

**Modified Award
FINRA Dispute Resolution**

In the Matter of the Arbitration Between:

Claimants

Scott Lawrence Siemers
Kenneth Thomas Casey
Michael Anthony Cappa
Alan Leigh Hunt
Estate of Ronald Hal Davis

Case Number: 09-04716

vs.

Respondent

Guggenheim Capital Markets, LLC

Hearing Site: New York, New York

Nature of the Dispute: Associated Persons and Non-Member vs. Member

REPRESENTATION OF PARTIES

Claimants Scott Lawrence Siemers ("Siemers"), Kenneth Thomas Casey ("Casey"), Michael Anthony Cappa ("Cappa"), Alan Leigh Hunt ("Hunt"), and the Estate of Ronald Hal Davis ("Davis"), hereinafter collectively referred to as "Claimants": Ethan A. Brecher, Esq., Liddle & Robinson, L.L.P., New York, New York.

Respondent Guggenheim Capital Markets, LLC, hereinafter referred to as "Respondent": Christian T. Kemnitz, Esq., Katten Muchin Rosenman LLP, Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed on or about: August 11, 2009.

Answer to Counterclaim filed on or about: November 10, 2009.

Scott Lawrence Siemers signed the Submission Agreement: June 16, 2009.

Kenneth Thomas Casey signed the Submission Agreement: June 16, 2009.

Michael Anthony Cappa signed the Submission Agreement: June 15, 2009.

Alan Leigh Hunt signed the Submission Agreement: June 16, 2009.

Estate of Ronald Hal Davis did not file a Submission Agreement.

Statement of Answer and Counterclaim filed by Respondent on or about: October 5, 2009.

Amended Statement of Answer and Counterclaim filed by Respondent on or about: December 29, 2010.

Guggenheim Capital Markets, LLC signed the Submission Agreement: October 1, 2009.

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract, unjust enrichment, quantum meruit, violation of New York Labor Law, tortious interference with prospective business advantage, and violation of the Texas Labor Code.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In its Counterclaim, Respondent asserted the following causes of action: usurping a corporate opportunity, breach of fiduciary duty, and unjust enrichment.

Unless specifically admitted in their Answer to Counterclaim, Claimants denied the allegations made in the Counterclaim and asserted various affirmative defenses.

In its Amended Counterclaim, Respondent asserted the following causes of action: usurping a corporate opportunity, breach of fiduciary duty, unjust enrichment, and faithless servant.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested: (a) \$30.00/share on the 167,000 unpaid ACDL warrants to Siemers and Casey; (b) payment of 150,400 US Coal warrants to Siemers and Cappa which had been requested by them in connection with a March 2007 engagement letter; (c) unpaid commissions to Siemers and Davis; (d) earned fees on the ACDL deal to Siemers and Casey; (e) earned fees on the US Coal deal to Siemers and Cappa; (f) earned fees on the Bozel deal to Siemers and Cappa; (g) earned fees on the Maritime Securities Systems deal to Siemers; (h) an accounting of all commissions paid to Respondent on ACDL and all of Davis' accounts from July 1, 2008 through the date of Siemers' and Davis' termination; (i) unpaid travel and entertainment expense reimbursements to Siemers; (j) unpaid severance to Siemers, Casey, Cappa, Davis, and Hunt; (k) liquidated damages; (l) interest on all claims from the date of said amounts were due; (m) attorneys' fees and costs incurred in pursuing this action, and (n) such other and further relief as the Panel deems just and appropriate.

Respondent requested dismissal of the Statement of Claim in its entirety, costs and disbursements, attorneys' fees, and such other and further relief that the Panel deems just and proper.

In its Counterclaim, Respondent requested damages for usurping a corporate opportunity in the amount equivalent to the profits earned by Claimants Siemens and Casey on the ACDL warrants sold to Harbinger Capital, award damages for breach of fiduciary duty in an amount to be determined at hearing, damages in the amount of \$305,899.77 for unjust enrichment, costs and disbursements, attorneys' fees, and such other and further relief as the Panel deems just and appropriate.

Claimants requested dismissal of the Counterclaim in its entirety.

In its Amended Counterclaim, Respondent requested damages for usurping a corporate opportunity in the amount equivalent to the profits earned by Claimants Siemens and Casey on the ACDL warrants sold to Harbinger Capital, award damages for breach of fiduciary duty in the amount to be determined at arbitration, damages in the amount of \$305,899.77 for unjust enrichment, award damages for faithless servant in an amount to be determined at hearing, costs and disbursements, attorneys' fees, and such other and further relief as the Panel deems just and appropriate. During the hearings, Respondent withdrew its breach of fiduciary duty and faithless servant counterclaims against Claimant Casey.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

By correspondence dated October 6, 2009, Claimants' counsel notified FINRA Dispute Resolution that Claimant Ronald Davis passed away on August 14, 2009.

