

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Jeffrey J. Hanz,
Claimant

Vs.

Case Number: 99-02419
Hearing Site: Milwaukee, Wisconsin

**National Securities Corporation,
The Boston Group,
Joseph W. Donohue,
Robert A. Diminico,
Kye Hellmers,
Michel Allocca,
Kimi Eizo Jingu,
John R. Brady,
Philip E. Steele,
Kevin E. Scannell,
Clifford F. Mastricola,
Susan Anne Gullery,
Bonnie Briggs Rich,
Janeann B. Knapp,
Scott L. Mathis, and
Paul R. Tamayo,**
Respondents.

REPRESENTATION OF PARTIES

Claimant Jeffrey J. Hanz ("Hanz") was represented by Matthew J. Tuttle, Esquire, of Perkins, Smith & Cohen, LLP, Boston, Massachusetts.

Respondent National Securities Corporation ("National") was originally represented by Patrick Hinton of Hinton & Roth, Seattle, Washington. However, Respondent National was not represented and did not appear at the hearing.

Respondents, The Boston Group ("Boston Group"), Robert A. Diminico ("Diminico") and Michael Allocca ("Allocca") were originally represented by Eric S. Hutner, Esquire, of Trachtenberg & Rodes, LLP, New York, New York, but were not represented and did not appear at the hearing.

Respondents Joseph W. Donohue ("Donohue"), Kye Hellmers ("Hellmers") and Scott L. Mathis ("Mathis") were represented by Eric S. Hutner, Esquire, of

Trachtenberg & Rodes, LLP, New York, New York.

Respondents Clifford F. Mastricola ("Mastricola"), Bonnie Briggs Rich ("Rich"), Janeann B. Knapp ("Knapp") and Paul R. Tamayo ("Tamayo") were not represented and did not appear at the hearing.

Respondents John R. Brady ("Brady") and Susan Anne Gullery ("Gullery") were originally represented by John T. McGuire, Esquire, of John T. McGuire, P.C., New York, New York, but were not represented and did not appear at the hearing.

Respondents Kimi Eizo Jingu ("Jingu"), Philip E. Steele ("Steele") and Kevin E. Scannell ("Scannell") were represented by Dan A. Druz, Esquire, Attorney at Law, Manasquan, New Jersey, who appeared telephonically at the hearing.

CASE INFORMATION

The Statement of Claim was filed on or about May 26, 1999.

Claimant signed the Uniform Submission Agreement on May 14, 1999.

Respondent National filed its Statement of Answer on or about August 23, 1999.

Respondent National did not file a Uniform Submission Agreement.

Respondents Boston Group and Donohue filed their joint Statement of Answer on or about September 17, 1999.

Robert A. Diminico signed the Uniform Submission Agreement on behalf of Respondent Boston Group on August 12, 1999.

Respondent Donohue signed the Uniform Submission Agreement on September 14, 1999.

Respondents Hellmers, Allocca, Steele, Scannell, Diminico and Mathis did not file Statements of Answer or Uniform Submission Agreements.

Respondents Jingu and Mastricola filed their joint Statement of Answer on or about May 18, 2000.

Respondents Jingu and Mastricola did not file Uniform Submission Agreements.

Respondent Brady filed his Statement of Answer on or about July 17, 2000.

Respondent Brady did not file a Uniform Submission Agreement.

Respondent Gullery filed her Statement of Answer on or about June 22, 2000.

Respondent Gullery did not file a Uniform Submission Agreement.

Respondent Rich filed her Statement of Answer on or about January 15, 2000.
Respondent Rich signed the Uniform Submission Agreement on January 27, 2000.

Respondent Knapp filed her Statement of Answer on or about June 19, 2000.
Respondent Knapp did not file a Uniform Submission Agreement.

Respondent Tamayo filed his Statement of Answer on or about February 10, 2000.
Respondent Tamayo signed the Uniform Submission Agreement on February 9, 2000.

CASE SUMMARY

Claimant alleged the following in his Statement of Claim: breach of contract, breach of the covenant of good faith and fair dealing, breach of fiduciary duty, breach of a broker's duty of reasonable care, breach of a broker's duty to supervise and ensure compliance, negligent and intentional misrepresentation, fraud and deceit, negligence, tortious malpractice as a licensed securities professional, violations of state and federal securities laws, violations of state consumer protection laws prohibiting deceptive and unfair trade practices, violations of various securities exchange rules and respondeat superior liability. The allegations were related to transactions in securities including the following: Chicago Pizza & Brewery, Inc.

