

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

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In the Matter of the Arbitration Between:

Albert K. Hanna, (Claimant) vs. Janney Montgomery Scott Inc. and Christopher T. Kline,  
(Respondents)

Case Number: 99-02684

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Albert K. Hanna, hereinafter referred to as "Claimant": Steven R. Goldberg, Esq., a sole practitioner, New York, NY.

Respondents, Janney Montgomery Scott Inc. ("Janney") and Christopher T. Kline ("Kline"), hereinafter collectively referred to as "Respondents": Paula D. Shaffner, Esq., Saul, Ewing, Remick & Saul, Philadelphia, PA.

**CASE INFORMATION**

Statement of Claim filed on or about: June 8, 1999.

Claimant signed the Uniform Submission Agreement: May 4, 1999.

Joint Statement of Answer filed by Respondents on or about: September 8, 1999.

Janney signed the Uniform Submission Agreement.

Kline signed the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: failure to timely and properly execute market orders; failure to supervise; and incorrect notices of margin calls. Claimant's claim involved the stocks of OnSale, Inc., Netscape Communications, Inc., America On-Line, Inc., and Mellon Bank Corp.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's losses were caused by the actions of third-parties over which Respondents have no control; Claimant is estopped from making the claims set forth in the Statement of Claim because the acts about which he complains were done at the direction of, and with the full authority and permission of, Claimant; Claimant is estopped from making the claims set forth in the Statement of Claim by the equitable doctrines of laches and unclean hands; Claimant, by his acts and omissions, has ratified any actions which he now alleges to be improper; Claimant failed to take

appropriate steps to mitigate his damages; any damages incurred by Claimant are attributable to Claimant's trading activity, or to market conditions and the nature of the individual investments, and not to any act or omission of Respondents; Claimant has failed to state a claim upon which relief can be granted; no action or inaction by Respondents caused or contributed to the injuries, loss, or damage alleged in the Statement of Claim; Claimant failed to exercise the degree of care over his investments which an ordinarily prudent investor would exercise; Claimant received the best execution possible under the circumstances; and Claimant's accounts were properly handled and supervised by Janney.

### **RELIEF REQUESTED**

Claimant requested compensatory damages totaling \$431,750.00, plus interest, costs, disbursements, and legal fees in the approximate amount of \$15,000.00.

Respondents requested that Claimant's claim for damages be denied in all respects, and that the costs of this proceeding, including attorneys' fees, be assessed against Claimant. In addition, Kline requested that the Panel enter an Order expunging all references to this arbitration from his Central Registration Depository Record.

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

During the hearings in this matter, Claimant withdrew his claims relating to incorrect margin calls, and proceeded only with his claim for improper execution of trades in OnSale, Inc.

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

1. Respondents be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$31,600.00 as compensatory damages. This Award is based upon an order to sell 1000 shares of OnSale, Inc. on November 30, 1998 at 10:04 a.m. The Panel has concluded that the best execution of this trade should have occurred at 10:07 a.m., at which time the price was \$81 5/8. Therefore, Claimant is entitled to the difference between \$81 5/8 and the executed price of \$50.00.
2. All other requests for relief are hereby 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 events giving rise to the dispute. In this matter, Janney Montgomery Scott Inc. is a party.

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

#### **Adjournment Fees**

Adjournments requested during these proceedings:

Sept. 27 & 28, 2000, adjournment by Claimant	= WAIVED
Nov. 15 & 16, 2000, adjournment by Claimant	= WAIVED

#### **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:

One (1) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: July 20, 2000	1 session
Four (4) Hearing sessions x \$1,125.00	= \$4,500.00
Hearing Dates: June 19, 2001	2 sessions
April 9, 2002	2 sessions
Total Forum Fees	= \$5,625.00

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1. The Panel has assessed \$2,812.50 of the forum fees against Claimant.
2. The Panel has assessed \$2,812.50 of the forum fees jointly and severally against Respondents.

**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.

1. Claimant, requested copies, \$93.75.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$2,812.50
<u>Administrative Costs</u>	<u>= \$ 93.75</u>
Total Fees	= \$3,206.25
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,781.25

2. Janney be and hereby 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, Inc.	= \$ 0.00

3. Respondents be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$2,812.50</u>
Total Fees	= \$2,812.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,812.50

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

**ARBITRATION PANEL**

Carol E. Weir, Esq.	-	Public Arbitrator, Presiding Chair
Peter A. Goldman, Esq.	-	Public Arbitrator
Earl S. Schwarz	-	Industry 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.

Carol E. Weir, Esq.  
Carol E. Weir, Esq.  
Public Arbitrator, Presiding Chair

4/24/02  
Signature Date

Peter A. Goldman, Esq.  
Peter A. Goldman, Esq.  
Public Arbitrator

Signature Date

Earl S. Schwarz  
Earl S. Schwarz  
Industry Arbitrator

Signature Date

May 10, 2002  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

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Peter A. Goldman, Esq.	-	Public Arbitrator
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Carol E. Weir, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Peter A. Goldman, Esq.  
Public Arbitrator

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4/23/02  
Signature Date

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Earl S. Schwarz  
Industry Arbitrator

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Signature Date

May 10, 2002

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Date of Service (For NASD office use only)

**ARBITRATION PANEL**

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Public Arbitrator, Presiding Chair

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Signature Date

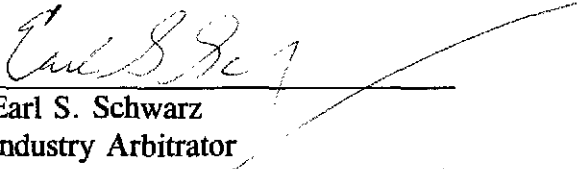
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Peter A. Goldman, Esq.  
Public Arbitrator

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Signature Date

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Earl S. Schwarz  
Industry Arbitrator

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4/24/02  
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