

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

**Christopher McCoun and April McCoun, (Claimants) vs. 1 800 Day Trade, Inc.,
Day Trade, Inc., Service Asset Management Company, et. al. (Respondents).**

Case Number: 99-01059

Hearing Site: Dallas, Texas

REPRESENTATION OF PARTIES

**Claimants, Christopher McCoun and April McCoun ("Claimants"): John T. Palter,
Esq., Novakov Davis, Dallas, Texas.**

**Respondents, 1 800 Day Trade, Inc., Day Trade, Inc. and Duewayne Handley
"Tag" Holley and Letha Lavonne Lewis (collectively "Day Trade Respondents")
Cheryl Jerome Moore, Esq.**

**Respondent, Service Asset Management Co. D/B/A Penson Financial Services,
Inc. ("Respondent Penson"): W. David Simmons, Esq., McGuire, Craddock,
Strother and Hale, P.C., Dallas, Texas.**

**Respondent, Southland Securities Corporation, ("Respondent Southland")
Robert L. Yeager, Esq., Law Offices of Robert Yeager, Dallas, Texas.**

CASE INFORMATION

**Statement of Claim filed on or about: March 5, 1999. First Amended Statement
of Claim filed on or about December 3, 1999.**

**Claimants, Christopher McCoun and April McCoun, signed the Uniform
Submission Agreements: March 1, 1999**

**Statement of Answer filed by Respondents, 1-800 Day Trade, Inc., Day Trade
Inc. and Duewayne Handley "Tag" Holley and Letha Lavonne Lewis on or about:
June 9, 1999. Respondent, 1-800 Day Trade, Inc. signed the Uniform
Submission Agreements: May 3, 1999. Respondent, Day Trade, Inc. signed
the Uniform Submission Agreements: June 8, 1999. Respondent, Duewayne
Handley "Tag" Holley signed the Uniform Submission Agreements: May 3,
1999. Respondent, Letha Lavonne Lewis signed the Uniform Submission**

Agreements: May 3, 1999.

Statement of Answer and Motion to Dismiss filed by Respondent Service Asset Management Co. D/B/A Pension Financial Services Inc. on or about: June 11, 1999. Respondent, Service Asset Management Co. D/B/A Pension Financial Services Inc. signed the Uniform Submission Agreement: April 26, 1999.

Statement of Answer filed by Respondent Southland Securities Corporation, on or about: January 4, 2000.

Respondent, Southland Securities Corporation, signed the Uniform Submission Agreement: November 2, 1999.

CASE SUMMARY

Claimants Christopher McCoun and April McCoun asserted causes of action including the following: Violations of the Texas Deceptive Trade Practices Act, violations of the Federal Securities Act of 1933, Control Person Liability, Negligence, Aider and Abettor liability, Failure to Supervise, Texas Securities Act, Breach of Contract, Common Law Fraud, Breach of Fiduciary Duty, Gross Negligence, Conversion, Negligent Misrepresentation, and Civil Conspiracy. The causes of action relate to the purchase and sale of various stocks in the Claimants' account.

Unless specifically admitted in their Answer, Respondents 1 800 Day Trade, Inc., Day Trade Inc., Duwayne Handley "Tag" Holley and Letha Lavonne Lewis denied the allegations made in the Statement of Claim and asserted defenses including the following: the Claim fails to state a claim against the Day Trade Respondents upon which relief can be granted, Claimants approved all trades and are therefore precluded from recovering, the Claimants assumed the risks of trading and that the Respondents had no duty to supervise the traders making the trades in the Claimants accounts, and therefore are not liable for any alleged losses.

Unless specifically admitted in its Answer, Respondent Southland Securities Corporation denied the allegations made in the Statement of Claim and asserted defenses including the following: the Respondent did not employ the traders making the trades in Claimants account and therefore are not liable for any alleged losses, the Respondent denies that it was negligent in supervising the conduct of the traders which is alleged to have been the cause of losses in Claimants' account, Respondent is not liable to Claimants because Claimants ratified contracts and agreements made between themselves and other Respondents in this arbitration disputes. Respondent Southland Securities Corporation also asserted a Motion to Dismiss all Claims against it, and asked that it recover its costs and attorneys' fees from Claimants.

