

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Florence Ziehm and Donna Shantz

Case Number: 01-06809

Name of the Respondents  
Linsco/Private Ledger Corp. and Terry Gourley

Hearing Site: Chicago, Illinois

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**REPRESENTATION OF PARTIES**

Claimants, Florence Ziehm and Donna Shantz, hereinafter collectively referred to as "Claimants:" Andrew J. Stoltman, Esq. of the firm Maddox, Koeller, Hargett & Caruso with offices located in Chicago, Illinois.

Respondent Linsco Private Ledger Corp., ("Linsco"): David J. Freniere, Esq. and Amanda M. Candelmo, Esq. in-house counsel for Linsco/Private Ledger located in Boston Massachusetts.

Respondent Terry Gourley ("Gourley") appeared *pro se*.

**CASE INFORMATION**

Statement of Claim filed on or about: December 17, 2001.

Claimant Ziehm signed the Uniform Submission Agreement: November 26, 2001.

Claimant Shantz signed the Uniform Submission Agreement: November 30, 2001.

Statement of Answer filed by Respondent Linsco on or about: February 11, 2002.

Stephanie Brown signed the Uniform Submission Agreement on behalf of Linsco: December 27, 2001.

Statement of Answer filed by Respondent Gourley on or about: December 04, 2002

**CASE SUMMARY**

Claimants asserted the following causes of action: Fraud; Negligence; Unsuitable Investment Recommendations; Failure to Supervise; Violations of the Illinois Securities Act of 1953 and NASD Conduct Rules; Breach of Contract; Constructive Fraud/Breach of Fiduciary Duty; Common Law Fraud; Negligence; and *Respondeat Superior*.

The causes of action relate to transactions in the 3dshopping.com stocks.

Unless specifically admitted in its Answer Respondent Linsco denied the allegations made in the Statement of Claim and asserted the following defenses:

- Failure to state a claim upon which relief can be granted.
- Claim is barred by the applicable statutes of limitations.
- Claim is barred by equity, including, but not limited to, the doctrines of waiver, estoppel, and ratification.
- Assumption of risk.
- Respondent Linsco acted in good faith and at no time acted either intentionally, negligently, or recklessly with respect to any matter alleged.
- Claimants had full knowledge of all material facts and did not rely on any act or omission alleged to have been made by Linsco.
- Any loss that Claimants may have incurred was caused by their own negligence or the negligence of third parties. As a result, Claimants are barred from recovering any amount that is attributable to their own negligence or to the negligence of such other third parties.
- Failure to mitigate.
- Claimants' losses, if any, have resulted solely from economic and market forces, and not from any act or omission of Respondent Linsco.

Unless specifically admitted in his Answer Respondent Gourley denied the allegations made in the Statement of Claim.

### **RELIEF REQUESTED**

Claimants requested:

Compensatory Damages (Ziehm)	\$45,570.00
Compensatory Damages (Shantz)	\$30,411.00
Punitive Damages	not specified
Interest	lost interest at the rate of 10% per annum and pre and post award interest
Attorney's Fees	not specified
Other Costs	not specified

Respondent Linsco requested:

Attorney's Fees	reasonable
Other Costs	reasonable
Other Monetary/Non-Monetary Relief if any:	denial or dismissal of the statement of claim

Respondent Gourley requested:

Other Monetary/Non-Monetary Relief if any:	denial or dismissal of the statement of claim
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### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Terry Gourley did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having

answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with the NASD.

### 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 Linsco Private Ledger Corp. and Terry Gourley are jointly and severally liable for and shall pay to Claimant Florence Ziehm in the amount of \$63,547.00 as compensatory damages.
2. Respondents Linsco Private Ledger Corp. and Terry Gourley are jointly and severally liable for and shall pay to Claimant Florence Ziehm in the amount of \$63,547.00 as punitive damages. After review of the parties' submissions and arguments, the panel finds authority to award punitive damages.
3. Respondents Linsco Private Ledger Corp. and Terry Gourley are jointly and severally liable for and shall pay to Claimant Florence Ziehm in the amount of \$21,161.00 as attorney's fees. After review of the parties' submissions and arguments, the panel finds authority to award attorney's fees.
4. Respondents Linsco Private Ledger Corp. and Terry Gourley are jointly and severally liable for and shall pay to Claimant Florence Ziehm in the amount of \$2,137.00 as costs. After review of the parties' submissions and arguments, the panel finds authority to award costs.
5. Respondents Linsco Private Ledger Corp. and Terry Gourley are jointly and severally liable for and shall pay to Claimant Donna Shantz in the amount of \$40,266.00 as compensatory damages.
6. Respondents Linsco Private Ledger Corp. and Terry Gourley are jointly and severally liable for and shall pay to Claimant Donna Shantz in the amount of \$40,266.00 as punitive damages. After review of the parties' submissions and arguments, the panel finds authority to award punitive damages.
7. Respondents Linsco Private Ledger Corp. and Terry Gourley are jointly and severally liable for and shall pay to Claimant Donna Shantz in the amount of \$13,408.00 as attorney's fees. After review of the parties' submissions and arguments, the panel finds authority to award attorney's fees.
8. Respondents Linsco Private Ledger Corp. and Terry Gourley are jointly and severally liable for and shall pay to Claimant Donna Shantz in the amount of \$2,137.00 as costs. After review of the parties' submissions and arguments, the panel finds authority to award costs.
9. Parties shall bear their own costs, except as specified herein.
10. Any and all relief not specifically addressed herein is 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 = \$225.00

