

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

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In the Matter of the Arbitration Between:

Vladimir Oterin and Viktor Pesok, (Claimants) vs. Vincent Ralph Landano, William Anthony Mancusi, Ira Paul Bader, U.S. Trading Corp., Michael Rozenstheyn, Gary Christopher Snisky, and Penson Financial Services, Inc., (Respondents)

Case Number: 99-04718

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimants, Vladimir Oterin and Viktor Pesok, hereinafter collectively referred to as "Claimants": Kevin P. Conway, Esq., Conway & Conway, New York, NY.

Respondents, Vincent Ralph Landano ("Landano"), William Anthony Mancusi ("Mancusi"), Ira Paul Bader ("Bader"), U.S. Trading Corp. ("U.S. Trading"), and Michael Rozenstheyn ("Rozenstheyn"): Edward J. Toscano, Esq., Toscano & Pudell, P.C., Huntington Village, NY.

Respondent, Gary Christopher Snisky ("Snisky"), appeared *pro se*. Previously represented by: Alan D. Singer, Esq., Davis & Singer, P.C., White Plains, NY.

Respondent, Penson Financial Services, Inc. ("Penson"): Wm. David Simmons, Esq., McGuire, Craddock, Strother & Hale, P.C., Dallas, TX.

**CASE INFORMATION**

Statement of Claim filed on or about: October 19, 1999.

Amended Statement of Claim filed on or about: November 5, 1999.

Claimants signed the Uniform Submission Agreement: October 11, 1999.

Joint Statement of Answer filed by Landano, Mancusi, U.S. Trading, and Rozenstheyn on or about: January 11, 2000.

Landano did not sign the Uniform Submission Agreement.

Mancusi did not sign the Uniform Submission Agreement.

U.S. Trading did not sign the Uniform Submission Agreement.

Rozenstheyn did not sign the Uniform Submission Agreement.

Statement of Answer filed by Penson on or about: January 4, 2000.

Penson signed the Uniform Submission Agreement.

Statement of Answer filed by Snisky on or about: July 13, 2000.  
Snisky did not sign the Uniform Submission Agreement.

Bader did not file a Statement of Answer or sign the Uniform Submission Agreement.

### **CASE SUMMARY**

Claimant asserted the following causes of action: fraud; conversion; breach of contract; breach of fiduciary duty; negligence; failure to supervise; violation of securities laws; intentional infliction of emotional distress; controlling person liability under section 20(a) of the Securities Exchange Act of 1934; and violations of sections 349 and 350 of the New York General Business Law.

Unless specifically admitted in their Answer, Landano, Mancusi, Rozenstheyn, and U.S. Trading denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a cause of action upon which relief can be granted; Claimants knowingly, willingly, and voluntarily assumed the risks of investing in the securities market and in the specific investments purchased; Respondents discharged their responsibilities in a professional and ethical manner, and all of Respondents' actions were within the parameters of accepted brokerage procedure and all exchange and governmental regulations; Claimants approved, authorized, and ratified Respondents' actions and accordingly, Claimants are estopped from recovery herein; Claimants' comparative fault, lack of diligence, and failure to conduct their affairs reasonably and responsibly bars any recovery of damages herein; Claimants' alleged damages were proximately caused by Claimants' own failure to use reasonable means to mitigate damages properly; if Claimants suffered any loss by reason of any matters alleged in the Statement of Claim, such loss was not caused by any act, lack of due care, and/or negligence by Respondents, but are a result of Claimants' own active, affirmative, negligent, and/or culpable conduct; and the NASD does not have personal jurisdiction over Rozenstheyn regarding this matter in that said Respondent is not nor has he ever been registered or licensed with the NASD, nor is he an "associated person" as that term is defined under the NASD By-Laws and Rules.

Unless specifically admitted in his Answer, Snisky denied the allegations made in the Statement of Claim and asserted the following defenses: the NASD does not have jurisdiction over Snisky regarding this matter in that said respondent is not nor has he ever been registered or licensed with the NASD, nor is he an "associated person" as that term is defined under the NASD By-Laws and Rules; and at no time did Snisky ever recommend stocks or trades to Claimants, nor did he ever make any unauthorized trades in their account.

### **RELIEF REQUESTED**

Claimants requested the following relief:

- (a) Rescission of the unauthorized transactions together with compensatory damages in the approximate amount of \$49,955.00;
- (b) Damages for the intentional infliction of emotional distress;
- (c) Pre and post judgement interest on the compensatory damages;
- (d) Costs of this action, including costs and expenses of expert witnesses;
- (e) Reasonable attorneys' fees;
- (f) Punitive damages in the sound discretion of the Panel; and
- (g) Such other relief as the Panel deems appropriate under the circumstances.