Unless stated otherwise in its Statement of Answer, Respondent National denied all allegations set forth in the Statement of Claim and asserted the following affirmative defenses: failure to state a claim upon which relief can be granted, violations of applicable statutes of limitations, failure to mitigate, contributory negligence and estoppel.

Unless stated otherwise in their joint Statement of Answer, Respondents Boston Group and Donohue denied all allegations set forth in the Statement of Claim and asserted the following affirmative defenses: failure to state a claim upon which relief can be granted, violations of applicable statutes of limitations, laches, failure to mitigate, ratification, waiver and estoppel.

Unless stated otherwise in their joint Statement of Answer, Respondents Jingu and Masticola denied all allegations set forth in the Statement of Claim.

Unless stated otherwise in his Statement of Answer, Respondent Brady denied all allegations set forth in the Statement of Claim and asserted the following affirmative defenses: failure to state a claim upon which relief can be granted,

violations of applicable statutes of limitations, contributory negligence, failure to exercise due diligence, assumption of the risk, ratification, waiver and estoppel.

Unless stated otherwise in her Statement of Answer, Respondent Gullery denied all allegations set forth in the Statement of Claim and asserted the following affirmative defenses: failure to state a claim upon which relief can be granted, violations of applicable statutes of limitations, contributory negligence, failure to exercise due diligence, assumption of the risk, ratification, waiver and estoppel.

Unless stated otherwise in her Statement of Answer, Respondent Rich denied all allegations set forth in the Statement of Claim.

Unless stated otherwise in her Statement of Answer, Respondent Knapp denied all allegations set forth in the Statement of Claim.

Unless stated otherwise in his Statement of Answer, Respondent Tamayo denied all allegations set forth in the Statement of Claim.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$ 214,000.00
Interest	unspecified
Punitive Damages	unspecified
Attorney's Fees	unspecified
Other Costs	unspecified

Each Respondent that filed a Statement of Answer requested that the Statement of Claim be dismissed in its entirety with prejudice.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, and as explained more fully herein, Claimant settled with and/or dismissed the following Respondents: National Securities Corporation, Susan Anne Gullery, Janeann B. Knapp and Paul R. Tamayo. Respondent Tamayo died prior to the hearing, and Claimant voluntarily dismissed all claims against him and his estate.

Respondent Clifford F. Masticola, who was not present at the hearing, had filed for bankruptcy prior to the hearing. Claimant did not receive leave from the bankruptcy court to pursue his claims against Respondent Masticola.

Respondents National Securities Corporation, Robert A. Diminico, Kye Hellmers, Michel Allocca, Kimi Eizo Jingu, John R. Brady, Philip E. Steele, Kevin E. Scannell, Clifford F. Masticola, Susan Anne Gullery, Janeann B. Knapp and Scott L. Mathis did not file with NASD Dispute Resolution, Inc. properly executed submissions 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.

Respondents Diminico, Hellmers, Allocca, Jingu, Brady, Steele, Scannell, Masticola, Rich, and Mathis filed Motions to Dismiss, which were denied by the undersigned Panel on May 4, 2000.

Respondents Gullery and Brady filed additional Motions to Dismiss. The second Motion to Dismiss filed by Respondent Gullery was denied by the undersigned Panel on July 24, 2000. The second Motion to Dismiss filed by Respondent Brady was denied by the undersigned Panel on August 14, 2000.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned Panel determined that Respondents, The Boston Group, Robert A. Diminico, Michael Allocca and John R. Brady 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").

Pursuant to an Order by the undersigned Panel, Claimant submitted post-hearing correspondence advising the Panel of the finalization of settlement agreements between Claimant and Respondents Rich, Jingu and Donohue and the dismissal with prejudice of his claims against these Respondents.

On or about December 29, 2000, Claimant Jeffrey J. Hanz filed a Motion for Sanctions against certain named Respondents. On January 18, 2001, the undersigned Panel Ordered that the Motion be held over for determination at the hearing. At the hearing, Respondents Hellmers and Mathis filed a Counter-Motion against Claimant. The final disposition of these Motions is further addressed herein.

