

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

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In the Matter of the Arbitration Between:

Louisa Lazzinnaro Trust (Claimant) vs. Joseph Langer, Investors Associates, Inc., Herman Epstein, and Schneider Securities, Inc., (Respondents) vs. Massimo Lazzinnaro and Mary Jane Lazzinnaro (Third-Party Respondents)

Case Number: 99-01258

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant Louisa Lazzinnaro Trust, hereinafter referred to as "Claimant": Kevin T. Hoffman, Esq., a sole practitioner, Greenwich, CT.

Respondent Joseph Langer ("Langer"): Lawrence J. Toscano, Esq., Heller, Horowitz & Feit, P.C., New York, NY.

Respondent Schneider Securities, Inc. ("Schneider"): Margaret E. Peper, Esq., Davis & Ceriani, P.C., Denver, CO.

Respondent Investors Associates, Inc. ("Investors") did not enter an appearance in this matter.

Respondent Herman Epstein ("Epstein") did not enter an appearance in this matter.  
Third-Party Respondents, Massimo Lazzinnaro ("M. Lazzinnaro") and Mary Jane Lazzinnaro ("M. J. Lazzinnaro"), hereinafter collectively referred to as "Third-Party Respondents": Kevin T. Hoffman, Esq., a sole practitioner, Greenwich, CT.

**CASE INFORMATION**

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

Claimant signed the Uniform Submission Agreement: April 16, 1999.

Statement of Answer filed by Langer on or about: June 24, 1999.

Langer signed the Uniform Submission Agreement: June 23, 1999.

Statement of Answer filed by Schneider on or about: July 6, 1999.

Third-Party Claim filed by Schneider on or about: July 7, 1999.

Schneider signed the Uniform Submission Agreement: June 29, 1999.

Investors did not file a Statement of Answer or sign a Uniform Submission Agreement.

Epstein did not file a Statement of Answer or sign a Uniform Submission Agreement.

Statement of Answer filed by Third-Party Respondents on or about: July 29, 1999.

M. Lazzinnaro signed the Uniform Submission Agreement: July 27, 1999.

M. J. Lazzinnaro signed the Uniform Submission Agreement: July 27, 1999.

### CASE SUMMARY

Claimant asserted the following causes of action: violations of Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10(b)-5 promulgated thereunder; churning; misrepresentations and omissions; violations of the common law; intentional fraudulent acts; breach of fiduciary duty; negligent misrepresentations; violation of Section 20(a) of the Securities and Exchange Act of 1934; and failure to supervise. Claimant's claim involved a variety of stocks and options.

Unless specifically admitted in his Answer, Langer denied the allegations made in the Statement of Claim and asserted the following defenses: Langer discussed every transaction with M. Lazzinnaro at the time of each trade; M. Lazzinnaro approved every transaction in Claimant's account; M. Lazzinnaro was made fully aware of the risks associated with all of the investments made in Claimant's account; any losses sustained by Claimant occurred because M. Lazzinnaro made unsolicited trades and refused to follow Langer's advice in certain situations; Claimant never complained to Investors, never sought to reverse any transaction, and transferred its account to Langer's new firm when he left Investors; and M. Lazzinnaro constantly suggested to Langer that Claimant's account should be traded more aggressively.

Unless specifically admitted in its Answer, Schneider denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant was at all times made aware of each and every transaction in its account and is therefore barred from recovery by virtue of the affirmative defense of laches; Claimant's failure to timely object to the transactions in its account is deemed to be a ratification, waiver, and estoppel of Claimant's right to recovery; at all times, Claimant maintained control over its securities account at Schneider and over all investments complained of in Claimant's Statement of Claim; Claimant failed to act promptly to mitigate its alleged damages as required by law; Claimant is barred from recovery by its contributory and comparative negligence, acquiescence, assumption of risk, and lack of reliance upon any action or inaction of Schneider; Claimant's claims are barred by the applicable statutes of limitation; the damages allegedly suffered by Claimant, if any, were caused by unforeseeable market factors and conditions affecting the value of securities in Claimant's account for which Schneider is not liable or responsible;

Claimant's causes of action fail to state a claim against Schneider for which relief may be granted; at all relevant times, Schneider acted in good faith and did not directly or indirectly induce the act or acts constituting any alleged violations of securities laws; and all of the transactions in Claimant's account were executed with the authorization of Claimant.

In its Third-Party Claim, Schneider asserted the following causes of action: breach of fiduciary duty and negligence.

Unless specifically admitted in their Answer, M. Lazzinnaro and M. J. Lazzinnaro denied the allegations made in the Third-Party Claim and asserted the following defenses: Schneider is attempting to assert a claim that is strictly held by the beneficiary of the Trust; the actions of the Third-Party Respondents do not rise to the level of any breach of fiduciary duty to the Trust's beneficiary, nor do they exculpate Schneider for its role in this fraud; Schneider's filing of a Third-Party Claim is merely an attempt to shift responsibility and an attempt to recoup attorney's fees; Schneider is attempting to cause a division in the Lazzinnaro family with the false hope that this arbitration will not be pursued; and Schneider has no damages nor do they allege with specificity the amount or source of their alleged damages.

