

**Final Order**  
**NASD Dispute Resolution, Inc.**

---

In the Matter of the Arbitration Between:

Heartland Securities Corp., (Claimant) vs. Herzog, Heine, Geduld, Inc., (Respondent)

Case Number: 00-00511

Hearing Site: New York, New York

---

**REPRESENTATION OF PARTIES**

Claimant, Heartland Securities Corp., hereinafter referred to as "Claimant": Matthew H. Maschler, Esq., Attorney at Law, Edison, NJ.

Respondent, Herzog, Heine, Geduld, Inc., hereinafter referred to as "Respondent": Karl L. Marquardt, Esq., Bressler, Amery & Ross, Morristown, NJ.

**CASE INFORMATION**

Statement of Claim filed on or about: February 4, 2000.

Revised Statement of Claim filed on or about: September 5, 2000.

Claimant signed the Uniform Submission Agreement: September 5, 2000.

Statement of Answer filed by Respondent on or about: April 6, 2000.

Statement of Answer to Revised Statement of Claim filed by Respondent on or about: September 28, 2000.

Respondent signed the Uniform Submission Agreement: April 5, 2000.

**CASE SUMMARY**

Claimant asserted the following causes of action: violations of state and federal securities laws; common law fraud; breach of fiduciary duty; negligence; failure to supervise; and violations of NASD Regulations.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: the Revised Statement of Claim fails to state a claim upon which relief can be granted; the Revised Statement of Claim is barred by the doctrines of laches, waiver, ratification, estoppel; Respondent acted in good faith and without malice or reckless indifference to Claimant; Claimant has failed to mitigate any

alleged damages and therefore their claim for damages is barred or reduced pro tanto; Claimant is not entitled to punitive damages and attorneys' fees; Respondent did not breach any duty to Claimant imposed by operation of law or contract; and Claimant's injuries or damages are due to the acts or omissions of third parties over whom Respondent had no control or right to control.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$26,000.00, plus interest at the legal rate, reasonable attorneys' fees, costs, forum fees, punitive damages, and such other and further relief as is fair and just.

Respondent requested that the Revised Statement of Claim be dismissed, with prejudice in its entirety, and that the Panel award Respondent its costs and such other relief as it deems just and proper.

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

The Statement of Claim in this matter was originally filed as Miguel Hernandez Management, Inc. and Jeffrey's Consolidated, Ltd., (Claimants) vs. Herzog, Heine, Geduld, Inc., (Respondent). The Revised Statement of Claim, which was filed on September 5, 2000, added Heartland Securities Corp. as Claimant, and released Miguel Hernandez Management, Inc. and Jeffrey's Consolidated, Ltd. as Claimants.

Respondent filed a Motion to Dismiss on March 8, 2002, asserting that Claimant lacks standing to prosecute this arbitration, and that NASD Regulation, Inc.'s investigation of this matter contradicts Claimant's claim. Claimant filed a Response to said Motion on March 25, 2002, to which Respondent replied on April 4, 2002. After due deliberation, the Panel decided to grant Respondent's Motion to Dismiss, with prejudice.

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.

### **DECISION**

After considering the pleadings, including Respondent's Motion to Dismiss and all responses thereto, 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, with prejudice.
2. 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	= \$1,000.00
--------------------------	--------------

#### **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 person at the time of the events giving rise to the dispute. In this matter, Heartland Securities Corp. and Herzog, Heine, Geduld, Inc. are parties.

#### **Heartland Securities Corp.**

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

#### **Herzog, Heine, Geduld, Inc.**

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

**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:	August 31, 2000	1 session
	February 5, 2002	1 session
<hr/> Total Forum Fees		= \$1,200.00

The Panel has assessed all of the forum fees against Claimant.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$2,200.00
Forum Fees	= \$1,200.00
Total Fees	= \$4,400.00
<u>Less payments</u>	= \$3,800.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 600.00

2. Respondent be and hereby is solely liable for:

Member Fees	= \$2,200.00
Total Fees	= \$2,200.00
<u>Less payments</u>	= \$2,200.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

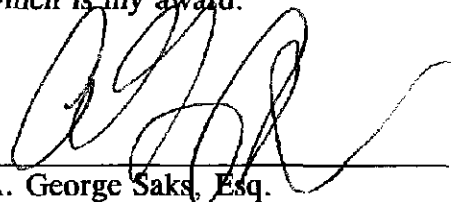
All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

A. George Saks, Esq.	-	Industry Arbitrator, Presiding Chair
Thomas Caiaffa	-	Industry Arbitrator
Vincent Buchanan	-	Industry 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.

  
\_\_\_\_\_  
A. George Saks, Esq.  
Industry Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Thomas Caiaffa  
Industry Arbitrator

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

\_\_\_\_\_  
Vincent Buchanan  
Industry Arbitrator

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

May 31, 2002  
Date of Service (For NASD office use only)

NASD Dispute Resolution, Inc.

Arbitration No. 00-00511

Award Page 6

---

**ARBITRATION PANEL**

A. George Saks, Esq.	-	Industry Arbitrator, Presiding Chair
Thomas Caiaffa	-	Industry Arbitrator
Vincent Buchanan	-	Industry 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.

---

A. George Saks, Esq.  
Industry Arbitrator, Presiding Chair



---

Thomas Caiaffa  
Industry Arbitrator

---

Signature Date

5/16/02

---

Signature Date

---

Vincent Buchanan  
Industry Arbitrator

---

Signature Date

May 31, 2002  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

A. George Saks, Esq.	-	Industry Arbitrator, Presiding Chair
Thomas Caiaffa	-	Industry Arbitrator
Vincent Buchanan	-	Industry 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.

\_\_\_\_\_  
A. George Saks, Esq.  
Industry Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Thomas Caiaffa  
Industry Arbitrator

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

  
\_\_\_\_\_  
Vincent Buchanan  
Industry Arbitrator

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

May 31, 2002  
Date of Service (For NASD office use only)