

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Greg Scalia, Al Scalia, and Corrine Scalia

Case Number: 02-06774

Name of the Respondents  
Wunderlich Securities, Inc.,  
Chicago Capital, Inc.,  
CCI Holdings, Inc.,  
Lazlo A. Nagy,  
Thomas C. Sanders, Sr.,  
Lee A. Korhumel, and  
Stephen J. Kennedy

Hearing Site: Chicago, Illinois

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**NATURE OF THE DISPUTE**

Customers v. Member Firms, a Non-Member Firm, and Associated Persons

**REPRESENTATION OF PARTIES**

Claimants Greg Scalia, Al Scalia, and Corrine Scalia ("Scalia") were represented by Andrew L. Stoltmann, Esq. of the firm Maddox, Hargett, & Caruso, P.C. located in Chicago, Illinois.

Respondent Wunderlich Securities, Inc. ("Wunderlich") was represented by Mark D. Griffith, Esq. of the firm Martin, Tate, Morrow, & Marston, P.C. located in Memphis, Tennessee.

Respondent Lazlo A. Nagy ("Nagy") was represented by Steven R. Maiyan, Esq. of the firm Kohrman Jackson & Krantz, PLL located in Cleveland, Ohio.

Respondent Chicago Capital, Inc. ("Chicago Capital") was *pro se*.

Respondent CCI Holdings, Inc. ("CCI Holdings") was *pro se*.

Respondent Thomas C. Sanders, Sr. ("Sanders") was *pro se*.

Respondent Lee A. Korhumel, ("Korhumel") was *pro se*.

Respondent Stephen J. Kennedy ("Kennedy") was *pro se*.

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### CASE INFORMATION

Statement of Claim filed on or about: November 11, 2002.  
Claimants signed the Uniform Submission Agreement: October 16, 2002.  
Claimants' Response to Respondents' Motion to Dismiss: February 5, 2004.  
Post-Hearing Submission filed by Claimants on or about: July 22, 2004.

Statement of Answer filed by Respondent Wunderlich on or about: March 17, 2003.  
Respondent Wunderlich signed the Uniform Submission Agreement: March 4, 2003.  
Post-Hearing Submission filed by Respondent Wunderlich on or about: July 1, 2004.  
Supplemental Post-Hearing Submission filed by Respondent Wunderlich on or about: July 13, 2004.

Statement of Answer filed by Respondent Lazlo on or about: July 7, 2003.  
Respondent Lazlo signed the Uniform Submission Agreement: June 20, 2003.

Statement of Answer filed by Respondent Sanders on or about: April 3, 2003.  
Respondent Sanders signed the Uniform Submission Agreement: March 28, 2003.

Statement of Answer filed by Respondent Korhumel on or about: May 1, 2003.  
Respondent Korhumel signed the Uniform Submission Agreement: April 7, 2003.

Statement of Answer filed by Respondent Kennedy on or about: May 1, 2003.  
Respondent Kennedy signed the Uniform Submission Agreement: April 7, 2003.  
Post-Hearing Submission filed by Respondent Kennedy on or about: July 1, 2004.

### CASE SUMMARY

Claimant Scalia asserted the following causes of action: Unsuitable Investment Recommendations; Misrepresentations and Omissions; Violation the Illinois Securities Law of 1953; Violation of Sections 2310, 2110, 2120, and 3010 of the Conduct Rules of the NASD; Breach of Contract; Common Law Fraud & Misrepresentation; Breach of Fiduciary Duty and Constructive Fraud; Respondeat Superior; Negligence; and Negligent Supervision.

The causes of action relate to investments in technology stock.

Unless specifically admitted in its Answer, Respondent Wunderlich denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant Negligence; Failure to Mitigate; Market Decline Caused Claimants' Losses; Waiver, Ratification, Laches and Estoppel; Failure to State a Claim for Unauthorized Trading; Statute of Limitations; Respondent Complied with Applicable Brokerage Industry Rules, Standards, Guidelines, and Requirements; Failure to Describe a Claim with Particularity; Claimants Have No Cause of Action for Violation of NASD Rules; No *Scienter*; No Authority/Knowledge; and Failure to State a Claim for Corporate Successor Liability.

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Unless specifically admitted in his Answer, Respondent Nagy denied the allegations made in the Statement of Claim and asserted the following defenses: Failure to state a claim upon relief may be granted; Claimants have irreparably prejudiced and damaged the instant proceedings through the introduction of hearsay, irrelevant and other inadmissible materials in their Statement of Claim; Claimants suffered no damages due to the acts complained of in the Statement of Claim. Claimants' claims are barred by the doctrines of estoppel, ratification and/or waiver; Respondents complied with all of their stated investment goals, and Claimants personally approved all transactions. Claimants bear responsibility for assuming such risk; Claimants' claims are barred by the doctrines of contributory and comparative negligence and assumption of the risk; Respondents acted properly and in good faith at all times with respect to Claimants' account; Some or all of Claimants' claims are barred by applicable statutes of limitations; All transactions recommended to and made for or on behalf of Claimants were suitable for Claimants and were in accordance with Claimants' stated investment objectives and financial condition; Claimants' claims are barred in whole or in part by the doctrine of laches; Claimants have failed to plead fraud with particularity; Claimants have failed to mitigate their damages; Claimants' claims are barred in whole or in part by the terms of their customer agreements; To the extent the Statement of Claim seeks damages for an alleged violation of the rules of the NYSE, the NASD or any other self-regulatory organization, Claimants fail to state a claim upon which relief may be granted because an alleged violation of the rules of any self-regulatory agency does not give rise to a private right of action; Claimants' claims are barred by Claimants' own participation in other shareholder derivative suits or other actions that preclude the filing of this cause and further preclude the recovery of duplicate damages; and pursuant to the NASD Code of Arbitration Procedure, Respondents reserve the right to amend his Statement of Answer, present additional defenses at the arbitration, and file a counterclaim or any other motions necessary to resolve this matter.