### **RELIEF REQUESTED**

Claimant requested:

1. An Award of compensatory damages against Langer and Epstein in the amount of \$41,500.00 for the losses and lost opportunities for the period the account was at Investors;
2. An Award of compensatory damages against Langer and Schneider in the amount of \$79,000.00 for the losses and lost opportunities for the period the account was at Schneider;
3. An Award of punitive damages of at least \$250,000.00 to deter such conduct in the future;
4. That all costs of the arbitration be assessed against the Respondents, including reasonable attorney's fees; and
5. All other just and necessary relief.

Langer requested that the Panel issue an Award:

1. Denying Claimant's claim and dismissing this arbitration as against Langer with prejudice;
2. Assessing all costs of this arbitration against Claimant;
3. Directing that Claimant pay to Langer all of his costs and expenses herein, including reasonable attorney's fees; and
4. Granting to Langer such other and further relief as the Panel deems just and proper.

Schneider requested that all claims asserted against it be dismissed, and that Claimant be ordered to pay all costs and expenses, including attorney's fees, incurred by Schneider in this arbitration.

In its Third-Party Claim, Schneider requested an Award in its favor and against the Third-Party Respondents for damages in an amount to be proven at the hearing, and for such other relief as the Panel deems just and proper.

The Third-Party Respondents requested that all claims against them be denied in their entirety, that all costs be assessed against Schneider, and that they be awarded all other just and equitable relief.

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

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Epstein has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Epstein present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Epstein did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

By letter dated May 25, 1999, Claimant informed NASD Dispute Resolution, Inc. that it was withdrawing its claims against Investors.

Although Lawrence Penna was named as a Respondent in the Statement of Claim, NASD Dispute Resolution, Inc. did not effect service upon this Respondent.

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. Schneider be and hereby is liable for and shall pay to Claimant the sum of \$12,000.00.

2. Langer be and hereby is liable for and shall pay to Claimant the sum of \$12,000.00.
3. Claimant's request for punitive damages is hereby denied.
4. All other requests 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	= \$ 200.00
Third-Party Claim 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, Schneider Securities, Inc. is a party.

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

#### **Adjournment Fees**

Adjournments requested during these proceedings:

October 10, 11 & 12, 2000, adjournment by Langer	= \$ 750.00
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#### **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: September 29, 2000 1 session	
Two (2) Pre-hearing sessions with Panel x \$750.00	= \$1,500.00
Pre-hearing conferences: March 13, 2000 1 session	

	May 23, 2000	1 session	
Five (5) Hearing sessions x \$750.00			= \$3,750.00
Hearing Dates:	December 13, 2000	2 sessions	
	January 9, 2001	2 sessions	
	January 10, 2001	1 session	
Total Forum Fees			= \$5,550.00

1. The Panel has assessed \$2775.00 of the forum fees against Claimant, Louisa Lazzinnaro Trust.
2. The Panel has assessed \$2775.00 of the forum fees jointly and severally against Respondents Schneider and Langer.

#### **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. Claimant requested tapes, \$60.00.

#### **Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 200.00
Forum Fees	= \$2,775.00
<u>Administrative Costs</u>	= \$ 60.00
Total Fees	= \$3,035.00
<u>Less payments</u>	= \$1,250.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,785.00
2. Langer be and hereby is solely liable for:

<u>Adjournment Fee</u>	= \$ 750.00
Total Fees	= \$ 750.00
<u>Less payments</u>	= \$ 750.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00
3. Schneider be and hereby is solely liable for:

Third-Party Claim Filing Fee	= \$ 500.00
<u>Member Fees</u>	= \$4,600.00

Total Fees	= \$5,100.00
<u>Less payments</u>	<u>= \$5,700.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

4. Respondents Langer and Schneider be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$2,775.00</u>
Total Fees	= \$2,775.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,775.00

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.

  
Judith Fields Jurney, Esq.  
Public Arbitrator, Presiding Chair

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

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Marc T. Danon, Esq.  
Public Arbitrator

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Signature Date

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Marcia Kessler, Esq.  
Industry Arbitrator

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Signature Date

February 21, 2001  
Date of Service (For NASD office use only)

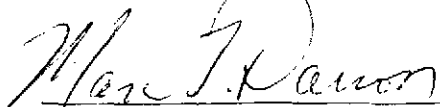


**Concurring Arbitrators' Signatures**

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.

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Judith Fields Journey, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date



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Marc T. Danon, Esq.  
Public Arbitrator

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Signature Date

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Marcia Kessler, Esq.  
Industry Arbitrator

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Signature Date

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February 21, 2001  
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