

Award

NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Names of Claimants

Joseph and Mae Fishbach
Michael J. Fishbach
Paul D. Giles
Reuben Hertz and Jacqueline Hertz
Richard Sears
Nancy J. Rakowski
Ohmer Jack Anderson and Opal Anderson
The Ohmer Jack Anderson Trust
Herbert Myers
Brian Grothe, Individually and as Trustee of
The Brian Grothe Revocable Trust
Louis Meucci
Evelyn Rubin, Individually and as Trustee of
The Evelyn Rubin Living Trust

Case No. 00-00551

Names of Respondents

H. Beck, Inc.
Elliot Seth Simon

Hearing Site: Boca Raton, Florida

REPRESENTATION OF PARTIES

For Joseph and Mae Fishbach, Michael J. Fishbach, Paul D. Giles, Reuben and Jacqueline P. Hertz, Richard Sears, Nancy J. Rakowski, Ohmer Jack Anderson and Opal Anderson, the Ohmer Jack Anderson Trust; Herbert Myers, Brian Grothe, the Brian Grothe Revocable Trust, Louis Meucci, Evelyn Rubin and the Evelyn Rubin Living Trust, hereinafter referred to as "Claimants": Joel A. Goodman, Esq., Goodman & Nekvasil, P.A., Clearwater, Florida.

For H. Beck, Inc. ("H. Beck"): Lloyd R. Schwed, Esq., Kubicki Draper, P.A., West Palm Beach, Florida.

For Elliot Seth Simon ("Simon"): Eugene Michael Kennedy, Esq., Fort Lauderdale, Florida. On or about February 13, 2002, Mr. Kennedy filed with NASD Dispute Resolution, Inc. ("NASDR") his Notice of Withdrawal as Counsel of Record. Thereafter, Respondent Simon did not appear.

CASE INFORMATION

Statement of Claim filed on or about: February 7, 2000.
First Amended Statement of Claim filed on or about: March 14, 2000.
Second Amended Statement of Claim filed on or about: April 19, 2000.
Third Amended Statement of Claim filed on or about: September 25, 2000.
Fourth Amended Statement of Claim filed on or about: September 4, 2001.
Claimants' Uniform Submission Agreements were signed as follows:
Joseph and Mae Fishbach: January 25, 2000.
Michael J. Fishbach: January 25, 2000.
Paul D. Giles: February 10, 2000.
Reuben and Jacqueline Hertz: January 28, 2000.
Richard Sears: January 27, 2000.
Nancy J. Rakowski: February 7, 2000.
Ohmer Jack Anderson individually and as Trustee of the Ohmer Jack Anderson Trust and Opal Anderson: December 16, 1999.
Brian Grothe, Individually and as Trustee of the Brian Grothe Revocable Trust: April 17, 2000.
Louis Meucci: February 16, 2000.
Herbert Myers: January 21, 2000.
Evelyn Rubin, Individually and as Trustee of the Evelyn Rubin Living Trust: March 15, 2000.
Respondent H. Beck's Answer to the First Amended Statement of Claim filed on or about: April 10, 2000.
Respondent H. Beck's Uniform Submission Agreement signed on: March 30, 2000 by Steven R. Porter, President, on behalf of the firm.
Respondent Simon's Statement of Answer to the Third Amended Statement of Claim filed on or about: April 4, 2001.
Respondent Simon's Statement of Answer to the Fourth Amended Statement of Claim filed on or about: October 2, 2001.
Respondent Simon did not file an executed Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action in connection with the alleged improper and illegal recommendations made by Respondent Simon, a licensed/registered broker of Respondent H. Beck, concerning Claimants' purchases of various unsuitable and overly concentrated investments, including the unregistered notes of First American Capital Trust (the "FACT Notes"): violations of Florida's Registration Statute-the Florida Securities and Investor Protection Act, Section 517.07; violations of federal securities laws; violation of the Florida Securities Act Section 517.301; breach of contract; common law fraud; constructive fraud through breach of fiduciary duty; negligence and gross negligence; unjust enrichment; and, violations of and conspiracy to violate the Florida Racketeer Influenced and Corrupt Organizations ("RICO") statute.