Unless specifically admitted in his Answer, Respondent Korhurnel denied the allegations made in the Statement of Claim and asserted the following defenses: No direct supervisory responsibility for Respondent Nagy.

**RELIEF REQUESTED**

Claimants requested:

Compensatory Damages	\$ 89,845.00
Punitive Damages	unspecified
Interest	margin interest paid; lost interest as provided by the Illinois Securities Law unspecified; and pre-award and post-award interest unspecified
Attorneys' Fees	witness fees, expenses, and accounting fees
Other Costs	any relief the panel deems just and equitable
Other Monetary/Non-Monetary Relief if any:	

Respondents each requested:

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Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	denial and dismissal

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

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators the "Panel" determined that Respondent Lee A. Korhummel has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Claimants withdrew any and all claims asserted against Lazlo Nagy. As a consequence these claims were not adjudicated.

Respondent CCI Holdings, Inc. did not file with NASD Dispute Resolution a properly executed submission to arbitration, and it is not an NASD member firm. As a result, NASD does not have jurisdiction over the claims asserted against CCI Holdings, Inc., and they were not adjudicated.

### **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. Respondents Wunderlich Securities, Inc., Chicago Capital, Inc., Thomas C. Sanders, Sr., Lee A. Korhummel, and Stephen J. Kennedy are jointly and severally liable to Greg Scalia, Al Scalia, and Corrine Scalia the sum of \$72,750.00 as compensatory damages.
2. Wunderlich Securities, Inc., Chicago Capital, Inc., Thomas C. Sanders, Sr., Lee A. Korhummel, and Stephen J. Kennedy are jointly and severally liable to Greg Scalia, Al Scalia, and Corrine Scalia the sum of \$19,400.00 as attorney's fees. The panel finds authority in the Illinois Securities Law for granting attorney's fees.
3. Except as specified herein, parties shall bear their own costs.
4. Any and all relief not specifically addressed herein, including punitive damages, is 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	= \$225.00
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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. Accordingly, Wunderlich Securities, Inc. and Chicago Capital, Inc. were each assessed the following fees:

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$1,700.00</u>
Total	= \$3,550.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

Chicago Capital, Inc. requested adjournment of the May 18 – 20, 2004 = \$ 750.00

**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:

One (1) Pre-hearing session with a single arbitrator at \$450.00	= \$ 450.00
Pre-hearing conference: February 2, 2004 1 session	
Two (2) Pre-hearing sessions with Panel at \$750.00	= \$1,500.00
Pre-hearing conferences: August 12, 2003 1 session	
May 17, 2004 1 session	
Five (5) Hearing sessions at \$750.00	= \$3,750.00
Hearing Dates: June 28, 2004 2 sessions	
June 29, 2004 3 sessions	
<u>Total Forum Fees</u>	<u>= \$5,700.00</u>

1. The Panel has assessed \$2,850.00 of the forum fees jointly and severally to Greg Scalia, Al Scalia, and Corrine Scalia.
2. The Panel has assessed \$2,850.00 of the forum fees jointly and severally to Wunderlich Securities, Inc., Chicago Capital, Inc., Thomas C. Sanders, Sr., Lee A. Korhumel, and Stephen J. Kennedy.

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**FEE SUMMARY**

1. Claimant Greg Scalia, Al Scalia, and Corrine Scalia jointly and severally liable for:	
Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= \$2,850.00
Total Fees	= \$3,075.00
<u>Less payments</u>	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$2,100.00
2. Respondent Wunderlich Securities, Inc. is solely liable for:	
<u>Member Fees</u>	= \$3,550.00
Total Fees	= \$3,550.00
<u>Less payments</u>	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00
3. Respondent Chicago Capital, Inc. is solely liable for:	
Member Fees	= \$3,550.00
<u>Adjournment Fee</u>	= \$ 750.00
Total Fees	= \$4,300.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$4,300.00
4. Respondents Wunderlich Securities, Inc., Chicago Capital, Inc., Thomas C. Sanders, Sr., Lee A. Korhumei, and Stephen J. Kennedy are jointly and severally liable for:	
<u>Forum Fees</u>	= \$2,850.00
Total Fees	= \$2,850.00
<u>Less payments</u>	= \$ 750.00
Balance Due NASD Dispute Resolution	= \$2,100.00

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

**ARBITRATION PANEL**

James P. O'Donnell	-	Public Arbitrator, Presiding Chairperson
David E. Neely	-	Public Arbitrator
David O. Juveland, Esq.	-	Non-Public Arbitrator

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Concurring Arbitrators' Signatures

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James P. O'Donnell  
Public Arbitrator, Presiding Chairperson

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

/s/ David E. Neely

August 17, 2004

\_\_\_\_\_  
David E. Neely  
Public Arbitrator

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

/s/ David O. Juveland

August 12, 2004

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David O. Juveland, Esq.  
Non-Public Arbitrator

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

August 20, 2004

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

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**Committer Arbitrators' Signatures**

James F. O'Donnell  
Public Arbitrator, Presiding Chairperson

Signature Date

David E. Nasty  
Public Arbitrator

Signature Date

  
David O. Juveland, Esq.  
Non-Public Arbitrator

August 12, 2004  
Signature Date

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