

**Award**  
**NASD Regulation, Inc.**

---

In the Matter of the Arbitration Between:

Robert Rachmiel, Joan B. Trubenstein, and Bernard Venditti, (Claimants) vs. On-line Investment Services Inc., (Respondent)

Case Number: 99-00342

Hearing Site: New York, New York

---

**REPRESENTATION OF PARTIES**

Claimants, Robert Rachmiel ("Rachmiel"), Joan B. Trubenstein ("Trubenstein"), and Bernard Venditti ("Venditti"), hereinafter collectively referred to as "Claimants", appeared *pro se*.

Respondent, On-line Investment Services Inc., hereinafter referred to as "Respondent":  
Barry J. Kronemer, Esq., Associate General Counsel, On-line Investment Services Inc.,  
Jersey City, NJ.

**CASE INFORMATION**

Statement of Claim filed on or about: March 16, 1999.

Rachmiel signed the Uniform Submission Agreement: December 10, 1998.

Trubenstein signed the Uniform Submission Agreement: December 18, 1998.

Venditti signed the Uniform Submission Agreement: November 11, 1998.

Statement of Answer and Counterclaim filed by Respondent on or about: July 23, 1999.

Amendment to Statement of Answer filed on or about: February 11, 2000.

Respondent signed the Uniform Submission Agreement: July 26, 1999.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of third-party agreement; failure to timely correct a trading problem; Respondent removed funds and sold stock in Claimants' accounts without appropriate authority; and failure to indemnify and promptly pay Claimants the money lost in their accounts in accordance with the requirements of the third-party agreement.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state any specific cause of action against Respondent; Trubenstein and Venditti authorized Rachmiel to day trade their accounts through a power of attorney authorization; Claimants cross-guaranteed their accounts in case of loss; Claimants have failed to state a claim upon which relief may be granted; Respondent exercised at least that degree of care, diligence, and skill which an ordinarily prudent person would exercise under similar circumstances; Claimants' comparative fault, lack of diligence, and failure to conduct their financial affairs bars any recovery on the claim; the Statement of Claim is barred by the doctrines of laches,

waiver, ratification, and estoppel; Respondent acted in good faith and without malice or reckless indifference to Claimants; Claimants have failed to mitigate any alleged damages and therefore, their claim for damages is barred or reduced pro tanto; Respondent did not breach any duty to Claimants imposed by operation of law or by contract; and Claimants' injuries or damages are due to their own acts or omissions or by the acts and omissions of third parties over whom Respondent has no control or right to control.

In its Counterclaim, Respondent asserted the following causes of action: negligence and/or intentional misconduct.

### **RELIEF REQUESTED**

Claimants requested that Respondent be directed to reimburse Venditti the sum of \$45,000.00; Trubenstein the sum of \$13,000.00; and Rachmiel the sum of \$2,500.00.

Respondent requested that the Statement of Claim be dismissed in its entirety, and that the Panel direct NASD Dispute Resolution, Inc. ("NASD-DR") to expunge all references to this matter from Respondent's registration files. In its Counterclaim, Respondent requested compensatory damages in the amount of \$2,791.35, costs, and reasonable attorneys' fees.

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

Prior to the hearing in this matter, Trubenstein dismissed, with prejudice, all claims against Respondent in the Statement of Claim, and Respondent dismissed, with prejudice, all claims against Trubenstein in the Counterclaim.

Prior to the hearing in this matter, Rachmiel withdrew his claims against Respondent, and Respondent withdrew its Counterclaim against Rachmiel.

During the hearing in this matter, Respondent made a Motion to Dismiss which was denied by the Panel.

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. Respondent be and hereby is liable for and shall pay to Venditti the sum of

\$38,000.00 as compensatory damages.

2. Respondent's Counterclaim against Venditti is hereby dismissed in its entirety.
3. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 150.00
Counterclaim 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 person at the time of the events giving rise to the dispute. In this matter, On-Line Investment Services Inc. is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

#### **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 Panel x \$500.00	= \$ 500.00
Pre-hearing conference: March 15, 2000	1 session

Three (3) Hearing sessions x \$500.00	= \$1,500.00
Hearing Dates: June 28, 2000	1 session
July 19, 2000	2 sessions

---

Total Forum Fees	= \$2,000.00
------------------	--------------

1. The Panel has assessed \$1,000.00 of the forum fees against Venditti.
2. The Panel has assessed \$1,000.00 of the forum fees against Respondent.

### **Fee Summary**

1. Venditti be and hereby is solely liable for:

<u>Forum Fees</u>	= \$1,000.00
Total Fees	= \$1,000.00
<u>Less payments</u>	= \$ 500.00
Balance Due NASD Regulation, Inc.	= \$ 500.00

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

<u>Initial Filing Fee</u>	= \$ 150.00
Total Fees	= \$ 150.00
<u>Less payments</u>	= \$ 150.00
Balance Due NASD Regulation, Inc.	= \$ 0.00

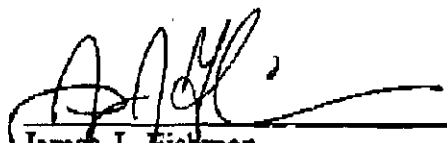
3. Respondent be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$3,100.00
<u>Forum Fees</u>	= \$1,000.00
Total Fees	= \$4,600.00
<u>Less payments</u>	= \$3,900.00
Balance Due NASD Regulation, Inc.	= \$ 700.00

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

**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.

  
\_\_\_\_\_  
James J. Fishman  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Jerry Georges  
Public Arbitrator

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

\_\_\_\_\_  
John Cleaveland Palmer, CFP, CIMA  
Industry Arbitrator

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

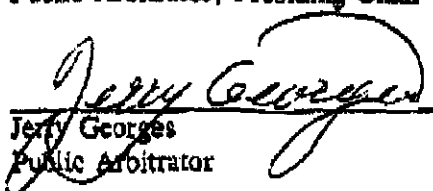
August 28, 2000  
\_\_\_\_\_  
Date of Service (For NASD office use only)

**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.

James J. Fishman  
Public Arbitrator, Presiding Chair

Signature Date

  
Jerry Georges  
Public Arbitrator

Signature Date

John Cleaveland Palmer, CFP, CIMA  
Industry Arbitrator

Signature Date

August 28, 2000

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.

---

James J. Fishman  
Public Arbitrator, Presiding Chair

---


Signature Date

---

Jerry Georges  
Public Arbitrator

---

Signature Date



---

John Cleaveland Palmer, CFP, CIMA  
Industry Arbitrator

---

Signature Date

August 28, 2000  
Date of Service (For NASD office use only)