Unless specifically admitted in its Answer, Respondent H. Beck denied the allegations of wrongdoing contained in the Statement of Claim and asserted the following defenses: Claimants have failed to mitigate their damages; Claimants' losses, if any, were market

losses that were not caused by H. Beck, and for which H. Beck should not be held liable; there is no evidence that the FACT Notes were unsuitable for Claimants; Claimants' alleged losses are speculative; Claimants' claims are barred by the legal defenses of laches and estoppel; Respondent H. Beck at all times acted in good faith in supervising its registered representative; and, some or all of Claimants' claims are barred by the applicable statutes of limitation.

Unless specifically admitted in his Statements of Answer, Respondent Simon denied the allegations of wrongdoing contained in the Statement of Claim and the amended claims and asserted the following affirmative defenses: Claimants consented, directed, ordered and instructed all of the FACT purchase and sale transactions at issue; Claimants voluntarily and knowingly assumed all risks related to their respective transactions in the FACT Notes, which assumption of risk alone was the sole direct and proximate cause of any losses to Claimants; the Panel has no power or authority to award punitive damages in this arbitration; the Panel has no power to award attorneys' fees in this arbitration; to the extent that Claimants have obtained or will obtain cash and/or tax savings as a result of their investments in the FACT Notes, Claimants are barred from recovery on their claims; Claimants, at all relevant times, had full knowledge of all of the material facts concerning their purchase of the Fact Notes, accordingly, Claimants should be estopped from bringing this proceeding or from obtaining any recovery herein; Claimants' claims are barred by the applicable principles of waiver, ratification and estoppel; Claimants' claims in this proceeding are barred by the applicable statutes of limitation; if any damage or loss was sustained by Claimants, such damage or loss was not in any way caused by Respondents; Claimants have not tendered their FACT Notes in this proceeding and apparently continue to hold them, this claim is, therefore, a hedge by Claimants against any loss they may sustain in the future from their ownership of the FACT Notes; and, Claimants have sustained no damages in the premises to this point. Respondent Simon further alleged that on information and belief, each and every Claimant in this arbitration has filed and expects recovery of prospective damages in the pending bankruptcy proceeding in which FACT is the debtor. Therefore, Claimants cannot be permitted to recover speculative damages under these circumstances.

RELIEF REQUESTED

Claimants requested compensatory damages as follows:

Joseph and Mae Fishbach:	\$230,000.00.
Michael Fishbach:	\$148,432.27.
Paul D. Giles:	\$ 98,285.36.
Reuben and Jacqueline Hertz:	\$162,118.16.
Richard Sears:	\$ 61,725.18.
Nancy J. Rakowski:	\$ 69,688.01.
Ohmer Jack Anderson and Opal Anderson:	\$182,391.48.
The Ohmer Jack Anderson Trust:	\$271,897.07.
Herbert Myers:	\$ 40,808.17.
Brian Grothe and The Brian Grothe Revocable Trust:	\$247,091.96.
Louis Meucci:	\$ 50,000.00.
Evelyn Rubin and The Evelyn Rubin Living Trust:	\$ 70,819.05.

Further, Claimants requested the following: rescission together with benefit-of-the-bargain damages; lost opportunity costs; model portfolio damages; pre-judgment interest; attorneys' fees; costs; punitive damages; statutory damages for violations of and conspiracy to violate Florida's RICO statute; and, such other relief deemed proper by the Panel.

Respondent H. Beck requested a dismissal of the claims against it in their entirety, plus its attorneys' fees and costs incurred in defending this matter.

Respondent Simon requested the following: a dismissal of all claims against him in their entirety; his costs and expenses, including reasonable attorneys' fees incurred in his defense of this matter; an order from the Panel expunging all references to this matter from his Central Registration Depository ("CRD") record as well as the records of any other regulatory body with jurisdiction over him in the securities brokerage business; and, any and all further relief deemed just and proper by the Panel.