AWARD

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

1. Pursuant to the correspondence dated January 21, 2001, from Matthew Tuttle, Esquire, attorney for Claimant, to NASD Dispute Resolution, Inc., and the post-hearing correspondence dated March 23, 2001, from

Matthew Tuttle, Esquire, attorney for Claimant, to NASD Dispute Resolution, Inc., the Panel unanimously makes the following orders (A-D):

- A. All claims against Respondent National Securities Corporation be and hereby are dismissed with prejudice.
 - B. All claims against Respondents Susan Anne Gullery and Janeann B. Knapp be and hereby are dismissed without prejudice.
 - C. All claims against Respondent Paul R. Tamayo be and hereby are dismissed upon the merits with prejudice because Paul R. Tamayo is deceased, and because Claimant Jeffrey J. Hanz is not pursuing any claim against him or his estate.
 - D. All claims against Respondents Joseph W. Donohue, Kimi Eizo Jingu and Bonnie Briggs Rich be and hereby are dismissed with prejudice.
2. Respondent Clifford F. Mastricola has filed for bankruptcy. Claimant Jeffrey J. Hanz does not have proper jurisdiction to proceed against Respondent Clifford F. Mastricola, because he is under the exclusive jurisdiction of the bankruptcy court. The Claimant did not obtain leave or permission from the bankruptcy court to proceed with this case. Therefore all claims against Respondent Clifford F. Mastricola be and hereby are dismissed without prejudice, because of the lack of jurisdiction.
3. As to the Respondents, The Boston Group, Robert A. Diminico, Kye Hellmers, Michael Allocca, John R. Brady, Philip E. Steele, Kevin E. Scannell and Scott L. Mathis, the undersigned Panel has unanimously found that Claimant Jeffrey J. Hanz has not sustained his burden of proof and has not presented sufficient evidence upon which this Panel can make a finding of liability against these Respondents. Therefore, all claims against these Respondents are dismissed with prejudice.
4. The Motion for Sanctions against various Respondents filed by Claimant Jeffrey J. Hanz and the Counter-Motion filed by Respondents Kye Hellmers and Scott L. Mathis are denied, except with respect to Claimant's Motion for Sanctions against Respondents The Boston Group and Robert A. Diminico. As against these two Respondents only, Claimant's Motion is granted, and Respondents The Boston Group and Robert A. Diminico be and hereby are jointly and severally liable for, and shall pay to Claimant Jeffrey J. Hanz, \$11,400.00 (Eleven Thousand Four Hundred Dollars and No Cents), as sanctions at the rate of \$100.00 (One Hundred Dollars and No Cents) per day for 114 days of violation of an Order of the Panel compelling discovery.

5. No attorney's fees shall be awarded to any party to this arbitration.
6. The correspondence dated January 21, 2001, from Matthew Tuttle, Esquire, attorney for Claimant, to NASD Dispute Resolution, Inc., and the post-hearing correspondence dated March 23, 2001, from Matthew Tuttle, Esquire, attorney for Claimant, to NASD Dispute Resolution, Inc., both of which are attached hereto, shall be incorporated herein by reference and made a part of this Award, except as modified herein.
7. Any outstanding Motions or Counter-Motions not specifically ruled upon herein are denied.
8. Except as otherwise specified herein, each party shall bear its own costs.
9. 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
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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 National Securities Corporation and The Boston Group. *

Member surcharge	= \$1,500
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$2,500

*The Boston Group is a terminated member. However, The Boston Group filed a Statement of Answer and a Uniform Submission Agreement, and actively participated in the arbitration until January 3, 2001, when counsel for The Boston Group withdrew. All the member fees had accrued by this point, and are therefore due and payable to NASD Dispute Resolution, Inc.

Adjournment Fees

The only adjournment was by Order of the Panel, and no fees are assessed.

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:

One (1) Pre-hearing Conference - single arbitrator x \$450 = \$ 450
Pre-hearing conference: April 24, 2000 1 session

Three (2) Pre-hearing conferences with Panel x \$1,125 = \$3,375
Pre-hearing conference: January 11, 2000 1 session
April 20, 2000 1 session
August 2, 2000 1 session

Four (4) Hearing sessions x \$1,125 = \$4,500
Hearing Dates: January 22, 2001 2 sessions
January 23, 2001 2 sessions

Total Forum Fees = \$8,325

The Panel has assessed the Forum Fees in equal shares between:

1. Claimant Jeffrey J. Hanz
2. Respondent, The Boston Group
3. Respondent Michael Allocca
4. Respondent John R. Brady
5. Respondent Robert A. Diminico
6. One share to be paid, jointly and severally, by Respondents Philip E. Steele and Kevin E. Scannell.

