

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

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In the Matter of the Arbitration Between:

Cantone Research, Inc., (Claimant) vs. Eugene B. Gulka, (Respondent)

Case Number: 01-03145

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Cantone Research, Inc., hereinafter referred to as "Claimant": Anthony Cantone, President and Christine Cantone, Vice President, Cantone Research, Inc., Tinton Falls, NJ. Previously represented by: Marc D. Powers, Esq., Parker Duryee Rosoff & Haft, New York, NY.

Respondent, Eugene B. Gulka, hereinafter referred to as "Respondent": Alan Wasserman, Esq., Wilentz, Goldman & Spitzer, Woodbridge, NJ.

**CASE INFORMATION**

Statement of Claim filed on or about: June 12, 2001.

Reply to Counterclaim filed by Claimant on or about: October 15, 2001.

Reply to Amended Statement of Answer and Counterclaim filed by Claimant on or about: November 19, 2001.

Claimant signed the Uniform Submission Agreement: June 5, 2001.

Statement of Answer and Counterclaim filed by Respondent on or about: September 26, 2001.

Amended Statement of Answer and Counterclaim filed by Respondent on or about: November 8, 2001.

Respondent signed the Uniform Submission Agreement: September 26, 2001.

**CASE SUMMARY**

Claimant Cantone Research, Inc., a small broker-dealer, alleged that Respondent, a fixed income trader with the firm, exposed the firm to grave risk and encumbered significant amounts of the firms capital by purchasing approximately \$900,000.00 of non-rated and taxable New Jersey Health Care Bonds at the end of December 2000 at an approximate price of 97 and, then, resigned in the following month. Claimant alleges that Respondent was employed with the understanding that he would engage in short-term trading of quality-rated fixed income securities for the firms proprietary Quality Bond Trading Account and that the New Jersey bond purchase was concentrated, illiquid, and inconsistent with Respondents past trading patterns and authority.

As a consequence of this large, illiquid purchase, Claimant has been forced to carry a position that has tied down its working capital and caused the firm to incur significant opportunity costs. Claimant alleges negligence, a breach of Respondent's employment contract with the firm, which required him to faithfully and diligently serve and promote [Cantone's] best interests, and breach of his fiduciary duties, as both an employee who occupied a special relationship of trust and a Fixed Income Principal of the firm.

Respondent Eugene Gulka denies Claimants allegations and states that, during his employment, he sold a range of bonds, including other non-rated bonds, sometimes carrying positions for several months, without objection from Claimant and ending with a profit. In fact, he had previously purchased the same New Jersey bonds, earned a profit on their sale, and received Claimants compliments for his work. Contrary to Claimants assertions, the New Jersey bonds were not illiquid. In fact, Claimant could and did sell the New Jersey bonds on a number of occasions after Respondent left the firm and those trades have netted to a profit. Respondent argues that his employment agreement did not prohibit the purchase of non-rated taxable bonds such as the New Jersey bonds, that the agreement contains no guarantees of profit, that the bonds are not of poor quality, and that Claimant failed to mitigate damages, assuming he had a sustainable claim.

Respondent counterclaims, stating that when he resigned in January 2001, he left approximately \$20,000.00 in trading profits, 55% of which should be his, if the positions in his trading account were liquidated to a profit. In light of the profitable nature of the New Jersey bond sales and the delays in liquidating, Claimant has wrongfully retained his money. At hearing, Respondent also made the argument that he is due legal fees for defending the Claimants frivolous claim.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the approximate amount of \$905,527.73, and such other and further relief as the Panel deems just and equitable.

In its Answer and Counterclaim, Respondent requested:

- a. Compensatory damages totaling \$11,000.00;
- b. Interest and all sums due Respondent at the rate provided by law; and
- c. Costs and legal fees incurred herein.

In its Reply, Claimant requested and Award:

- a. Denying Respondent's Counterclaim;
- b. Awarding Claimant costs and expenses, including reasonable attorneys' fees;  
and
- c. For such other and further relief as the Panel deems just and proper.