OTHER ISSUES CONSIDERED AND DECIDED

On or about August 6, 2001, Claimants advised NASD Dispute Resolution, Inc. that they had amicably resolved their claims as against Respondent H. Beck. Thereafter, this Panel made no determinations with respect to Claimants' claims against Respondent H. Beck.

Respondent Simon did not file with NASD Dispute Resolution, Inc. an executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claims and having attended the Pre-Hearing Conference on May 7, 2001, is bound by the determination of the Panel on all issues submitted.

Further, Respondent Simon did not attend the evidentiary hearing in this matter. Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators determined that Respondent Simon 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 Respondent Simon present, in accordance with Rule 10318 of the Code.

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. The arbitration panel specifically finds that Respondent Simon violated the Florida Securities and Investor Protection Act., Sections 517.07 and 517.301, Florida Statutes, and is *liable to Claimants pursuant to Section 517.211, Florida Statutes and shall pay to Claimants compensatory and punitive damages as follows:*

Joseph and Mae Fishbach: compensatory damages of \$100,076.06, plus punitive damages in the amount of \$100,076.06 for a total of \$200,152.12.

Michael J. Fishbach: compensatory damages of \$185,333.18, plus punitive damages of \$185,333.18 for a total of \$370,666.36.

Paul D. Giles: compensatory damages of \$122,268.39, plus punitive damages of \$122,268.39 for a total of \$244,536.78.

Reuben Hertz and Jacqueline Hertz: compensatory damages of \$136,903.03, plus punitive damages of \$136,903.03 for a total of \$273,806.06.

Nancy J. Rakowski: compensatory damages of \$86,805.14, plus punitive damages of \$86,805.14 for a total of \$173,610.28.

Richard Sears: compensatory damages of \$74,853.33, plus punitive damages of \$74,853.33 for a total of \$149,706.66.

Ohmer Jack Anderson and Opal Anderson: compensatory damages of \$217,288.16, plus punitive damages of \$217,288.16 for a total of \$434,576.32.

The Ohmer Jack Anderson Trust: compensatory damages of \$331,238.20, plus punitive damages of \$331,238.20 for a total of \$662,476.40.

Brian Grothe: compensatory damages of 121,914.70, plus punitive damages of \$121,914.70 for a total of \$243,829.40.

The Brian Grothe Revocable Trust: compensatory damages of \$119,155.00, plus punitive damages of \$119,155.00 for a total of \$238,310.00.

Louis Meucci: compensatory damages of \$61,394.02, plus punitive damages of \$61,394.02 for a total of \$122,788.04.

Herbert Myers: compensatory damages of \$49,789.05, plus punitive damages of \$49,789.05 for a total of \$99,578.10.

Evelyn Rubin: compensatory damages of \$38,986.80, plus punitive damages of \$38,986.80 for a total of \$77,973.60.

The Evelyn Rubin Living Trust: compensatory damages of \$48,967.80, plus punitive damages of \$48,967.80 for a total of \$97,935.60.

2. Pre-judgment interest has been awarded to all Claimants and is included in the compensatory damage awards referenced above and is calculated through February 28, 2002, pursuant to Florida Blue Sky interest rates.

3. All Claimants are awarded post-judgment interest on the compensatory damage awards referenced above which shall begin to accrue on March 1, 2002 and continue until the date of payment of the Award.

4. The Arbitration Panel specifically finds that Respondent Simon violated the Florida Securities and Investor Protection Act Section 517.07 and 517.301, Florida Statutes and is liable to Claimants pursuant Section 517.211, Florida Statute, and shall pay to all Claimants attorneys' fees, the amounts of which shall be determined by a court of competent jurisdiction.

5. Respondent Simon's request for an order expunging all references to this matter from his CRD record and the records of any other regulatory body is denied.

6. Any and all requests for relief not specifically addressed herein, including Claimants' request for RICO damages, are 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	= \$ 500.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$4,500.00

Adjournment Fees

There were no adjournments requested during these proceedings.