Unless specifically admitted in its Answer, Respondent Service Asset Management D/B/A Penson Financial Services, Inc. denied the allegations made in the Statement of Claim and asserted defenses including the following: The Claimants' have failed to mitigate their damages, the claims are barred by the equitable doctrines of waiver, estoppel and ratification. Respondent Service Asset Management D/B/A Penson Financial Services, Inc. asserted a Motion to Dismiss all of Claims relating to trading in their account by the traders whom the Claimants had authorized to trade their account, but neither of whom was a registered representative or agent of Respondent.

RELIEF REQUESTED

Claimants Christopher and April McCoun requested:

Compensatory Damages	\$ 70,869.38
Punitive Damages	\$141,738.76
Interest	\$ 3,543.46
Attorneys' Fees and costs	\$ 30,000.00
Other Monetary/Non-Monetary Relief:	unspecified

Respondent 1 800 Day Trade, Inc., Day Trade Inc. and Duewayne Handley "Tag" Holley and Letha Lavonne Lewis requested:

Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief:	unspecified

Respondent Southland Securities Corporation requested:

Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief:	unspecified

Respondent Service Asset Management D/B/A Penson Financial Services, Inc. requested:

Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief:	unspecified

OTHER ISSUES CONSIDERED AND DECIDED

Southland Securities Corporation filed a Motion to Dismiss. The panel granted the request for dismissal after reviewing all briefs, pleadings and oral arguments presented by the parties at the hearing. Therefore, the panel makes no further rulings as to Southland Securities Corporation. All other Motions to Dismiss were denied.

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 Arbitration Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. That the Respondent 1-800 Day Trade, Inc. is liable for and shall pay compensatory damages of (\$35, 000) thirty five thousand dollars to Claimants Christopher and April McCoun;
2. That the Respondent 1-800 Day Trade, Inc. is liable for and shall pay attorneys' fees of (\$10, 000) ten thousand dollars to Claimants Christopher and April McCoun. In making this award of attorneys' fees the panel reviewed and considered the pleadings, documents and oral arguments of counsel and found that authority exists for this award of attorneys' fees; and
3. That any and all relief requests, including punitive damages not specifically awarded are hereby dismissed and 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	= \$200.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the

time of the events giving rise to the dispute. In this matter, the member firms is are a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Forum Fees and Assessments

The Arbitration 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:

Two (2) Pre-hearing sessions with Panel	x \$750.00	= \$1,500.00
Pre-hearing conferences: September 10, 1999	1 session	
January 27, 2000	1 session	
Nine (9) Hearing sessions	x \$750.00	= \$6,750.00
Hearing Dates: February 1, 2000	2 sessions	
February 2, 2000	2 sessions	
May 8, 2000	2 sessions	
May 9, 2000	2 sessions	
May 10, 2000	1 session	
Total Forum Fees		= \$8,250.00

1. The Arbitration Panel has assessed \$4,125.00 of the forum fees to Christopher McCoun and April McCoun.
2. The Arbitration Panel has assessed \$4,125.00 of the forum fees to 1-800 Day Trade.

Fee Summary

1. Claimants, Christopher McCoun and April McCoun, be and hereby are jointly and severally liable for:

Filing Fee	= \$200.00
Forum Fees	= \$4,125.00
Total Fees	= \$4,325.00
<u>Less payments</u>	<u>= \$950.00</u>
Balance Due NASD Regulation, Inc.	= \$3,375.00

2. Respondent, 1-800 Day Trade, Inc., be and hereby is solely liable for:

Member Fees	= \$4,600.00
Forum Fees	= \$4,125.00
<u>Administrative Costs</u>	<u>= \$0</u>
Total Fees	= \$8,725.00
<u>Less payments</u>	<u>= \$4,620.00</u>
Balance Due NASD Regulation, Inc.	= \$4,105.00

