

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

James H. Oliver and Nebraska Land & Live Stock, Inc., Claimants v. National Securities Corporation, The Boston Group, Michael Allocca, Jr., Robert A. Diminico, Ian E. Gilbey, Kye Hellmers, Dwight C. Southwick, Janeann B. Knapp, Eric S. Hutner, Joseph W. Donohue, Jr., Philip E. Steele, Kevin E. Scannell, Clifford F. Masticola, Scott L. Mathis, and John R. Brady, Respondents

Case Number: 99-00940

Hearing Site: Los Angeles, California

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**REPRESENTATION OF PARTIES**

For Claimants James H. Oliver and  
Nebraska Land & Live Stock, Inc.:

Ryan K. Bakhtiari, Esq.  
Aidikoff & Uhl  
Beverly Hills, California

For Respondent National Securities  
Corporation:

Kristin Gaerttner  
National Securities  
Corporation  
Seattle, Washington

For Respondents The Boston Group and  
Robert A. Diminico:

Robert A. Diminico  
National Securities  
Corporation  
Los Angeles, California

For Respondents Ian E. Gilbey, Kye Hellmers, and  
Eric S. Hutner:

Eric S. Hutner, Esq.  
Tractenberg & Rodes, LLP  
New York, New York

For Respondent Michael Allocca, Jr.:

Michael Allocca, Jr.  
*In Pro Per*  
Los Angeles, California

For Respondent Dwight C. Southwick:

M. William Munno, Esq.  
Seward & Kissel LLP  
New York, New York

For Respondent Janeann B. Knapp:

Janeann B. Knapp  
In Pro Per  
Westfield, New Jersey

For Respondent Joseph W. Donohue, Jr.:

Joseph W. Donohue, Jr.  
In Pro Per  
Millburn, New Jersey

For Respondent Philip E. Steele:

Philip E. Steele  
In Pro Per  
Los Angeles, California

For Respondent Kevin E. Scannell:

Kevin E. Scannell  
In Pro Per  
Santa Monica, California

For Respondent Clifford F. Masticola:

Clifford F. Masticola  
In Pro Per  
New York, New York

For Respondent Scott L. Mathis:

Scott L. Mathis  
In Pro Per  
New York, New York

For Respondent John R. Brady:

John R. Brady  
In Pro Per  
Beverly Hills, California

#### **CASE INFORMATION**

Statement of Claim filed: March 31, 1999

Claimants' Uniform Submission Agreement filed: March 31, 1999

Statement of Answer filed by Respondent Clifford F. Masticola: June 21, 1999

Statement of Answer filed by Respondent National Securities Corporation: June 21, 1999

Respondent National Securities Corporation's Uniform Submission Agreement signed: June 21, 1999

First Amended Statement of Claim filed: June 25, 1999

Joint Statement of Answer to Claimants' First Amended Statement of Claim filed by Respondents The Boston Group, Michael Allocca, and Ian E. Gilbey: July 9, 1999

Respondent Ian E. Gilbey's Uniform Submission Agreement signed: June 24, 1999

Respondent The Boston Group's Uniform Submission Agreement signed: June 16, 1999

Second Amended Statement of Claim filed: February 29, 2000

Joint Statement of Answer to Second Amended Statement of Claim filed by Respondents The Boston Group, Michael Allocca, and Ian E. Gilbey: March 16, 2000

Statement of Answer filed by Respondent Dwight C. Southwick to Claimants' Second Amended Statement of Claim: July 5, 2000

Respondent Dwight C. Southwick's Uniform Submission Agreement signed: July 6, 2000

### **CASE SUMMARY**

Claimants alleged breach of fiduciary duty, fraud, failure to supervise, violation of Federal and State Securities Laws, and violation of NASD Rules of Fair Practice and NYSE Rules. The dispute involved the purchase and/or sale of various securities.

Respondents National Securities Corporation, The Boston Group, Michael Allocca, Jr., Ian E. Gilbey, Dwight C. Southwick, and Clifford F. Masticola denied the allegations of wrongdoing set forth in Claimants' Statements of Claim.

Respondents Robert A. Diminico, Kye Hellmers, Janeann B. Knapp, Eric S. Hutner, Joseph W. Donohue, Jr., Philip E. Steele, Kevin E. Scannell, Scott L. Mathis, and John R. Brady did not file a Statement of Answer.

### **RELIEF REQUESTED**

Claimants sought compensatory damages not less than \$163,282.43, rescission, lost opportunity costs, punitive damages, interest, attorney's fees, interest, and costs of arbitration.

Respondents National Securities Corporation, Dwight C. Southwick, and Clifford F. Mastricola requested dismissal of the Statement of Claim in its entirety.

Respondents The Boston Group, Michael Allocca, Jr., Ian E. Gilbey requested dismissal of the Statement of Claim in its entirety, attorney's fees, and costs of arbitration.

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

On June 25, 1999 NASD Dispute Resolution, Inc. received notice that all claims against National Securities Corporation were dismissed without prejudice.

On July 5, 2000 the Arbitration Panel granted Respondents Scott L. Mathis and Joseph W. Donohue, Jr.'s Motions to Dismiss with prejudice.

