator

4/02/01 

Signature Date Mark R. Greenberg
Industry Arbitrator

April 9, 2001

Date of Service (For NASD office use only)