3. Respondent, Service Asset Management Co. D/B/A Person Financial Services, Inc., be and hereby is solely liable for:

Member Fees	= \$4,600.00
<u>Administrative Costs</u>	= \$0
Total Fees	= \$4,600.00
<u>Less payments</u>	= \$4,600.00
Zero Balance Due NASD Regulation, Inc.	= \$0

4. Respondent, Southland Securities Corporation, be and hereby is solely liable for:

Member Fees	= \$4,600.00
<u>Administrative Costs</u>	= \$0
Total Fees	= \$4,600.00
<u>Less payments</u>	= \$0
Balance Due NASD Regulation, Inc.	= \$4,600.00

All balances are due to NASD Regulation, Inc.

/s/ Richard Knudsen

June 24, 2000

Richard A. Knudsen
Public Arbitrator, Presiding Chair

Signature Date

/s/ Adrian Alter

June 22, 2000

Adrian Alter
Public Arbitrator

Signature Date

/s/ Thomas F. O'Toole

June 26, 2000

Thomas F. O'Toole
Industry Arbitrator

Signature Date

3. Respondent, Service Asset Management Co. D/B/A Penson Financial Services, Inc., be and hereby is solely liable for:

Member Fees	= \$4,600.00
<u>Administrative Costs</u>	= \$0
Total Fees	= \$4,600.00
<u>Less payments</u>	= \$4,600.00
Zero Balance Due NASD Regulation, Inc.	= \$0

4. Respondent, Southland Securities Corporation, be and hereby is solely liable for:

Member Fees	= \$4,600.00
<u>Administrative Costs</u>	= \$0
Total Fees	= \$4,600.00
<u>Less payments</u>	= \$0
Balance Due NASD Regulation, Inc.	= \$4,600.00

All balances are due to NASD Regulation, Inc.


 Richard A. Knudsen
 Public Arbitrator, Presiding Chair


 Signature Date

 Adrian Alter
 Public Arbitrator

 Signature Date

 Thomas F. O'Toole
 Industry Arbitrator

 Signature Date

3. Respondent, Service Asset Management Co. D/B/A Person Financial Services, Inc., be and hereby is solely liable for:

Member Fees	= \$4,600.00
<u>Administrative Costs</u>	= \$0
Total Fees	= \$4,600.00
<u>Less payments</u>	= \$4,600.00
Zero Balance Due NASD Regulation, Inc.	= \$0

4. Respondent, Southland Securities Corporation, be and hereby is solely liable for:

Member Fees	= \$4,600.00
<u>Administrative Costs</u>	= \$0
Total Fees	= \$4,600.00
<u>Less payments</u>	= \$0
Balance Due NASD Regulation, Inc.	= \$4,600.00

All balances are due to NASD Regulation, Inc.

Richard A. Knudsen
Public Arbitrator, Presiding Chair

Signature Date



Adrian Alter
Public Arbitrator

6/24/00

Signature Date

Thomas F. O'Toole
Industry Arbitrator

Signature Date

→ To: SOSAN KOZAK

3. Respondent, Service Asset Management Co. D/B/A Pension Financial Services, Inc., be and hereby is solely liable for:

Member Fees	= \$4,600.00
<u>Administrative Costs</u>	= \$0
Total Fees	= \$4,600.00
<u>Less payments</u>	= \$4,600.00
Zero Balance Due NASD Regulation, Inc.	= \$0

4. Respondent, Southland Securities Corporation, be and hereby is solely liable for:

Member Fees	= \$4,600.00
<u>Administrative Costs</u>	= \$0
Total Fees	= \$4,600.00
<u>Less payments</u>	= \$0
Balance Due NASD Regulation, Inc.	= \$4,600.00

All balances are due to NASD Regulation, Inc.

Richard A. Knudsen
Public Arbitrator, Presiding Chair

Signature Date

Adrian Alter
Public Arbitrator

Signature Date

Thomas F. O'Toole
Thomas F. O'Toole
Industry Arbitrator

June 26, 2000
Signature Date