On July 7, 2000 NASD Dispute Resolution, Inc. received notice that all claims against Dwight C. Southwick were dismissed with prejudice.

On September 22, 2000 NASD Dispute Resolution, Inc. received notice that all claims against Janeann B. Knapp were dismissed without prejudice.

On February 20, 2001 NASD Dispute Resolution, Inc. received notice that Claimants settled all claim against Michael Allocca, Jr, Ian E. Gilbey, and Kye Hellmers.

On February 21, 2001 the NASD Dispute Resolution, Inc. received notification that Respondent Clifford F. Mastricola filed for Bankruptcy.

Upon review of the file and the representations made on behalf of the Claimants, the undersigned Panel determined that Respondents The Boston Group, Michael Allocca, Jr., Robert A. Diminico, Philip E. Steele, Kevin E. Scannell, and John R. Brady were properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents Michael Allocca, Jr. and Clifford F. Mastricola did not file with the NASD Dispute Resolution, Inc. properly executed submission agreements, but are required to submit to arbitration pursuant to the Code, and having answered the claim, are bound by the determination of the Panel on all issues submitted.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents The Boston Group and Robert A. Diminico are jointly and severally liable to and shall pay Claimants \$100,000.00 in compensatory damages.
- 2) Respondents The Boston Group and Robert A. Diminico are jointly and severally liable to and shall pay Claimants \$300,000.00 in punitive damages pursuant to California Civil Code Section 3294.
- 3) Respondent Eric S. Hutner is dismissed without prejudice.
- 4) Respondent Philip E. Steele is dismissed without prejudice.
- 5) Respondent Kevin E. Scannell is dismissed without prejudice.
- 6) Respondent John R. Brady is dismissed without prejudice.
- 7) Each party shall bear its own costs, including attorney's fees.
- 8) All other relief requested and not expressly granted is denied.

### **FEEs**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 200.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy.

The member firm National Securities Corporation is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
<u>Pre-Hearing Process Fee</u>	= \$ 200.00
Total Member Fees	= \$ 1,700.00

The member firm The Boston Group is a party and the following fees are assessed:

Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$ 2,500.00
Total Member Fees	= \$ 3,100.00

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

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel. The following fees are assessed:

(2) Pre-hearing conference sessions with the panel @ \$ 750.00/session	= \$ 1,500.00
Pre-hearing conferences:     January 13, 2000     1 session	
June 20, 2000     1 session	

(2) Hearing sessions @ \$750.00/session	= \$ 1,500.00
Hearings:                             February 20, 2001     2 sessions	

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<b>Total Forum Fees</b>	<b>= \$ 3,000.000</b>
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The Panel assessed \$ 3,000.00 of the forum fees jointly and severally to The Boston Group and Robert A. Diminico.

**Fee Summary**

1. Claimants James H. Oliver and Nebraska Land & Live Stock, Inc. are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 200.00
<u>Less Payments</u>	<u>= \$(950.00)</u>
Refund due Claimants	= \$(750.00)

2. Respondent National Securities Group is charged with the following fees and costs:

Member Fees	= \$ 1,700.00
<u>Less Payments</u>	<u>= \$(1,500.00)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 200.00

3. Respondent The Boston Group is charged with the following fees and costs:

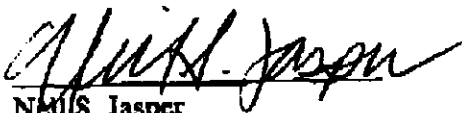
<u>Member Fees</u>	<u>= \$ 2,100.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,100.00

4. Respondents The Boston Group and Robert A. Diminico are charged jointly and severally with the following fees and costs:

<u>Forum Fees</u>	<u>= \$ 3,000.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,000.00

All balances are payable to NASD Dispute Resolution, Inc. and are to be paid upon receipt of the award pursuant to Rule 10330(g) of the Code.

**Concurring Arbitrators' Signatures**



Neil S. Jasper  
Chair, Public Arbitrator

  
Signature Date

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Eugene A. Taylor, Jr.  
Public Arbitrator

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

\_\_\_\_\_  
Charles A. Pease  
Non-Public Arbitrator

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Signature Date

  
Date of Service



**Concurring Arbitrators' Signatures**

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Neil S. Jasper  
Chair, Public Arbitrator

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

*Eugene A. Taylor, Jr.*  
*Feb. 26, '01*

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Eugene A. Taylor, Jr.  
Public Arbitrator

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

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Charles A. Pease  
Non-Public Arbitrator

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Signature Date

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Date of Service

**Concurring Arbitrators' Signatures**

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Neil S. Jasper  
Chair, Public Arbitrator

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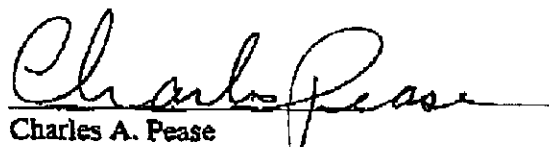
Signature Date

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Eugene A. Taylor, Jr.  
Public Arbitrator

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Signature Date

  
Charles A. Pease  
Non-Public Arbitrator

2/23/01  
Signature Date

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Date of Service