

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

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In the Matter of the Arbitration Between

Name of Claimant

Vauneva M. Jennings

Case No. 99-02055

Name of Respondents

National Securities Corporation;  
Frank Mathis, Jr.;  
The Boston Group;  
Robert Anthony DiMinico;  
Kye Hellmer;  
Scott Lee Mathis;  
Bonnie Lou Moore; and,  
Joseph Salvani

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**REPRESENTATION OF PARTIES**

Claimant Vauneva Jennings ("Jennings") was represented at the evidentiary hearing by Ronald C. Koksall, Esq., of the firm of Butler, Vines and Babb, located in Knoxville, Tennessee.

Respondent Joseph Salvani ("Salvani") was represented at the hearing by Berthold H. Hoeniger, Esq., located in Bridgewater, Connecticut. Respondents Scott L. Mathis ("S. Mathis") and Kye Hellmers ("Hellmers") were represented by Eric S. Hutner, Esq., of Eric S. Hutner & Associates, located in New York, New York. Respondent Frank M. Mathis, Jr. ("F. Mathis") represented himself at the hearing. Respondent Bonnie Lou Moore ("Moore") represented herself at the hearing. Respondent Robert Diminico ("Diminico") was not represented at the hearing and did not appear personally at the hearing. Respondent The Boston Group ("Boston") was not represented at the hearing.

**CASE INFORMATION**

Statement of Claim filed on or about: May 4, 1999.

Claimant signed the Uniform Submission Agreement: April 15, 1999.

Motion for Leave to Amend Statement of Claim filed: December 14, 1999.

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

Statement of Answer filed by Respondent National Securities Corporation ("NSC") on or about: August 19, 1999.

Respondent NSC did not file a signed Uniform Submission Agreement.

Statement of Answer filed by Respondent Frank Mathis, Jr. on or about: August 19, 1999.

Respondent F. Mathis signed the Uniform Submission Agreement: August 18, 1999.

Statement of Answer and Motion filed by Respondent The Boston Group on or about: August 18, 1999.

Respondent Boston signed the Uniform Submission Agreement: September 10, 1999.

Statement of Answer and Motion to Dismiss filed by Respondents DiMinico, Hellmer and S. Mathis on or about: May 5, 2000.

Respondents DiMinico, Hellmer and S. Mathis did not file a signed Uniform Submission Agreement.

Claimant's Response to the Motion to Dismiss filed on or about: May 23, 2000.

Statement of Answer and Motion to Dismiss filed by Respondent Bonnie Lou Moore on or about: June 1, 2000.

Respondent Moore signed the Uniform Submission Agreement: June 7, 2000.

Claimant's Response to Moore's Motion to Dismiss filed on or about: June 14, 2000.

Statement of Answer, Motion to Dismiss and Cross-claim filed by Respondent Joseph Salvani on or about: June 20, 2000.

Respondent Salvani signed the Uniform Submission Agreement: June 20, 2000.

Claimant's Response to Salvani's Motion to Dismiss filed on or about: July 5, 2000.

### **CASE SUMMARY**

Claimant asserted that Respondents' actions constituted the following causes of action: fraudulent acts or devices under Tenn. Code Ann. § 48-2-121 and 15 U.S.C. § 78j; common law fraud and deceit; and breach of fiduciary duty. The causes of action relate to the recommended purchase of 10,000 shares of IDM Environmental Corp.

Unless specifically admitted in its Answer, Respondent NSC denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim fails to state any claim against NSC for which relief can be granted;
2. The claims are barred by the applicable statute of limitations;
3. Any losses sustained by the Claimant are attributable to market conditions or Claimant's own conduct and failure to mitigate damages, and not by any actions, or inaction, on NSC's part;
4. Claimant was negligent or contributorily negligent, which was the sole or contributing cause of the alleged damages; and

5. Claimant is estopped from asserting the claims in the Statement of Claim.

Unless specifically admitted in its Answer, Respondent Boston denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The claims should be dismissed in their entirety for Claimant's failure to allege the necessary elements of each claim;
2. Any claim asserted pursuant to Tennessee statutory law must be dismissed because under the terms of the parties agreement, Tennessee law does not apply to this dispute; and
3. Claimant failed to take reasonable steps to mitigate her damages.

