

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

**Raymond A. Rubin and
Eunice I. Rubin Revocable Trust,**
Claimants

vs.

Case Number: 99-01937
Hearing Site: Milwaukee, Wisconsin

**Alvaro F. Dumancella,
Redstone Securities, Inc.,
Fred Eugene Plan
Robert Francis Ryder, Jr., and
Madison Capital Markets Corp.,**
Respondents.

REPRESENTATION OF PARTIES

Claimants Raymond A. Rubin and Eunice I. Rubin Revocable Trust ("Rubin") were represented by Stephen M. Anderson, Esquire, of Ruder, Ware & Michler, Wausau, Wisconsin.

Respondent Alvaro F. Dumancella ("Dumancella") was originally represented by Eric J. Sussman, Esquire, Garden City, New York, but was not represented and did not appear at the hearing.

Respondent Redstone Securities, Inc. ("Redstone") was originally represented by Charles M. O'Rourke, Esquire, Woodbury, New York, but was not represented and did not appear at the hearing.

Respondent Fred Eugene Plan ("Plan") was not represented by counsel and did not appear at the hearing.

Respondents Robert Francis Ryder, Jr. ("Ryder"), and Madison Capital Markets Corp. ("Madison Capital") were originally represented by Terence D. Watson, Esquire, of Zevnik, Horton, Guibord, McGovern, Palmer & Fognani, L.L.P., New York, New York, but were not represented and did not appear at the hearing.

CASE INFORMATION

The Statement of Claim was filed on or about April 28, 1999.
Claimants' Uniform Submission Agreement was signed on April 21, 1999.

Respondent Dumancella did not file an Answer or Uniform Submission Agreement.

Respondent Redstone filed its Answer on or about July 19, 1999.
Thomas Laundrie, Chairman of Respondent Redstone, signed the Uniform Submission Agreement on June 22, 1999.

Respondent Plan did not file an Answer or Uniform Submission Agreement.

Respondents Ryder and Madison Capital filed their Joint Answer, Counterclaim and Cross-Claim on or about December 27, 1999.
Lawrence Zelin, Chief Operating Officer for Respondent Madison Capital, signed the Uniform Submission Agreement on August 13, 1999.
Respondent Ryder did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant alleged the following in his Statement of Claim: churning; unauthorized trading; fraud; misrepresentations; violations of Rule 10b-5; violations of Wisconsin state law; breach of fiduciary duty and negligence. The allegations were related to transactions in the following securities: Intervoice, Inc. ("INTV"); Azurel Ltd. ("AZUR"); National Media Corp. ("OTCBB: NM") and Southern Pacific Funding ("OTCBB: SFCFQ").

In its Answer, Respondent Redstone denied the allegations asserted in the Statement of Claim and asserted the following affirmative defense: failure to state a claim upon which relief can be granted.

In their Joint Answer, Counterclaim, and Cross-Claim (against Respondent Dumancella), Respondents Ryder and Madison Capital denied the allegations made in the Statement of Claim and asserted the following affirmative defenses: failure to state a claim upon which relief can be granted; assumption of the risk and failure to mitigate. Respondents Ryder and Madison Capital also alleged that Claimants owed them money pursuant to a Margin Agreement. Finally, Respondents Ryder and Madison Capital alleged that Respondent Dumancella breached his duties and should indemnify them in full in the event that they be found liable to Claimants.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$265,000.00
Interest	unspecified
Attorney's Fees	unspecified
Other Costs	unspecified

Respondent Redstone requested that all claims against it be dismissed in their entirety, as well as costs and attorney's fees.

Respondents Ryder and Madison Capital requested that all claims against them be dismissed in their entirety. They also requested indemnification from Respondent Dumancella in their Joint Cross-Claim against him. Finally, they requested the following in their Counterclaim:

Compensatory Damages	\$ 14,211.45
Interest	unspecified
Attorney's Fees	unspecified
Other Costs	unspecified

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned Panel determined that all Respondents 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 Dumancella, Plan and Ryder did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

Claimants filed a Motion for Discovery Sanctions and Summary Judgment, which the undersigned Panel received at the hearing. The Panel did not rule on the Motion, but addresses some of the issues raised therein in this award.

Prior to the hearing, Claimants settled their dispute with Respondent Dumancella, and dismissed with prejudice all claims against him. Also prior to the hearing, Claimants dismissed with prejudice all claims against Respondents Redstone and Ryder.

The Non-Public arbitrator was unable to attend the hearing. All parties present at the hearing agreed to proceed with two Panel members. This award reflects the unanimous decision of the Panel as constituted at the hearing.

AWARD

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

1. Respondents Fred Eugene Plan and Madison Capital Markets Corp. are *jointly and severally* liable for, and shall pay to Claimants, Raymond A. Rubin and Eunice I. Rubin Revocable Trust, **\$200,000.00** (Two Hundred Thousand Dollars and No Cents) **in damages**, which amount includes "out-of-pocket" losses, commission reimbursement and margin interest;
2. Respondents Fred Eugene Plan and Madison Capital Markets Corp. are *jointly and severally* liable for, and shall pay to Claimants, Raymond A. Rubin and Eunice I. Rubin Revocable Trust, **interest at the rate of 4.6% per annum** (the T-Bill two year rate) accrued from October 20, 1998, through the Date of Service of this Award;
3. Upon consideration of the pleadings and the parties' arguments, the Panel has determined that it has the authority to render an award of attorney's fees. Respondents Fred Eugene Plan and Madison Capital Markets Corp. are *jointly and severally* liable for, and shall pay to Claimants, Raymond A. Rubin and Eunice I. Rubin Revocable Trust, **attorney's fees in the amount of \$25,000.00** (Twenty-five Thousand Dollars and No Cents), which award reflects the Panel's determination of *reasonable* fees incurred;
4. All claims asserted by Respondents Ryder and Madison Capital in their Joint Counterclaim and Cross-Claim are dismissed in their entirety, with prejudice; and
5. Except as specified otherwise herein, each party shall bear its own costs and attorneys' fees.