By correspondence dated May 3, 2010, Claimants filed a Motion to Amend the Case Caption to replace "Ron Davis" with the "Estate of Ron Hal Davis". Claimants' counsel provided the Panel with a photocopy of Letters Testamentary dated October 5, 2009 in Cause No. 09-2808-1, whereby Randall Fein was appointed by the Probate Court of Dallas County, Texas, as Independent Executor of the Will and Estate of Ronald Hal Davis, and a copy of an agreement whereby Randall Fein as Executor retained the firm of Liddle & Robinson, L.L.P. as its representative. After due deliberation and by Order dated June 19, 2010, the Panel granted Claimants' Motion.

Estate of Ronald Hal Davis did not file with FINRA Dispute Resolution a properly executed Submission Agreement. A Submission Agreement dated June 15, 2009 was filed by Ronald Hal Davis.

By correspondence dated December 29, 2010, Respondent filed a Motion to Amend its Counterclaim and Claimants objected. After due deliberation and by Order dated February 8, 2011, the Panel granted Respondent's Motion.

By letter dated July 26, 2012, Claimants notified FINRA that the parties requested the Panel to modify the award. The parties requested that the Panel: (1) amend the "Relief Requested" section on page 2 of the Award to reflect, as confirmed by the Chairman, that Claimants' Statement of Claim requested US Coal Warrants resulting from the March 2007 engagement; (2) replace Claimant Cappa with Claimant Casey as a Respondent to Respondent's counterclaims on page 3; and (3) amend the Award to note that Respondent's counterclaims for breach of fiduciary duty and faithless servant against Casey were withdrawn.

The Panel reviewed Claimant's submission and ordered that: (1) the subpart (b) of the first paragraph under the caption "Relief Requested" is amended to read "payment of 150,400 US Coal warrants to Siemers and Cappa which had been requested by them in connection with a March 2007 engagement letter"; (2) The third lines of each of the first and third paragraphs on page 3 of the present Award, under the same caption, are hereby amended to delete the name "Cappa" and substituting "Casey"; and (3) The following sentence is hereby added to the text of said third paragraph on page 3 to read as follows: "During the hearings, Respondent withdrew its breach of fiduciary duty and faithless servant counterclaims against Casey."

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

1. Respondent is liable for and shall pay to Claimant Siemers compensatory damages in the amount of \$7,128.00 plus interest at the rate of 6% per annum from August 5, 2008 until the award is paid in full.
2. Respondent is liable for and shall pay to Claimant Casey compensatory damages in the amount of \$118,829.00 plus interest at the rate of 6% per annum from September 17, 2010 until the award is paid in full.
3. Respondent is liable for and shall pay to Claimant Cappa compensatory damages in the amount of \$64,298.00 plus interest at the rate of 6% per annum from August 11, 2008 until the award is paid in full.
4. Claimant Hunt's claims are denied in their entirety.
5. Respondent is liable for and shall pay to Claimant Davis compensatory damages in the amount of \$656.00 plus interest at the rate of 6% per annum from August 19, 2008 until the award is paid in full. If payment has already been made, no further payment is required.
6. Respondent's Counterclaims are denied in their entirety.

7. Any and all relief not specifically addressed herein is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution assessed a filing fee* for each claim:

Initial Claim Filing fee	= \$ 1,250.00
Counterclaim Filing fee	= \$ 2,125.00

**The filing fee is made up of a non-refundable and a refundable portion.*

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 persons at the time of the events giving rise to the dispute. Accordingly, as a party, Guggenheim Capital Markets, LLC, is assessed the following:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

May 10-3 and 24-26, 2011 adjournment by Claimants	= \$ 1,125.00
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The Panel assessed the \$1,125.00 adjournment fees jointly and severally to Claimants.

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

One (1) Decision on discovery-related motion on the papers with (1) one arbitrator @ \$200.00	= \$ 200.00
<u>Claimants submitted one discovery-related motion</u>	
Total Discovery-Related Motion Fees	= \$ 200.00

The Panel has assessed the \$200.00 discovery-related motion fees jointly and severally to Claimants.

Hearing Session Fees and Assessments

The Panel has assessed hearing session 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 Panel @ \$1,125.00		= \$ 2,250.00
Pre-hearing conferences: April 13, 2010	1 session	
July 25, 2011	1 session	
Fifteen (15) Hearing sessions @ \$1,125.00		= \$16,875.00
Hearing Dates: May 9, 2012	2 sessions	
May 10, 2012	2 sessions	
May 15, 2012	2 sessions	
May 16, 2012	1 session	
May 22, 2012	2 sessions	
May 23, 2012	2 sessions	
June 5, 2012	2 sessions	
June 6, 2012	2 sessions	
Total Hearing Session Fees		= \$19,125.00

1. The Panel has assessed \$9,562.50 of the hearing session fees jointly and severally to Claimants Siemens, Casey, and Cappa.
2. The Panel has assessed \$9,562.50 of the hearing session fees to Respondent.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

Joseph B. Russell	-	Public Arbitrator, Presiding Chairperson
Dan Brecher	-	Public Arbitrator
Alice Holly Oshins	-	Non-Public Arbitrator

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.