Landano, Mancusi, Rozenstheyn, and U.S. Trading requested that the Statement of Claim be dismissed in its entirety and such other and further relief as the Panel may deem just and proper.

Snisky requested that the Statement of Claim be dismissed in its entirety and such other and further relief as the Panel may deem just and proper.

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

Landano, Mancusi, Bader, Rozenstheyn, U.S. Trading, and Snisky 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, Claimants dismissed without prejudice their claims against Penson.

During the hearings in this matter, Rozenstheyn and Snisky both made motions to dismiss for lack of subject matter jurisdiction. The Panel granted these motions, as is reflected in the "Award" section below.

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. U.S. Trading and Bader be and hereby are jointly and severally liable for and shall pay to Claimants the sum of \$39,955.24 as compensatory damages.
2. The claim is dismissed against Landano and Mancusi in its entirety.
3. The claim is dismissed, without prejudice, against Rozenstheyn and Snisky for lack of jurisdiction.
4. Claimants' request for punitive damages is hereby denied.
5. U.S. Trading and Bader be and hereby are jointly and severally liable for and shall pay to Claimants the sum of \$87.50, to reimburse Claimants for one half of the filing fee previously paid to NASD Dispute Resolution, Inc.
6. 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	= \$ 175.00
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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, U.S. Trading Corp. and Penson Financial Services, Inc. are parties.

#### **U.S. Trading Corp.**

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,000.00

#### **Penson Financial Services, Inc.**

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00

### **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:

Two (2) Pre-hearing sessions with Panel x \$600.00 = \$1,200.00

Pre-hearing conferences:	June 20, 2000	1 session
	July 10, 2000	1 session

Six (6) Hearing sessions x \$600.00 = \$3,600.00

Hearing Dates:	September 6, 2000	2 sessions
	September 7, 2000	2 sessions
	September 8, 2000	2 sessions

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Total Forum Fees = \$4,800.00

1. The Panel has assessed \$2,400.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$2,400.00 of the forum fees jointly and severally against U.S. Trading and Bader.

**Fee Summary**

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	= <u>\$2,400.00</u>
Total Fees	= \$2,575.00
<u>Less payments</u>	= <u>\$ 775.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,800.00

*As stated in the "Award" section above, U.S. Trading and Bader are jointly and severally liable and shall reimburse Claimants the sum of \$87.50, representing one half of the filing fee.*

2. U.S. Trading be and hereby is solely liable for:

<u>Member Fees</u>	= <u>\$2,400.00</u>
Total Fees	= \$2,400.00
<u>Less payments</u>	= <u>\$1,400.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,600.00

3. Person be and hereby is solely liable for:

<u>Member Fees</u>	= <u>\$1,400.00</u>
Total Fees	= \$1,400.00
<u>Less payments</u>	= <u>\$1,400.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

4. U.S. Trading and Bader be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= <u>\$2,400.00</u>
Total Fees	= \$2,400.00
<u>Less payments</u>	= <u>\$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,400.00

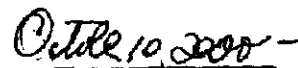
All balances are due and payable to NASD Dispute Resolution, Inc.

**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.



Robert M. Kerrigan, Esq.  
Public Arbitrator, Presiding Chair



Signature Date

Franklin P. Chapman  
Public Arbitrator

Signature Date

Mark S. Brody  
Industry Arbitrator

Signature Date

October 12, 2000

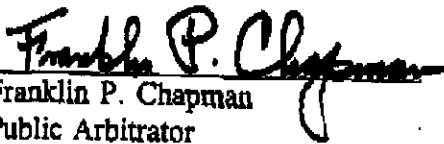
Date of Service (For NASD office use only)

**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 M. Kerrigan, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

  
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Franklin P. Chapman  
Public Arbitrator

10/5/00  
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Signature Date

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Mark S. Brody  
Industry Arbitrator

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Signature Date

\_\_\_\_\_  
October 12, 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.

Robert M. Kerrigan, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

Franklin P. Chapman  
Public Arbitrator

Signature Date

Mark S. Brody  
Mark S. Brody  
Industry Arbitrator

10/3/2000  
Signature Date

October 12, 2000

Date of Service (For NASD office use only)