Any and all relief not specifically addressed herein is 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 = \$ 300

Cross-Claim filing fee = \$ 500

The Panel directs the reimbursement of Claimant's initial claim filing fee by Respondents Madison Capital Markets Corp. and Fred Eugene Plan, jointly and severally.

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, the member firms are Redstone Securities, Inc. and Madison Capital Markets Corp.

Member surcharge = \$1,500

Pre-hearing process fee = \$ 600

Hearing process fee = \$2,500

Adjournment Fees

Adjournments requested during these proceedings:

June 27-30, 2000, adjournment by Claimants = \$ 1,125

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

Two (2) Pre-hearing conferences with Panel x \$1,125 = \$ 2,250

Pre-hearing conference: December 8, 1999 1 session

January 19, 2000 1 session

Two (2) Hearing sessions x \$1,125 = \$ 2,250

Hearing Dates: January 9, 2001 2 sessions

Total Forum Fees = \$ 4,500

The Panel has assessed \$1,125 in Forum Fees solely to Respondent Alvaro F. Dumancella. The Panel has assessed the remaining \$3,375 in Forum Fees to Madison Capital Markets Corp. and Fred Eugene Plan, jointly and severally.

Fee Summary

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

Initial Filing Fee = \$ 300

Adjournment Fee = \$ 1,125

Total Fees = \$ 1,425

Less payments = \$ 3,025

Balance Due NASD Dispute Resolution, Inc. = \$(1,600)

NASD Dispute Resolution, Inc. will refund this \$1,600 to Claimant. Additionally, Respondents Madison Capital Markets Corp. and Fred Eugene Plan will reimburse the \$300 initial filing fee directly to Claimant.

2. Respondent Redstone Securities, Inc. be and hereby is solely liable for:

<u>Member Fees</u>	= \$ 4,600
<u>Total Fees</u>	= \$ 4,600
<u>Less Payments</u>	= \$ 1,500
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,100

3. Respondent Madison Capital Markets Corp. be and hereby is solely liable for:

<u>Member Fees</u>	= \$ 4,600
<u>Total Fees</u>	= \$ 4,600
<u>Less Payments</u>	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 4,600

4. Respondents Robert Francis Ryder, Jr., and Madison Capital Markets Corp., be and hereby are jointly and severally liable for:

<u>Cross-Claim Filing Fee</u>	= \$ 500
<u>Total Fees</u>	= \$ 500
<u>Less payments</u>	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 500

5. Respondents Madison Capital Markets Corp. and Fred Eugene Plan be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 3,375
<u>Total Fees</u>	= \$ 3,375
<u>Less payments</u>	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,375

With the exception of the initial filing fee reimbursement, payable directly to Claimant, all balances are due to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

Gary L. Grolle
Gary L. Grolle, Esq.
Public Arbitrator, Presiding Chair

March 16, 2001
Signature Date

John Phillip Ryan
John Phillip Ryan, Esq.
Public Arbitrator

March 16, 2001
Signature Date

March 20, 2001
Date of Service (For NASD office use only)

NASD-DR Award

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<u>Total Fees</u>	= \$ 4,600
<u>Less Payments</u>	= \$ 1,500
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$ 3,100

3. Respondent Madison Capital Markets Corp. be and hereby is solely liable for:

<u>Member Fees</u>	= \$ 4,600
<u>Total Fees</u>	= \$ 4,600
<u>Less Payments</u>	= \$ 0
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$ 4,600

4. Respondents Robert Francis Ryder, Jr., and Madison Capital Markets Corp., be and hereby are jointly and severally liable for:


<u>Cross-Claim Filing Fee</u>	= \$ 500
<u>Total Fees</u>	= \$ 500
<u>Less payments</u>	= \$ 0
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$ 500

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<u>Forum Fees</u>	= \$ 3,375
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<u>Less payments</u>	= \$ 0
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$ 3,375

With the exception of the initial filing fee reimbursement, payable directly to Claimant, all balances are due to NASD Dispute Resolution, Inc.

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Public Arbitrator, Presiding Chair


Signature Date

John Phillip Ryan, Esq.
Public Arbitrator

Signature Date

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Member Fees	= \$ 4,600
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Balance Due NASD Dispute Resolution, Inc.	= \$ 3,100

3. Respondent Madison Capital Markets Corp. be and hereby is solely liable for:

Member Fees	= \$ 4,600
Total Fees	= \$ 4,600
Less Payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 4,600

4. Respondents Robert Francis Ryder, Jr., and Madison Capital Markets Corp., be and hereby are jointly and severally liable for:

Cross-Claim Filing Fee	= \$ 500
Total Fees	= \$ 500
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 500

5. Respondents Madison Capital Markets Corp. and Fred Eugene Plan be and hereby are jointly and severally liable for:

Forum Fees	= \$ 3,375
Total Fees	= \$ 3,375
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Balance Due NASD Dispute Resolution, Inc.	= \$ 3,375

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Public Arbitrator, Presiding Chair

John Phillip Ryan, Esq.
Public Arbitrator

Signature Date

March 16, 2001

Signature Date

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