Concurring Arbitrators' Signatures



Joseph B. Russell
Public Arbitrator, Presiding Chairperson

8/16/12

Signature Date

Dan Brecher
Public Arbitrator

Signature Date

Alice Holly Oshins
Non-Public Arbitrator

Signature Date

September 7, 2012

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

ARBITRATION PANEL

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Dan Brecher	-	Public Arbitrator
Alice Holly Oshins	-	Non-Public Arbitrator

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Joseph B. Russell
Public Arbitrator, Presiding Chairperson



Dan Brecher
Public Arbitrator

Alice Holly Oshins
Non-Public Arbitrator

Signature Date

August 16, 2012

Signature Date

Signature Date

September 7, 2012

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

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Dan Brecher	-	Public Arbitrator
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Joseph B. Russell
Public Arbitrator, Presiding Chairperson

Signature Date

Dan Brecher
Public Arbitrator

Signature Date



Alice Holly Oshins
Non-Public Arbitrator



Signature Date

September 7, 2012

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Award
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Respondent requested dismissal of the Statement of Claim in its entirety, costs and disbursements, attorneys' fees, and such other and further relief that the Panel deems just and proper.

In its Counterclaim, Respondent requested damages for usurping a corporate opportunity in the amount equivalent to the profits earned by Claimants Siemers and Cappa on the ACDL warrants sold to Harbinger Capital, award damages for breach of fiduciary duty in an amount to be determined at hearing, damages in the amount of \$305,899.77 for unjust enrichment, costs and disbursements, attorneys' fees, and such other and further relief as the Panel deems just and appropriate.

Claimants requested dismissal of the Counterclaim in its entirety.

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Respondent Estate of Ronald Hal Davis did not file with FINRA Dispute Resolution a properly executed Submission Agreement. A Submission Agreement dated June 15, 2009 was filed by Ronald Hal Davis.

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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

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3. Respondent is liable for and shall pay to Claimant Cappa compensatory damages in the amount of \$64,298.00 plus interest at the rate of 6% per annum from August 11, 2008 until the award is paid in full.
4. Claimant Hunt's claims are denied in their entirety.
5. Respondent, is liable for and shall pay to Claimant Davis compensatory damages in the amount of \$656.00 plus interest at the rate of 6% per annum from August 19, 2008 until the award is paid in full. If payment has already been made, no further payment is required.
6. Respondent's Counterclaims are denied in their entirety.
7. Any and all relief not specifically addressed herein is denied.

FEES

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Adjournments granted during these proceedings for which fees were assessed:

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with (1) one arbitrator @ \$200.00 = \$ 200.00

Claimants submitted one discovery-related motion

Total Discovery-Related Motion Fees = \$ 200.00

The Panel has assessed the \$200.00 discovery-related motion fees jointly and severally to Claimants.

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The Panel has assessed hearing session 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:

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May 16, 2012 1 session
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May 23, 2012 2 sessions
June 5, 2012 2 sessions
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Total Hearing Session Fees = \$19,125.00

1. The Panel has assessed \$9,562.50 of the hearing session fees jointly and severally to Claimants Siemens, Casey, and Cappa.
2. The Panel has assessed \$9,562.50 of the hearing session fees to Respondent.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

Joseph B. Russell	-	Public Arbitrator, Presiding Chairperson
Dan Brecher	-	Public Arbitrator
Alice Holly Oshins	-	Non-Public Arbitrator

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.

Concurring Arbitrators' Signatures



Joseph B. Russell
Public Arbitrator, Presiding Chairperson

7/10/2012

Signature Date

Dan Brecher
Public Arbitrator

Signature Date

Alice Holly Oshins
Non-Public Arbitrator

Signature Date

July 16, 2012

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

ARBITRATION PANEL

Joseph B. Russell	-	Public Arbitrator, Presiding Chairperson
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Public Arbitrator, Presiding Chairperson

Signature Date



Dan Brecher
Public Arbitrator

July 10, 2012

Signature Date

Alice Holly Oshins
Non-Public Arbitrator

Signature Date

July 16, 2012

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

ARBITRATION PANEL

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Signature Date

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Public Arbitrator

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Alice Holly Oshins
Non-Public Arbitrator



Signature Date

July 16, 2012
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