**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. Linsco Private Ledger Corp. is a party.

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

**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 Panel at \$750.00 = \$ 750.00  
Pre-hearing conference: August 16, 2002 1 session  
Four (4) Hearing sessions at \$750.00 = \$3,000.00  
Hearing Dates: December 04, 2002 2 sessions  
December 05, 2002 2 sessions  
Total Forum Fees = \$3,750.00

The Panel has assessed \$3,750.00 of the forum fees jointly and severally to Linsco Private Ledger Corp. and Terry Gourley.

**FEE SUMMARY**

1. Claimants Florence Ziehm and Donna Shantz are jointly and severally liable for:  
Initial Filing Fee = \$ 225.00  
Total Fees = \$ 225.00  
Less payments = \$ 975.00  
Refund Due from NASD Dispute Resolution, Inc. = \$ 750.00

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2. Respondent Linsco Private Ledger Corp. is solely liable for:
- |                                           |              |
|-------------------------------------------|--------------|
| <u>Member Fees</u>                        | = \$3,550.00 |
| <u>Total Fees</u>                         | = \$3,550.00 |
| <u>Less payments</u>                      | = \$2,950.00 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 600.00  |
3. Respondents Linsco Private Ledger Corp. and Terry Gourley, are jointly and severally liable for:
- |                                           |              |
|-------------------------------------------|--------------|
| <u>Forum Fees</u>                         | = \$3,750.00 |
| Balance Due NASD Dispute Resolution, Inc. | = \$3,750.00 |

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

**ARBITRATION PANEL**

Stephen E. Smith, Esq.	-	Public Arbitrator, Presiding Chairperson
Hon. Michael S. Jordan	-	Public Arbitrator
Ann Wilhelmina Kuppe	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Stephen E. Smith	12/20/02
_____ Stephen E. Smith, Esq. Public Arbitrator, Presiding Chairperson	_____ Signature Date
/s/ Michael S. Jordan	12/20/02
_____ Hon. Michael S. Jordan Public Arbitrator	_____ Signature Date
/s/ Ann Wilhelmina Kuppe	12/20/02
_____ Ann Wilhelmina Kuppe Non-Public Arbitrator	_____ Signature Date

12/23/02

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

NASD Dispute Resolution, Inc.  
Arbitration No. 01-06809  
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2. Respondent Linsco Private Ledger Corp. is solely liable for:

<u>Member Fees</u>	= \$3,550.00
<u>Total Fees</u>	= \$3,550.00
<u>Less payments</u>	= \$2,950.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 600.00

3. Respondents Linsco Private Ledger Corp. and Terry Gourley, are jointly and severally liable for:

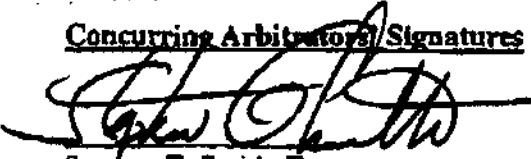
<u>Forum Fees</u>	= \$3,750.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,750.00

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

**ARBITRATION PANEL**

Stephen E. Smith, Esq.	-	Public Arbitrator, Presiding Chairperson
Hon. Michael S. Jordan	-	Public Arbitrator
Ann Wilhelmina Kuppe	-	Non-Public Arbitrator

**Concurring Arbitrators/Signatures**

  
 Stephen E. Smith, Esq.  
 Public Arbitrator, Presiding Chairperson

  
 Signature Date

\_\_\_\_\_  
 Hon. Michael S. Jordan  
 Public Arbitrator

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 Signature Date

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