

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

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In the Matter of the Arbitration Between:

Robert D. Mattia, (Claimant) vs. Gold Country Securities, Inc., Pan American Bancorp., Service Asset Management Company, Insider Trading, and Charles Vaccarro, (Respondents)

Case Number: 99-03386

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant Robert D. Mattia, hereinafter referred to as "Claimant": Steven B. Caruso, Esq., Maddox Koeller Hargett & Caruso, New York, NY.

Respondents Gold Country Securities, Inc. ("Gold Country") and Charles Vaccarro ("Vaccarro"): Charles M. O'Rourke, Esq., a sole practitioner, Woodbury, NY.

Respondent Service Asset Management Company ("SAMC"): Brian J. Hurst, Esq., Baker & McKenzie, Dallas, TX.

Respondents Insider Trading ("Insider") and Pan American Bancorp ("Pan American"), did not appear at the hearings in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: July 26, 1999.

Particularized Statement of Claim against SAMC filed on or about: June 15, 2000.

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

Joint Statement of Answer filed by Gold Country and Vaccarro on or about: October 5, 1999.

Gold Country and Vaccarro did not sign Uniform Submission Agreements.

Statement of Answer and Motion to Dismiss filed by SAMC on or about: October 15, 1999.  
SAMC signed the Uniform Submission Agreement: August 25, 1999.

Insider and Pan American did not file Statements of Answer or sign Uniform Submission Agreements.

**CASE SUMMARY**

Claimant asserted the following causes of action: violation of Securities Exchange Act of 1934; violation of New York & Texas common law; fraud; negligence; breach of contract;

breach of fiduciary duty; respondeat superior; violation of NASD Conduct Rules; violation of New York General Business Laws; violation of Texas Uniform Securities Act; violation of Texas Deceptive Trade Practices Consumer Protection Act; and violation of Texas Business & Commerce Code.

Unless specifically admitted in their Answer, Gold Country and Vaccarro denied the allegations made in the Statement of Claim and asserted the following defenses: assumption of risk; contributory negligence on the part of the Claimant; waiver, estoppel, and ratification; and failure to state a claim upon which relief may be granted.

Unless specifically admitted in its Answer, SAMC denied the allegations made in the Statement of Claim and asserted the following defenses: neither Gold Country nor any other Respondent acted as SAMC's agent for purposes of subjecting SAMC to liability for any of the claims alleged by Claimant; Claimant's claims are barred by the doctrines of waiver, estoppel and ratification; Claimant's claims are barred by his own contributory or comparative negligence and assumption of risk.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$119,361.00; interest; punitive damages; reasonable attorneys' fees; all costs and forum fees; damages for lost interest and/or lost appreciation potential; and such other and further relief as may be deemed just, proper, and equitable.

Gold Country and Vaccarro requested that all claims be dismissed in their entirety and that they be awarded costs and reasonable attorneys' fees.

SAMC requested that all claims against it be dismissed and that SAMC recover all relief to which it is entitled including attorneys' fees and all costs of this proceeding.

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

Gold Country and Vaccarro did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

Prior to the hearings in this matter, the Panel granted the Motion to Dismiss filed by SAMC. SAMC's request for attorneys' fees and costs, which was included in the Motion to Dismiss, was denied by the Panel.

Insider and Pan American were not members of the NASD, Inc. or associated persons at the time in question and declined to voluntarily submit to the proceeding. At the hearing, Claimant withdrew all claims against Insider and Pan American.

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. Claimant's claims are hereby denied in their entirety.
2. SAMC's request for attorneys' fees and costs is hereby denied.
3. 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, Gold Country Securities, Inc. and Service Asset Management Company are parties.

#### **Gold Country Securities, Inc.**

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

#### **Service Asset Management Company**

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

### **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 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: May 8, 2000 1 session

Three (3) Hearing sessions x \$1,125.00 = \$3,375.00  
Hearing Date: September 11, 2000 2 sessions  
September 12, 2000 1 session

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Total Forum Fees = \$4,500.00

1. The Panel has assessed \$2,250.00 of the forum fees against Claimant.
2. The Panel has assessed \$2,250.00 of the forum fees jointly and severally against Gold Country and Vaccarro.

### **Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= <u>\$2,250.00</u>
Total Fees	= \$2,550.00
<u>Less payments</u>	= <u>\$1,425.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,125.00

2. SAMC 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>\$6,100.00</u>
Refund Due SAMC	= \$1,500.00

3. Gold Country 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>\$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$4,600.00

4. Gold Country and Vaccarro be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= <u>\$2,250.00</u>
Total Fees	= \$2,250.00
<u>Less payments</u>	= <u>\$ 0.00</u>

Balance Due NASD Dispute Resolution, Inc. = \$2,250.00

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

**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.



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Robert E. Bartkus, Esq.  
Public Arbitrator, Presiding Chair

10-11-00

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Signature Date

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Paul D. Schneider, Esq.  
Public Arbitrator

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Signature Date

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James N. Baxter  
Industry Arbitrator

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Signature Date

October 17, 2000  
Date of Service (For NASD office use only)

**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.

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Robert E. Bartkus, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Paul D. Schneider, Esq.  
Public Arbitrator

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Signature Date

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James N. Baxter  
Industry Arbitrator

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**Concurring Arbitrators' Signatures**

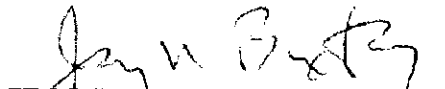
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Robert E. Bartkus, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Paul D. Schneider, Esq.  
Public Arbitrator

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Signature Date

  
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James N. Baxter  
Industry Arbitrator

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