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

Respondent made a Motion to Amend his Counterclaim to seek attorneys' fees for defending a frivolous claim. Respondent subsequently withdrew his Motion to Amend in reliance on the Panel's inherent powers to deal with bad litigation conduct and sanction parties, where appropriate.

The parties' arbitration agreement called for findings and conclusions in the Award, at the request of either party. During the hearings in this matter, both parties expressly waived their right to an explanation of the Panel's decision.

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. Claimant's claims are hereby dismissed in their entirety.
2. Respondent's Counterclaims are hereby dismissed in their entirety.
3. All other requests for relief are hereby 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	= \$1,250.00
Counterclaim filing fee	= \$ 125.00

**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. In this matter, Cantone Research, Inc. is a party.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$3,500.00

**Adjournment Fees**

Adjournments requested during these proceedings:

Oct. 7, 8 & 14, 2002, adjournment by Claimant	= \$1,200.00
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The Panel has determined that the adjournment fee should be split between Claimant and Respondent. Therefore, each party has been assessed \$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:

One (1) Pre-hearing session with Panel x \$1,200.00	= \$1,200.00
Pre-hearing conference: May 8, 2002	1 session
Four (4) Hearing sessions x \$1,200.00	= \$4,800.00
Hearing Dates: December 2, 2002	2 sessions
December 3, 2002	2 sessions
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Total Forum Fees	= \$6,000.00

1. The Panel has assessed \$3,000.00 of the forum fees against Claimant.
2. The Panel has assessed \$3,000.00 of the forum fees against Respondent.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 1,250.00
Member Fees	= \$ 6,100.00
Adjournment Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$ 3,000.00</u>
Total Fees	= \$10,950.00
<u>Less payments</u>	<u>= \$ 8,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,400.00

2. Respondent is solely liable for:

Counterclaim Filing Fee	= \$ 125.00
Adjournment Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$ 3,000.00</u>
Total Fees	= \$ 3,725.00
<u>Less payments</u>	<u>= \$ 575.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,150.00

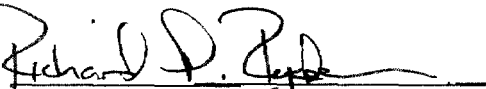
All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Richard P. Ryder, Esq.	-	Non-Public Arbitrator, Presiding Chair
Michael P. Golden	-	Non-Public Arbitrator
Stephanie Morse-Shamosh, Esq.	-	Non-Public Arbitrator

**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.



Richard P. Ryder, Esq.  
Non-Public Arbitrator, Presiding Chair

12-10-02  
Signature Date

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Michael P. Golden  
Non-Public Arbitrator

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

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Stephanie Morse-Shamosh, Esq.  
Non-Public Arbitrator

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

January 6, 2003

Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Richard P. Ryder, Esq.	-	Non-Public Arbitrator, Presiding Chair
Michael P. Golden	-	Non-Public Arbitrator
Stephanie Morse-Shamosh, Esq.	-	Non-Public Arbitrator

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Richard P. Ryder, Esq.  
Non-Public Arbitrator, Presiding Chair

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Signature Date



Michael P. Golden  
Non-Public Arbitrator

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12-17-02  
Signature Date

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Stephanie Morse-Shamosh, Esq.  
Non-Public Arbitrator

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Signature Date

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January 6, 2003  
Date of Service (For NASD Dispute Resolution use only)

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Michael P. Golden	-	Non-Public Arbitrator
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Richard P. Ryder, Esq.  
Non-Public Arbitrator, Presiding Chair

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Signature Date

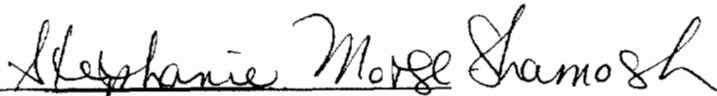
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Michael P. Golden  
Non-Public Arbitrator

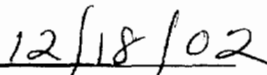
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Signature Date

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Stephanie Morse-Shamosh, Esq.  
Non-Public Arbitrator

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