Respondent F. Mathis adopted the answer filed by The Boston Group.

Unless specifically admitted in their Answer, Respondents DiMinico, Hellmer and S. Mathis denied the allegations made in the Statement of Claim and adopted the affirmative defenses set forth in the Statement of Answer filed by The Boston Group.

Unless specifically admitted in her Answer, Respondent Moore denied the allegations made in the Statement of Claim and asserted that she was not a control person nor did she supervise the customer accounts or registered representatives.

Unless specifically admitted in his Answer, Respondent Salvani denied the allegations made in the Statement of Claim and adopted the affirmative defenses asserted by The Boston Group. In addition, Salvani asserted a cross-claim against The Boston Group for indemnification.

#### **RELIEF REQUESTED**

Claimant requested damages in the following approximate amounts:

|                      |                      |
|----------------------|----------------------|
| Compensatory Damages | \$ 90,000.00         |
| Punitive Damages     | \$ 400,000.00        |
| Attorneys' Fees      | \$reasonable amount  |
| Other Costs          | \$unspecified amount |

Respondent NSC requested that it be dismissed with prejudice and that Claimant be required to bear all costs.

Respondents The Boston Group, F. Mathis, DiMinico, Hellmer and S. Mathis each requested that the Statement of Claim be dismissed in its entirety, with Respondents awarded costs, including attorneys' fees, plus any other relief the Panel deemed just and proper.

Respondents Moore and Salvani each requested dismissal from this arbitration.

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

The Statement of Claim was amended on or about December 16, 1999, to add Respondents Joseph Salvani, Scott Mathis, Kye Hellmers, Robert Anthony Diminico, and Bonnie Lou Moore.

Claimant and National Securities Corp. stipulated to the dismissal of National Securities Corp. on or about March 23, 2000.

Respondents Salvani, S. Mathis, Hellmers, Diminico and Moore moved to dismiss on the ground that the Statement of Claim failed to state a claim as to them. Those motions were denied by the Panel without prejudice to renew the motions at the evidentiary hearing.

Respondents NSC, DiMinico, Hellmer and S. Mathis did not file with 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.

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators determined that Respondents The Boston Group and Diminico were properly served with the Statement of Claim and due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD-DR Code of Arbitration Procedure (the "Code").

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.

The panel takes notice of the fact that the Respondent Diminico filed a bankruptcy petition on March 23, 2001, in the United States Bankruptcy Court in Los Angeles, California, and this action is therefore stayed as to Respondent Robert Anthony Diminico.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Frank Mathis, Jr., Joseph Salvani and The Boston Group are jointly and severally liable for and shall pay to the Claimant, Vauneva M. Jennings, the sum of \$80,971.75 as compensatory damages, plus pre-judgment interest in the sum of \$27,015.24;
2. In addition, Respondents Frank Mathis, Jr., Joseph Salvani and The Boston Group are jointly and severally liable for and shall pay to the Claimant, Vauneva M. Jennings, the sum of \$50,000.00 as punitive damages. In deciding to award punitive damages, the Panel considered the pleadings of the parties and the arguments made on their behalf, and determined that authority existed for an award of punitive damages to the Claimant, Vauneva M. Jennings;

