

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Pennington Family Trust

and

99-01519
Phoenix, Arizona

Name of Respondents

Berry-Shino Securities, Inc.
Robert L. Berry
Ralph M. Shino
Paul W. Osman

Nature of the Dispute: Customer vs. Member and Associated Persons.

REPRESENTATION OF PARTIES

Pennington Family Trust ("**Claimant**") was represented by Michael Salcido, Esq., Renaud Cook Drury Mesaros, PA, Phoenix, Arizona.

Berry-Shino Securities, Inc. ("**Respondent Berry-Shino**"), Robert L. Berry ("**Respondent Berry**"), Ralph M. Shino ("**Respondent Shino**") and Paul W. Osman ("**Respondent Osman**") were represented by Michael S. Finkelstein, Esq., Finkelstein & Feil, LLP, Garden City, New York.

CASE INFORMATION

The Statement of Claim was dated March 25, 1999 and received on or about March 30, 1999. Submission Agreement of Claimant Pennington Family Trust was signed on March 25, 1999 by Robert L. Pennington, Trustee and on June 16, 1999 by Jennye R. Pennington, Trustee.

Statement of Answer was filed by Respondents Berry-Shino Securities, Inc., Robert L. Berry, Ralph M. Shino and Paul W. Osman on or about August 25, 1999. Respondents' Motion for Voluntary Arbitrator Recusal was filed on or about January 21, 2004. Submission Agreement of Respondent Berry-Shino Securities, Inc. was signed on August 23, 1999 by R. Matthew Shino.

Submission Agreement of Respondent Robert L. Berry was signed on August 23, 1999. Submission Agreement of Respondent Ralph M. Shino was signed on August 23, 1999. Submission Agreement of Respondent Paul W. Osman was signed on August 23, 1999.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitable investment recommendations; securities fraud in violation of A.R.S. §44-1991; fraud; churning; dishonest and unethical conduct as defined in the Arizona Securities Act, ACC R14-4-130; breach of fiduciary duty; negligent supervision and/or failure to supervise; and negligence and/or negligent misrepresentations. churning. Claimant specifically stated:

Respondents recommended that Pennington invest in various speculative NASDAQ stocks. Berry-Shino made a market on some of these stocks. Shortly after opening the account Pennington told Osman that he would like a 10% stop loss, to be set on any stocks purchased. Osman told Pennington that it was his policy to use a 7% stop loss, to which Pennington agreed. Soon after this initial meeting, the positions recommended by Osman were down well past the 7% stop loss. Pennington questioned Osman, who said on each occasion that sometimes the stop loss is "jumped over".

These securities purchased for the Penningtons by Respondents were not suitable for individuals in their golden years, with no desire or reason to speculate. Such securities were also unsuitable based upon the Penningtons' previous investment portfolio held at Fidelity. The securities recommended and purchased by Respondents were, primarily, speculative, and appropriate only for individuals who could afford to risk principal.

Osman reportedly told Pennington that the berry-Shino stocks were just as safe as blue chip stocks, and, more importantly, would significantly increase in value.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated

Respondents only made recommendations to Claimant through Osman who was the broker handling the account. None of the recommendations were traded on a discretionary basis as Osman obtained the Claimants permission before executing each and every trade. Claimant transferred from Fidelity Investments on August 1, 1997 six equity positions of which four were NASDAQ stocks. The Claimant represented to Osman that their primary objectives with this account were capital gains and growth., ..., Osman recalls talking to Claimant about a stop loss on purchases but was never given specific instructions by Claimant to put in place any stop loss orders that were not entered.

Respondent only executed trades authorized by Claimant at prices authorized by Claimant. Claimant always had complete control over his account and the ultimate decision making authority.

RELIEF REQUESTED

Claimant requested an award as follows:

1. Compensatory damages of at least \$46,557.24;
2. Pre and post judgment interest until the Award is paid in full;
3. "Opportunity" or "Benefit of the Bargain" losses based on how the Pennington account would have performed had it been properly managed;
4. Disgorgement of all commissions, mark ups, profits and margin interest charged to his account;
5. Costs and attorneys' fees incurred herein, including all NASD filing and expert witness fees, pursuant to ARS §§ 12-341.01 and 44-2001;
6. Punitive damages in an amount to be determined at the hearing in this matter; and
7. Such other and further relief as is deemed just and proper.

Respondents requested that the arbitration panel enter the following award:

1. Claimant's claims be denied in full.
2. Respondents be awarded all costs and attorneys' fee, including all NASD filing and expert witness fees.
3. Pre and post judgment interest until the Award is paid in full.
4. Such other relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED & 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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted in this matter shall be and hereby are dismissed in their entirety; Claimant having failed to meet its burden of proof.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Paul W. Osman's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to

Members 99-09 and 99-54, Respondent Paul W. Osman must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee = \$175.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Berry-Shino Securities, Inc.

Member surcharge	\$	800.00
Pre-hearing process fee	\$	600.00
Hearing process fee	\$	1,000.00
Total Member Fees	\$	2,400.00

Adjournment Fees

Adjournments requested during these proceedings:

Hearing Date(s), January 29 – 30, 2004 adjournment requested by Respondents = \$600.00
Fee waived by Arbitration Panel.

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

3	Pre-hearing session(s) with Panel	x	600.00	\$	1,800.00
	January 12, 2000	1	session		
	September 24, 2003				
	January 27, 2004				
3	Hearing sessions	x	600.00	\$	1,800.00
	March 25, 2004	3	sessions		
	Total Forum Fees			\$	3,600.00

The Arbitration Panel has assessed \$1,800.00 of the forum fees to Pennington Family Trust.

The Arbitration Panel has assessed \$1,800.00 of the forum fees jointly and severally to Berry-Shino Securities, Inc., Robert L. Berry, Ralph M. Shino, and Paul W. Osman.

Fee Summary

Claimant, Pennington Family Trust, shall be and hereby is liable for:

Initial Filing Fee	= \$	175.00
<u>Forum Fees</u>	= \$	1,800.00
Total Fees	= \$	1,975.00
<u>Less payments</u>	= \$	-775.00
Balance Due NASD Dispute Resolution	= \$	1,200.00

Respondent, Berry-Shino Securities, Inc., shall be and hereby is liable for:

Member Fees	= \$	2,400.00
<u>Forum Fees</u>	= \$	0.00
Total Fees	= \$	2,400.00
<u>Less payments</u>	= \$	-2,600.00
Balance applied to fees below	= \$	- 200.00

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Respondents, Berry-Shino Securities, Inc., Robert L. Berry, Ralph M. Shino, and Paul W. Osman, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$	1,800.00
<u>Total Fees</u>	= \$	1,800.00
<u>Less payments</u>	= \$	-200.00
Balance Due NASD Dispute Resolution	= \$	1,600.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

John J. Balitis, Jr., Esq. - Public Arbitrator, Presiding Chair
Edward C. Rapp, J.D. - Public Arbitrator
Paul C. Bookidis - Non-Public Arbitrator

Concurring Arbitrators:

John J. Balitis, Jr., Esq.
Public Arbitrator, Presiding Chair

4/5/04.
Signature Date

Edward C. Rapp, J.D.
Public Arbitrator

Signature Date

Paul C. Bookidis
Non-Public Arbitrator

Signature Date

04/05/2004 13:33 FAX

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NASD Dispute Resolution
 Arbitration No. 99-01519
 Award Page 6 of 6

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 Public Arbitrator

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Paul C. Bookidis
 Non-Public Arbitrator

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Public Arbitrator

Signature Date

Paul C. Bookidis
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Non-Public Arbitrator

4-7-04
Signature Date