

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

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In the Matter of the Arbitration Between:

Stephen C. Schulmerich, Claimant vs. Pacific Harbor Securities, Inc., Kenneth W. Wagner, Michael K. Wagner, Joanne Wagner, Sara Lynn Hannan and Larry R. Baldwin, Respondents.

Case Number: 00-03479

Hearing Site: Portland, Oregon

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**REPRESENTATION OF PARTIES**

Claimant, Stephen C. Schulmerich, hereinafter referred to as "Claimant": Stephen C. Schulmerich, Portland, Oregon

Respondents, Pacific Harbor Securities, Inc. ("Pacific Harbor"), Kenneth W. Wagner, Michael K. Wagner, Joanne Wagner and Sara Lynn Hannan ("Hannan"): Clay W. Stucki, Esq., Bennett, Tueller, Johnson & Deere, Salt Lake City, Utah

Respondent, Larry R. Baldwin ("Baldwin"): Larry R. Baldwin, Tacoma, Washington

**CASE INFORMATION**

Statement of Claim filed on or about: August 11, 2000

Claimant, Stephen C. Schulmerich, signed the Uniform Submission Agreement: August 10, 2000

Joint Statement of Answer filed by Respondents, Pacific Harbor, Kenneth W. Wagner, Michael K. Wagner and Joanne Wagner, on or about: January 23, 2001

Statement of Answer filed by Respondent, Hannan, on or about: November 13, 2000

Respondent, Hannan, signed the Uniform Submission Agreement: November 13, 2000

**CASE SUMMARY**

Claimant alleged the following claims with respect to his employment with Pacific Harbor: 1) Breach of contract against Pacific Harbor; 2) Misrepresentation against Pacific Harbor, Michael K. Wagner and Joanne Wagner; and 3) Removal of funds from Pacific Harbor for non-Pacific Harbor business activities by principals Kenneth W. Wagner, Michael K. Wagner, Larry R. Baldwin and Sara Lynn Hannan.

Respondents, except Larry R. Baldwin, denied Claimant's allegations set forth in Claimant's Claim.

### **RELIEF REQUESTED**

Claimant requested:

1. \$29,000.00 for unpaid commissions;
2. \$15,000.00 in Punitive damages;
3. Costs in the amount of \$1,450; and
4. Interest.

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

During the hearing, the Arbitrator was advised of the bankruptcy filings by Kenneth W. Wagner, Michael K. Wagner and Joanne Wagner and determined that the above-referenced matter is stayed with respect to said Respondents.

Respondent Pacific Harbor did not file with NASD Dispute Resolution, Inc. ("NASD-DR") a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure ("the Code") and, having answered Claimant's Claim, appeared and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

Respondent Baldwin did not file with NASD-DR a Statement of Answer or properly executed submission to arbitration. The Arbitrator determined that Respondent Baldwin has been properly served with Claimant's Claim and further determined that Respondent Baldwin is required to submit to arbitration pursuant to the Code and is bound by the determination of the Arbitrator on all issues submitted.

Respondent Baldwin did not appear at the evidentiary hearing in this matter. Pursuant to Rule 10318 of the Code, the Arbitrator determined that Respondent Baldwin received proper notice of the hearing and ruled to proceed in his absence.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Upon the completion of Claimant's case in chief, Respondents, except Baldwin, moved for a directed verdict. Based on the evidence presented, the Arbitrator granted the motion as to Respondent Hannan, and denied the motion as to Pacific Harbor, Michael K. Wagner and Joanne Wagner. Accordingly, all claims by Claimant against Respondent Hannan are dismissed.

2. As to Respondent Baldwin, the Arbitrator found that the evidence does not support the claim that he is personally liable for the unpaid commissions. As a principal and/or officer of Pacific Harbor, Mr. Baldwin cannot be held personally liable for the debts of the corporation absent a piercing of the corporate veil. Accordingly, all claims by Claimant against Respondent Baldwin are dismissed.
3. As to Respondent Pacific Harbor, Pacific Harbor stipulated that it is liable for breach of contract for unpaid commissions in the amount of \$29,000. Accordingly, Pacific Harbor is solely liable for and shall pay to Claimant the sum of \$29,000, plus interest thereon at 9% per annum from June 7, 2000, until paid pursuant to Oregon law.
4. As to the claim for punitive damages against Pacific Harbor, under Oregon law punitive damages may be awarded in a civil action if the Claimant shows by clear and convincing evidence that the respondent either acted with malice, or a conscious, reckless, and outrageous indifference to the health, safety, and welfare of others. Oregon Revised Statutes Sections 18.537(1), 18.540(1). The evidence does not support an award of punitive damages under Oregon law.
5. Any and all relief not specifically addressed herein is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD-DR will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$175.00
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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	= \$800.00
Pre-hearing process fee	= \$600.00
Hearing process fee	= \$1,000.00

#### **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 Arbitrator x \$450.00	= \$450.00
Pre-hearing conference:      March 28, 2001      1 session	
Three (3) Hearing sessions x \$450.00	= \$1,350.00
Hearing Dates:              May 16, 2001      2 sessions	
May 17, 2001      1 session	
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Total Forum Fees	= \$1,800.00

The Panel has assessed the \$1,800.00 in forum fees to Respondent, Pacific Harbor.

**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.

The parties did not incur administrative costs.

**Fee Summary**

1. Claimant, Schulmerich, is liable for:	
Initial Filing Fee	= \$ 175.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$ 175.00
<u>Less payments</u>	= \$1,450.00
Balance (Refund)	= \$1,275.00
2. Respondent, Pacific Harbor, is liable for:	
Member Fees	= \$2,400.00
Forum Fees	= \$1,800.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$4,200.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD-DR	= \$4,200.00

All balances are due to NASD Dispute Resolution, Inc.

NASD Dispute Resolution, Inc.

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James F. Zotter, Esq.

Public Arbitrator

**Presiding Arbitrator's Signature**

  
James F. Zotter, Esq.  
Public Arbitrator, Presiding Chair

Date Served:

JUN 8 2001

  
Signature Date

Date of Service (For NASD office use only)