3. Furthermore, Respondents Frank Mathis, Jr., Joseph Salvani and The Boston Group are jointly and severally liable for and shall pay to the Claimant, Vauneva M. Jennings, the sum of \$30,000.00 as attorneys' fees. In deciding to award attorneys' fees, the Panel considered the pleadings of the parties and the arguments made on their behalf, and determined that authority existed for an award of attorneys' fees to the Claimant, Vauneva M. Jennings;
4. Finally, Respondents Frank Mathis, Jr., Joseph Salvani and The Boston Group are jointly and severally liable for and shall pay to the Claimant, Vauneva M. Jennings, the sum of \$300.00 as reimbursement of the non-refundable claim filing fee paid by the Claimant;
5. The claims against Respondents National Securities Corporation; Kye Hellmer; Scott Lee Mathis; and Bonnie Lou Moore are dismissed and denied with prejudice;
6. All remaining costs of arbitration, including any additional attorneys' fees, shall be borne by the party incurring the cost; and,
7. Any relief not specifically requested is hereby withdrawn.

#### **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 | = \$ 300.00 |
| Cross-claim              | = \$ 300.00 |

#### **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 are parties to the arbitration.

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

#### **Adjournment Fees**

Adjournments requested during these proceedings:

|   |                                       |
|---|---------------------------------------|
| May 3-4, 2000 adjournment by The Boston Group | = \$ 1,125.00 (waived by arbitrators) |
| November 6-7, 2000 adjournment by Mr. Salvani | = \$ 1,125.00                         |

#### **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:

Four (4) Pre-hearing sessions with Panel x \$ 1,125.00 = \$ 4,500.00

Pre-hearing conferences:      December 6, 1999      1 session  
   April 28, 2000      1 session  
   July 11, 2000      1 session  
   November 6, 2000      1 session

Five (5) Hearing sessions x \$ 1,125.00 = \$ 5,625.00

Hearing Dates:              February 13, 2001      2 sessions  
   February 14, 2001      3 sessions

Total Forum Fees = \$10,125.00

The Panel has assessed \$10,125.00 of the forum fees jointly and severally to Respondents Frank Mathis, Jr., Joseph Salvani and The Boston Group.

**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.

Respondent Joseph Salvani, copies of audio tapes = \$ 153.00

**Fee Summary**

Claimant Vauneva M. Jennings is solely liable for:

Initial Filing Fee = \$ 300.00  
Less payments = \$ 1,559.50  
Balance Due Claimant Vauneva M. Jennings = \$ 1,259.50

Respondent National Securities Corporation is solely liable for:

Member Fees = \$ 4,600.00  
Less payments = \$ 4,600.00  
Balance Due NASD Dispute Resolution, Inc. = \$ 0

Respondent The Boston Group is solely liable for:

Member Fees = \$ 4,600.00  
Less payments = \$ 0  
Balance Due NASD Dispute Resolution, Inc. = \$ 4,600.00

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Respondent Joseph Salvani is solely liable for:

|  |                      |
|--|----------------------|
| Cross-claim Filing Fee   | = \$ 300.00          |
| Adjournment Fee  | = \$ 1,125.00        |
| <u>Administrative Costs</u>                                      | <u>= \$ 153.00</u>   |
| Total Fees   | = \$ 1,578.00        |
| <u>Less payments</u>   | <u>= \$ 2,403.00</u> |
| Balance Due Respondent Joseph Salvani<br>(Applied to Forum Fees) | = \$ 825.00          |

Respondents Frank Mathis, Jr., Joseph Salvani and The Boston Group are jointly and severally liable for:

|   |                    |
|---|--------------------|
| Forum Fees                                | = \$10,125.00      |
| <u>Less payments</u>                      | <u>= \$ 825.00</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 9,300.00      |

All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

  
Steven R. Gregory, Esq.  
Public Arbitrator, Presiding Chair

5/14/01  
Signature Date

\_\_\_\_\_  
Robert J Warner, Jr., LLB  
Public Arbitrator

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

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Phillip G. Magdich  
Industry Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD-DR office use only)

NASD Dispute Resolution, Inc.  
Arbitration No. 99-02055  
Award Page 7

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 Public Arbitrator, Presiding Chair

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 Robert J Warner, Jr., LLB  
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 Phillip G. Magdich  
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