Forum Fees and Assessments

The Panel has the authority to assess forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference date: May 7, 2001 1 session	
Two (2) Hearing sessions x \$1,200.00	= \$2,400.00
Hearing Date: February 18, 2002 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$2,850.00

The Panel has assessed \$150.00 of the forum fees jointly and severally to Claimants.
The Panel has assessed \$150.00 of the forum fees to Respondent H. Beck.
The Panel has assessed \$2,550.00 of the forum fees to Respondent Simon.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings..

Fee Summary

Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 150.00

Total Fees	= \$ 650.00
Less payments	= \$ 650.00

Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00
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Respondent H. Beck be and hereby is solely liable for:

Member Fees	= \$7,600.00
Forum Fees	= \$ 150.00

Total Fees	= \$7,750.00
Less payments	= \$5,600.00

Balance Due NASD Dispute Resolution, Inc.	= \$2,150.00
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Respondent Simon be and hereby is solely liable for:

Forum Fees	= \$2,550.00
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Total Fees	= \$2,550.00
Less payments	= \$ 0.00

Balance Due NASD Dispute Resolution, Inc.	= \$2,550.00
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All balances are due and payable to NASD Dispute Resolution, Inc. immediately upon

receipt of the Award by the parties pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Paul W. Sterman, CPA	-	Public/Presiding Chair
Cornelius P. Mahon	-	Public/Panelist
Lewis W. Slaughter	-	Non-Public/Panelist

Concurring Arbitrators' Signatures

_____/s/_____
Paul W. Sterman, CPA
Public Arbitrator, Presiding Chair

Signature Date

_____/s/_____
Cornelius P. Mahon
Public Arbitrator

Signature Date

_____/s/_____
Lewis W. Slaughter
Non-Public Arbitrator

Signature Date

March 18, 2002

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

receipt of the Award by the parties pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Paul W. Sterman, CPA	-	Public/Presiding Chair
Cornelius P. Mahon	-	Public/Panelist
Lewis W. Slaughter	-	Non-Public/Panelist

Concurring Arbitrators' Signatures

Paul W. Sterman CPA

Paul W. Sterman, CPA
Public Arbitrator, Presiding Chair

3/16/2002

Signature Date

Cornelius P. Mahon
Public Arbitrator

Signature Date

Lewis W. Slaughter
Non-Public Arbitrator

Signature Date

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

receipt of the Award by the parties pursuant to Rule 10330(g) of the Code.

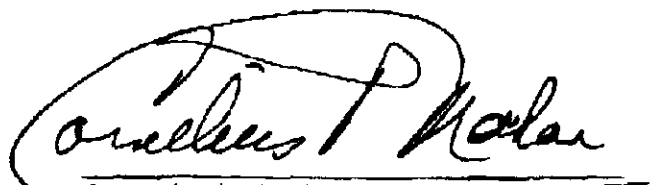
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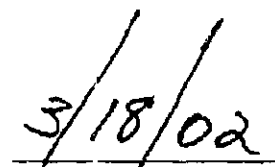
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Public Arbitrator, Presiding Chair

Signature Date



Cornelius P. Mahon
Public Arbitrator



Signature Date

Lewis W. Slaughter
Non-Public Arbitrator

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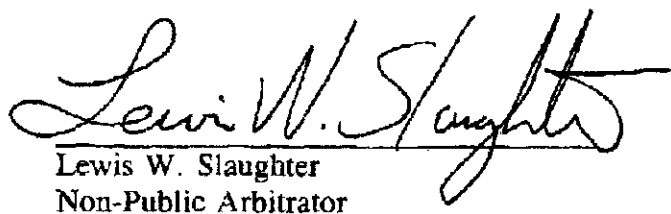
Concurring Arbitrators' Signatures

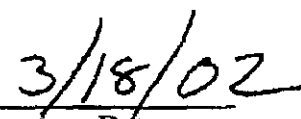
Paul W. Sterman, CPA
Public Arbitrator, Presiding Chair

Signature Date

Cornelius P. Mahon
Public Arbitrator

Signature Date


Lewis W. Slaughter
Non-Public Arbitrator


Signature Date

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