

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Franciszksa Ciochon and Janusz Ciochon, (Claimants) vs. Zbigniew Jerry Markowski and Securities America, Inc., (Respondents).

Case Number:
99-02516

Hearing Site:
Chicago, Illinois

REPRESENTATION OF PARTIES

Claimants, Franciszkasa Ciochon and Janusz Ciochon, hereinafter collectively referred to as "Claimants": Kenneth F. Berg, Esq., Chicago, Illinois.

Respondents, Zbigniew Jerry Markowski ("Markowski") and Securities America, Inc. ("Securities America"), hereinafter collectively referred to as "Respondents": Edward B. Keidan, Esq., Conway & Mrowiec, Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed on or about: June 2, 1999

Claimants signed the Uniform Submission Agreement: June 1, 1999

Statement of Answer filed by Respondents, Markowski and Securities America, on or about: August 31, 1999

Respondent, Securities America, signed the Uniform Submission Agreement: August 13, 1999

Respondent, Markowski, signed the Uniform Submission Agreement: August 16, 1999

Amended Statement of Claim filed on or about: January 31, 2000.

Answer to Amended Statement of Claim filed by Respondents, Markowski and Securities America, on or about: February 16, 2000.

CASE SUMMARY

The stocks in question are Dynagen, Ross Technology, Gandalf Technologies, Inc., Radius, and Fonar.

Claimants asserted the following causes of action:

1. Willful and Wanton Breach of Fiduciary Duty.

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2. Violation of Art. III, Sec. 15(b) of the NASD Rules of Fair Practice.
3. Violation of Art. III, Sec. 2(a) of the NASD Rules of Fair Practice.
4. Violation of Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5.
5. Violation of the Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/1.
6. Violation of the Illinois Securities Act, 815 ILCS 5/13(F)
7. Violation of Art. III, Sec. 27 of the NASD Rule of Fair Practice for failure to supervise.
8. Vicarious Liability.

Unless specifically admitted in its Answer, Respondents Markowski and Securities America denied the allegations made in the Statement of Claim and asserted the following affirmative defenses:

1. Securities America reasonably maintained and conducted supervisory activities at all relevant times.
2. Estoppel
3. Failure to State a Claim upon which relief can be granted.
4. Any loss incurred by Claimants should be offset by the amount of dividends, interest, profits or other benefits
5. Failure to Mitigate Damages

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$267,046.31
Punitive Damages	\$0
Interest	\$0
Attorneys' Fees	Requested
Other Costs	Requested
Other Monetary/Non-Monetary Relief if any:	None Requested

Respondents Markowski and Securities America requested:

Compensatory Damages	\$0
Punitive Damages	\$0
Interest	\$0
Attorneys' Fees	\$0
Other Costs	Requested
Other Monetary/Non-Monetary Relief if any:	None Requested

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OTHER ISSUES CONSIDERED AND 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.

AWARD

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

1. Respondents Zbigniew J. Markowski and Securities America, Inc. are joint and severally liable to Claimants Franciszka and Janusz Ciochon in the amount of \$125,913.67 as compensatory damages.
2. Respondents Zbigniew J. Markowski and Securities America, Inc. are liable to Claimants Franciszka and Janusz Ciochon in the amount of \$23,789.83 as attorney's fees.
3. 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	= \$300.00
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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 event giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1500.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$2500.00</u>
Total	= \$4600.00

Adjournment Fees

Adjournments requested during these proceedings:

June 13, 2000 - June 14, 2000 adjournment by Respondent Markowski = \$1000.00

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

Two (2) Pre-hearing sessions with Panel x \$1125.00		= \$2250.00
Pre-hearing conferences: February 29, 2000	1 session	
March 14, 2000	1 session	
Four (4) Hearing sessions x \$1125		= \$4500.00
Hearing Dates: September 18, 2000	2 sessions	
September 19, 2000	2 session	
Total Forum Fees		= \$6750.00

1. The Panel has assessed \$3375.00 of the forum fees to Claimants.
2. The Panel has assessed \$3375.00 of the forum fees jointly and severally to Markowski and Securities America.

Fee Summary

1. Claimants are solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$3375.00
Total Fees	= \$3675.00
Less payments	= \$1425.00
Balance Due NASD Dispute Resolution, Inc.	= \$2250.00
2. Respondent Securities America is solely liable for:

Member Fees	= \$4600.00
Total Fees	= \$4600.00
Less payments	= \$4600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00
3. Respondent Markowski is solely liable for:

Adjournment Fee	= \$1000.00
Less payments	= \$1000.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00
4. Respondents Markowski and Securities America are jointly and severally liable for:

Forum Fee	= \$3375.00
Less payments	= \$ 125.00
Balance Due NASD Dispute Resolution, Inc.	= \$3250.00

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All balances are due to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

/s/ Susan E. Einspar-Wayne

11/14/00

Susan E. Einspar-Wayne, Esq.
Public Arbitrator, Presiding Chair

Signature Date

/s/ Michael S. Matek

11/21/00

Michael S. Matek, Esq.
Public Arbitrator

Signature Date

/s/ Donald Whiteman

11/02/00

Donald Whiteman
Industry Arbitrator

Signature Date

11/30/00

Date of Service (For NASD Dispute Resolution, Inc. office use only)