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**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 99-04558

David A. Neuman, individually, and as  
Trustee of the Margot L. Maisel Rev  
Tr dtd 8/15/90 and as custodian for  
Brandon Neuman and Julie Neuman,  
individually, and as custodian for  
Brandon Neuman

Names of the Respondents

Hearing Site: Boca Raton, Florida

Shochet Securities, Inc. and Cynthia D.  
Franke

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For David A. Neuman, individually, and as Trustee of the Margot L. Maisel Rev Tr dtd 8/15/90 and as custodian for Brandon Neuman and Julie Neuman, individually, and as custodian for Brandon Neuman, hereinafter collectively referred to as "Claimants": Arnold Y. Steinberg, Esq., Arnold Y. Steinberg, P.C., Pittsburgh, Pennsylvania.

For Respondent Shochet Securities, Inc., hereinafter referred to as "Shochet": Neil S. Baritz, Esq., Baritz and Colman, LLP, Boca Raton, Florida until his withdrawal of counsel on or about March 18, 2003. Thereafter, Respondent Shochet did not appear.

For Respondent Cynthia D. Franke, hereinafter referred to as "Franke": Neil S. Baritz, Esq., Baritz and Colman, LLP, Boca Raton, Florida.

**CASE INFORMATION**

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

Claimants signed the Uniform Submission Agreement: October 6, 1999.

Statement of Answer filed by Respondents Shochet and Franke on or about: June 9, 2000.

Claimants' Reply to Respondents' Answer and Affirmative Defenses filed on or about: July 21, 2000.

Motion to Dismiss filed by Respondents Shochet and Franke on or about: July 8, 2002.

Objection to Dismissal filed by Claimants on or about: July 15, 2002.

Respondents Shochet and Franke did not submit executed Uniform Submission Agreements.

### **CASE SUMMARY**

Claimants asserted the following causes of action: violation of Chapter 517 of the Florida Statutes; churning; breach of fiduciary duty; fraud; and, negligent supervision. The causes of action relate to trading in options and on margin and the purchase and sale of unspecified securities products in Claimants' accounts.

Unless specifically admitted in their Answer, Respondents Shochet and Franke denied the allegations made in the Statement of Claim, asserted various defenses and filed a motion to dismiss the Statement of Claim on the basis that Claimants failed to produce documents in accordance with the Panel's May 3, 2002 order granting Respondent Shochet and Franke's Motion to Compel.

In response to the Motion to Dismiss, Claimants asserted that no time limit was set by the Panel for compliance with the May 3, 2002 order to produce.

### **RELIEF REQUESTED**

Claimants requested an unspecified amount of compensatory damages, punitive damages, interest, disgorgement of excessive commissions and margin interest, costs of this action, attorney's fees and any other relief deemed just and proper.

Respondents Shochet and Franke requested dismissal of this claim and an award that Respondents Shochet and Franke were the prevailing parties for the purpose of obtaining an award of attorney's fees and costs associated with defending this matter.

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

Respondent Shochet did not appear at the evidentiary hearing in this matter. Upon review of the file and the representations made by Claimants, the Panel determined that Respondent Shochet had been properly served with the Statement of Claim and received due notice of the hearing and that arbitration of the matter would proceed without Respondent Shochet present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent Shochet and Franke did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and having answered the claim, are bound by the determinations of the Panel on all issues submitted.

On or about November 25, 2002, Claimants notified NASD Dispute Resolution that Count I of the Statement of Claim for violation of Chapter 517 of the Florida Statutes was withdrawn, with prejudice.

On or about May 29, 2003, Claimants filed a motion that the Panel enter an award without a hearing. Respondents Shochet and Franke did not file any response to the motion. On or about August 8, 2003, the Panel denied Claimants' motion.

On or about March 22, 2004, Claimants notified NASD Dispute Resolution that all claims against Respondent Franke were dismissed, with prejudice.

On or about March 24, 2004, Claimants and Respondent Franke filed with NASD Dispute Resolution a joint request for expungement of Respondent Franke's registration records maintained by the NASD Central Registration Depository ("CRD"). On or about March 30, 2004, a majority of the Panel granted the request for expungement.

The party present at the hearing agreed that the Award in this matter may be executed in counterpart copies.

### **AWARD**

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

Respondent Shochet is liable on the claims of churning and negligent supervision and shall pay to Claimants compensatory damages in the amount of \$3,781,782.00, inclusive of interest from February 15, 1997 to March 22, 2004.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Franke's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Franke must obtain confirmation from a court of competent jurisdiction before the NASD CRD will execute the expungement directive.

Any and all claims for relief not specifically addressed herein, including Claimants' requests for punitive damages and attorney's fees, are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 250.00
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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, the member firm is a party.

Member surcharge	= \$1,200.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,000.00

**Adjournment Fees**

Adjournment granted during these proceedings for which fees were assessed:

December 1-3, 2003, adjournment requested by Claimants = \$ 1,000.00

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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 the Panel @ \$1,000.00 = \$2,000.00

Pre-hearing conferences:      October 10, 2001      1 session  
   September 30, 2002      1 session

One (1) Hearing session @ \$1,000.00 = \$1,000.00

Hearing Date:                      March 22, 2004      1 session

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Total Forum Fees = \$3,000.00

The Panel has assessed \$1,500.00 of the forum fees jointly and severally to Claimants.  
The Panel has assessed \$1,500.00 of the forum fees to Respondent Shochet.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to: additional copies of arbitrator awards; copies of audio transcripts; retrieval of documents from archives; interpreters; and, security.

No administrative costs were incurred in this matter.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 250.00
Adjournment Fee	= \$ 1,000.00
Forum Fees	= \$ 1,500.00

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Total Fees	= \$ 2,750.00
<u>Less payments</u>	<u>= \$ 1,750.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,000.00

Respondent Shochet is solely liable for:

Member Fees	= \$ 3,800.00
<u>Forum Fees</u>	<u>= \$ 1,500.00</u>
Total Fees	= \$ 5,300.00
<u>Less payments</u>	<u>= \$ 1,800.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,500.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Marianne Madsen	-	Public Arbitrator, Presiding Chairperson
Cornelius P. Mahon	-	Public Arbitrator
Daniel B. Daugherty	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ 03/30/04

\_\_\_\_\_  
Marianne Madsen  
Public Arbitrator, Presiding Chairperson

Signature Date

/s/ 03/31/04

\_\_\_\_\_  
Daniel B. Daugherty  
Non-Public Arbitrator

Signature Date

**Dissenting Arbitrator's Signature**

Arbitrator Mahon found that Respondent Shochet was responsible for lack of supervision, but believed that the Award against Respondent Shochet should be held to 33 1/3% of the total Award by the Panel.

/s/ 03/30/04

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Cornelius P. Mahon  
Public Arbitrator  
03/31/04

Signature Date

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

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Arbitration No. 99-04558  
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3/31/04  
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