

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Insinger Trust (Jersey), Ltd. as Trustee of the Breakwater Trust (Claimant) v. Oscar Gruss & Son, Inc. and Michael David Rapoport a/k/a Michael Rapp (Respondents)

Case Number: 99-01981

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant Insinger Trust (Jersey), Ltd. as Trustee of the Breakwater Trust ("Breakwater") hereinafter referred to as "Claimant": Susan D. Ciallella, Esq., Cozen and O'Connor, P.C., Philadelphia, PA. Previously represented by: Christopher C. Fountain, Esq., and Phillip Russell, Esq., Greenwich, CT.

Respondent Oscar Gruss & Son, Inc. ("OGSI"): Robert S. Churchill, Esq., McLaughlin & Stern, LLP, New York, NY.

Respondent Michael David Rapoport a/k/a Michael Rapp ("Rapp"): Thomas V. Marino, Esq., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: April 27, 1999.

Claimant signed the Uniform Submission Agreement: February 19, 1999.

Statement of Answer filed by OGSI on or about: September 1, 1999.

Motion to Dismiss filed by OGSI on or about: September 1, 1999.

OGSI signed the Uniform Submission Agreement: August 31, 1999.

Statement of Answer and Motion to Dismiss filed by Rapp on or about: August 23, 1999.

Rapp signed the Uniform Submission Agreement: August 27, 1999.

CASE SUMMARY

Claimant asserted the following causes of action: unauthorized trading; misrepresentation; suitability; and failure to execute. Claimant's claim involved shares of Source Media Holding.

Unless specifically admitted in its Answer, OGSI denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer and Motion to Dismiss, Rapp denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

Claimant requested recovery of all of its out-of-pocket losses, estimated to be \$239,000.00, interest on its original investment at the annual rate of 12%, costs, and reasonable attorneys' and expert witness fees.

OGSI requested dismissal of Claimant's Statement of Claim and an award of the costs and disbursements of this proceeding, including administration fees, arbitrators' fees, attorneys' fees, and such further relief as the arbitrators deem just and proper.

Rapp requested an award dismissing the claim and awarding the costs and disbursements of this proceeding including administration fees, arbitrators' fees, attorneys' fees, and such other, further and different relief as to the arbitrators seems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

By letter dated April 12, 2000, NASD Dispute Resolution was notified that counsel for Claimant, Christopher Fountain, Esq., withdrew and Claimant requested a sixty day extension to file a responsive pleading to the Motions to Dismiss. On June 28, 2000, the Panel issued an Order granting OGSI's and Rapp's Motions to Dismiss without prejudice. By letters dated July 5 and 6, 2000, Claimant's new counsel entered her appearance and requested that the Panel postpone the hearings and grant Claimant additional time to respond to the Motions to Dismiss. On September 1, 2000 the Panel issued an Order in which it denied Claimant's application and determined that Claimant may submit a new application addressing the fact that the Panel already granted the Motions to Dismiss. No new application was ever made.

AWARD

After considering the pleadings, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. In accordance with the Panel's June 28, 2000 Order, Claimant's claims are hereby dismissed without prejudice.

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 = \$300.00

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. Oscar Gruss & Son, Inc. is a party.

Member surcharge = \$1,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$2,500.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

Three (3) Pre-hearing sessions with Panel @ \$1,125.00 = \$3,375.00

Pre-hearing conferences:	February 16, 2000	1 session
	May 18, 2000	1 session
	June 28, 2000	1 session

Total Forum Fees = \$3,375.00

1. The Panel has assessed \$1,687.50 of the forum fees against Claimant.
2. The Panel has assessed \$1,687.50 of the forum fees jointly and severally against OGSi and Rapp.

Fee Summary

1. Claimant is solely liable for:	
Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$1,687.50</u>
Total Fees	= \$1,987.50
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 562.50
2. OGSi is solely liable for:	
<u>Member Fees</u>	<u>= \$4,600.00</u>
Total Fees	= \$4,600.00
<u>Less payments</u>	<u>= \$4,600.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00
3. OGSi and Rapp are jointly and severally liable for:	
<u>Forum Fees</u>	<u>= \$1,687.50</u>
Total Fees	= \$1,687.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$1,687.50

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Gary W. Sherbell, Esq.	-	Public Arbitrator, Presiding Chair
Marion Yuen, MA	-	Public Arbitrator
E. Stephen Walsh, Esq.	-	Non-Public Arbitrator

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.

Gary Sherbell
Gary W. Sherbell, Esq.
Public Arbitrator, Presiding Chairperson

12/5/03
Signature Date

Marion Yuen, MA
Public Arbitrator

Signature Date

E. Stephen Walsh, Esq.
Non-Public Arbitrator

Signature Date

December 23, 2003
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Gary W. Sherbell, Esq.	-	Public Arbitrator, Presiding Chair
Marion Yuen, MA	-	Public Arbitrator
E. Stephen Walsh, Esq.	-	Non-Public Arbitrator

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.

Gary W. Sherbell, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Marion Yuen
Marion Yuen, MA
Public Arbitrator

12/12/03
Signature Date

E. Stephen Walsh, Esq.
Non-Public Arbitrator

Signature Date

December 23, 2003

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Gary W. Sherbell, Esq.	-	Public Arbitrator, Presiding Chair
Marion Yuen, MA	-	Public Arbitrator
E. Stephen Walsh, Esq.	-	Non-Public Arbitrator

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.

Gary W. Sherbell, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Marion Yuen, MA
Public Arbitrator

Signature Date

E. Stephen Walsh
E. Stephen Walsh, Esq.
Non-Public Arbitrator

12/5/03
Signature Date

December 23, 2003
Date of Service (For NASD Dispute Resolution use only)