Each one-sixth share is \$1,387.50.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,387.50
Total Fees	= \$ 1,687.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 262.50

2. Respondent, National Securities Corporation, be and hereby is solely liable for:

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

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3. Respondent, The Boston Group, be and hereby is solely liable for:

Member Fees	= \$ 4,600.00
Forum Fees	= \$ 1,387.50
Total Fees	= \$ 5,987.50
Less Payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 5,987.50

4. Respondent, Michael Allocca, be and hereby is solely liable for:

Forum Fees	= \$ 1,387.50
Total Fees	= \$ 1,387.50
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,387.50

5. Respondent, John R. Brady, be and hereby is solely liable for:

Forum Fees	= \$ 1,387.50
Total Fees	= \$ 1,387.50
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,387.50

6. Respondent, Robert A. Diminico, be and hereby is solely liable for:

Forum Fees	= \$ 1,387.50
Total Fees	= \$ 1,387.50
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,387.50

7. Respondents, Philip E. Steele and Kevin E. Scannell, be and hereby are jointly and severally liable for:

Forum Fees	= \$ 1,387.50
Total Fees	= \$ 1,387.50
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,387.50

Concurring Arbitrators' Signatures


Emanuel V. Gumina, Esq., Public Presiding Chair

5/17/01
Signature Date

George R. Fleischli, Esq., Public Arbitrator

Signature Date

Brian E. Slotky, Non-Public Arbitrator

Signature Date

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

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3. Respondent, The Boston Group, be and hereby is solely liable for:

Member Fees	= \$ 4,600.00
Forum Fees	= \$ 1,387.50
Total Fees	= \$ 5,987.50
Less Payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 5,987.50

4. Respondent, Michael Allocca, be and hereby is solely liable for:

Forum Fees	= \$ 1,387.50
Total Fees	= \$ 1,387.50
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,387.50

5. Respondent, John R. Brady, be and hereby is solely liable for:

Forum Fees	= \$ 1,387.50
Total Fees	= \$ 1,387.50
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,387.50

6. Respondent, Robert A. Diminico, be and hereby is solely liable for:

Forum Fees	= \$ 1,387.50
Total Fees	= \$ 1,387.50
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,387.50

7. Respondents, Philip E. Steele and Kevin E. Scannell, be and hereby are jointly and severally liable for:

Forum Fees	= \$ 1,387.50
Total Fees	= \$ 1,387.50
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,387.50

Concurring Arbitrators' Signatures

Emanuel V. Gumina, Esq., Public Presiding Chair

George R. Fleischli

George R. Fleischli, Esq., Public Arbitrator

Signature Date

May 17, 2001

Signature Date

Brian E. Slotky, Non-Public Arbitrator

Signature Date

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

NASD-DR Award

Jeffrey J. Hanz vs. National Securities Corporation, et al

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3. Respondent, The Boston Group, be and hereby is solely liable for:
- | | |
|---|---------------|
| Member Fees | = \$ 4,600.00 |
| Forum Fees | = \$ 1,387.50 |
| Total Fees | = \$ 5,987.50 |
| Less Payments | = \$ 0 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 5,987.50 |
4. Respondent, Michael Allocca, be and hereby is solely liable for:
- | | |
|---|---------------|
| Forum Fees | = \$ 1,387.50 |
| Total Fees | = \$ 1,387.50 |
| Less payments | = \$ 0 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 1,387.50 |
5. Respondent, John R. Brady, be and hereby is solely liable for:
- | | |
|---|---------------|
| Forum Fees | = \$ 1,387.50 |
| Total Fees | = \$ 1,387.50 |
| Less payments | = \$ 0 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 1,387.50 |
6. Respondent, Robert A. Diminico, be and hereby is solely liable for:
- | | |
|---|---------------|
| Forum Fees | = \$ 1,387.50 |
| Total Fees | = \$ 1,387.50 |
| Less payments | = \$ 0 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 1,387.50 |
7. Respondents, Philip E. Steele and Kevin E. Scannell, be and hereby are jointly and severally liable for:
- | | |
|---|---------------|
| Forum Fees | = \$ 1,387.50 |
| Total Fees | = \$ 1,387.50 |
| Less payments | = \$ 0 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 1,387.50 |

Concurring Arbitrators' Signatures

Emanuel V. Gumina, Esq., Public Presiding Chair

Signature Date

George R. Fleischli, Esq., Public Arbitrator

Signature Date

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