

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

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In the Matter of the Arbitration Between:

Cynthia David, (Claimant) vs. Raymond Louis Dirks, (Respondent)

Case Number: 99-04430

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Cynthia David, hereinafter referred to as "Claimant": Robert L. Seaman, Esq., a sole practitioner, New York, NY.

Respondent, Raymond Louis Dirks, hereinafter referred to as "Respondent": Jeffrey S. Eisenberg, Esq., Law Offices of Jeffrey S. Eisenberg, New York, NY. Previously represented by: A. Joseph Tandet, Esq., a sole practitioner, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: September 28, 1999.

Amended Statement of Claim filed on or about: March 3, 2000.

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

Statement of Answer filed by Respondent on or about: January 7, 2000.

Statement of Answer to Amended Statement of Claim filed by Respondent on or about: March 10, 2000.

Respondent signed the Uniform Submission Agreement: January 14, 2000.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; mismanagement of account; negligence; unsuitability; unauthorized trading; misrepresentation; breach of trust; failure to supervise; chaotic and disorganized business practices. Claimant's claim involved unspecified financial products.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: the allegations contained in Claimant's Statement of Claim do not constitute a valid Statement of Claim and Demand for Arbitration in that they are vague and unenforceable; the agreements referred to in Claimant's Statement of Claim and Amended Statement of Claim are unenforceable due to lack of consideration; the agreements in question are against public policy; the agreements in question are unenforceable as a result of constituting an illegal guaranty against losses which

violates the Rules and Regulations of the NASD and the Securities and Exchange Commission ("SEC"); the agreements in question are no more than agreements to agree which cannot be enforced in accordance with long-standing New York case law; and other than the payments made to Claimant for her work as a consultant, all payments claimed in the Statement of Claim are uncollectible as against public policy in violation of the Rules and Regulations of the NASD and the SEC and are illegal as guarantees against losses.

### **RELIEF REQUESTED**

In her Statement of Claim, Claimant requested compensatory damages in the amount of \$167,500.00, plus attorneys' fees, interest, and forum fees. In her Amended Statement of Claim, Claimant requested compensatory damages in the amount of \$1,159,200.00, plus interest thereon.

Respondent requested that the Statement of Claim be dismissed and that he be awarded costs, disbursements, and reasonable attorneys' fees.

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

At the beginning of the hearings in this matter, Respondent made a motion to dismiss. After due deliberation, the Panel denied said motion.

During the hearings in this matter, Claimant verbally amended her Statement of Claim to strike the third paragraph thereof which alleged mismanagement of her account caused by negligence, unsuitability, unauthorized trading, misrepresentation, breach of trust, failure to supervise, and the chaotic and disorganized business practices of Respondent.

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

1. Respondent be and hereby is liable for and shall pay to Claimant the sum of \$59,510.00 as compensatory damages, plus interest at the rate of 9% per annum accruing from April 28, 1999 through April 16, 2001.

2. Respondent be and hereby is liable for and shall pay to Claimant the sum of \$18,843.00 as attorneys' fees. The Panel awarded attorneys' fees pursuant to the terms of the Memorandum dated August 12, 1998, signed by both parties, representing an amendment to their agreement dated July 18, 1997.
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	= \$ 500.00
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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 firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, Security Capital Trading, Inc. and National Securities Corporation are the Respondent's firm and/or former firm.

#### **Security Capital Trading, Inc.**

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

#### **National Securities Corporation**

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

October 4, 5 & 6, 2000, adjournment by Respondent	= \$ 1,200.00
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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:

One (1) Pre-hearing session with Panel x \$1,200.00 = \$ 1,200.00  
Pre-hearing conference: June 20, 2000 1 session

Seventeen (17) Hearing sessions x \$1,200.00 = \$20,400.00

Hearing Dates: November 1, 2000 2 sessions  
November 2, 2000 2 sessions  
November 3, 2000 1 session  
December 13, 2000 2 sessions  
December 14, 2000 2 sessions  
December 15, 2000 2 sessions  
February 7, 2001 2 sessions  
February 8, 2001 2 sessions  
February 9, 2001 2 sessions

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Total Forum Fees = \$21,600.00

1. The Panel has assessed \$10,800.00 of the forum fees against Claimant.
2. The Panel has assessed \$10,800.00 of the forum fees against Respondent.

**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 tapes, \$45.00.
2. Respondent, requested tapes, \$480.00.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$10,800.00
<u>Administrative Costs</u>	= \$ 45.00
Total Fees	= \$11,345.00
<u>Less payments</u>	= \$ 1,745.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 9,600.00

2. Respondent be and hereby is solely liable for:

Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$10,800.00
<u>Administrative Costs</u>	= \$ 480.00
Total Fees	= \$12,480.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$12,480.00

3. Security Capital Trading, Inc. be and hereby is solely liable for:

<u>Member Fees</u>	= \$ 6,600.00
Total Fees	= \$ 6,600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 6,600.00

4. National Securities Corporation be and hereby is solely liable for:

<u>Member Fees</u>	= \$ 6,600.00
Total Fees	= \$ 6,600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 6,600.00

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.



Carolyn A. Mann  
Public Arbitrator, Presiding Chair

4/30/01  
Signature Date

\_\_\_\_\_  
James Pollak, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Linda S. Cole  
Industry Arbitrator

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

May 4, 2001  
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.

\_\_\_\_\_  
Carolyn A. Mann  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
*James Pollak*  
James Pollak, Esq.  
Public Arbitrator

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*MAY 1, 2001*  
Signature Date

\_\_\_\_\_  
Linda S. Cole  
Industry Arbitrator

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

\_\_\_\_\_  
May 4, 2001  
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Carolyn A. Mann  
Public Arbitrator, Presiding Chair

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Signature Date

\_\_\_\_\_  
James Pollak, Esq.  
Public Arbitrator

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



\_\_\_\_\_  
Linda S. Cole  
Industry Arbitrator

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

May 4, 2001

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