
Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Fiserv Correspondent Services, Inc. n/k/a Fiserv Securities, Inc. (Claimant) vs. Congressional Securities, Inc., David H. Zimmer, Sherry M. Zimmer, David H. Zimmer Money Pur. Plan, Sherry M. Zimmer Money Pur. Plan, Sheldon L. Contract, Harriet E. Contract, Sheldon L. Contract DDS PA Employees PSP DTD 9-17-87, David C. Diephouse, Youness E. Hendifar, Mahnaz Hendifar, John Joseph, Bernard Klitzner, Sandra J. Lachance, Ella M. Leffler, Karen A. Merguerian, Warren M. Merguerian, Warren Merguerian Jr. DDS PA Profit Sharing Plan DTD 6-1-85, Jan B. Newman, Sandra Newman, Martin Newman, William H. Ratcliffe, and Jay M. Walshon, (Respondents)

Case Number: 00-03756

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Fiserv Correspondent Services, Inc. n/k/a Fiserv Securities, Inc., hereinafter referred to as "Claimant": Steven D. Plissey, Esq., Sherman & Howard, LLC, Denver, CO (Mr. Plissey was with the law firm of Williams, Youle & Koenigs, P.C., Denver, CO, when this claim was originally filed).

Respondents, Congressional Securities, Inc. ("Congressional"), David H. Zimmer ("D. Zimmer"), Sherry M. Zimmer ("S. Zimmer"), David H. Zimmer Money Pur. Plan ("D. Zimmer Plan"), Sherry M. Zimmer Money Pur. Plan ("S. Zimmer Plan"), Sheldon L. Contract ("S. Contract"), Harriet E. Contract ("H. Contract"), Sheldon L. Contract DDS PA Employees PSP Dated 9-17-87 ("Contract PSP"), David C. Diephouse ("Diephouse"), Youness E. Hendifar ("Y. Hendifar"), Mahnaz Hendifar ("M. Hendifar"), John Joseph ("Joseph"), Bernard Klitzner ("Klitzner"), Sandra J. Lachance ("Lachance"), Ella M. Leffler ("Leffler"), Karen A. Merguerian ("K. Merguerian"), Warren M. Merguerian ("W. Merguerian"), Warren Merguerian Jr. DDS PA Profit Sharing Plan DTD 6-1-85 ("Merguerian Plan"), Jan B. Newman ("J. Newman"), Sandra Newman ("S. Newman"), Martin Newman ("M. Newman"), William H. Ratcliffe ("Ratcliffe"), and Jay M. Walshon ("Walshon"), hereinafter collectively referred to as "Respondents": Jonathan C. Uretsky, Esq., Winget Spadafora & Schwartzberg LLP, New York, NY. Previously represented by: David H. Zimmer, Esq., a sole practitioner, Boca Raton, FL and Robert M. Jaffe, Esq., Ballon Stoll Bader & Nadler, P.C., New York, NY, respectively.

CASE INFORMATION

Statement of Claim filed on or about: August 28, 2000.
Reply to Counterclaim filed by Claimant on or about: December 21, 2000.
Claimant signed the Uniform Submission Agreement: August 24, 2000.

Joint Statement of Answer and Counterclaim filed by Respondents on or about:
November 30, 2000.

Congressional signed the Uniform Submission Agreement: November 30, 2000.
D. Zimmer signed the Uniform Submission Agreement: November 30, 2000.
S. Zimmer signed the Uniform Submission Agreement: November 30, 2000.
D. Zimmer Plan signed the Uniform Submission Agreement: November 30, 2000.
S. Zimmer Plan signed the Uniform Submission Agreement: November 30, 2000.
S. Contract signed the Uniform Submission Agreement: November 28, 2000.
H. Contract signed the Uniform Submission Agreement: November 28, 2000.
Contract PSP signed the Uniform Submission Agreement: November 28, 2000.
Diephouse signed the Uniform Submission Agreement: November 28, 2000.
Y. Hendifar signed the Uniform Submission Agreement: November 27, 2000.
M. Hendifar signed the Uniform Submission Agreement: November 27, 2000.
Joseph signed the Uniform Submission Agreement: December 2, 2000.
Klitzner signed the Uniform Submission Agreement: November 30, 2000.
Lachance signed the Uniform Submission Agreement: November 28, 2000.
Leffler did not sign a Uniform Submission Agreement.
K. Merguerian signed the Uniform Submission Agreement: November 30, 2000.
W. Merguerian signed the Uniform Submission Agreement: November 30, 2000.
Merguerian Plan signed the Uniform Submission Agreement: November 30, 2000.
J. Newman signed the Uniform Submission Agreement: October 4, 2000.
S. Newman signed the Uniform Submission Agreement: October 4, 2000.
M. Newman signed the Uniform Submission Agreement: November 27, 2000.
Ratcliffe signed the Uniform Submission Agreement: November 28, 2000.
Walshon signed the Uniform Submission Agreement: December 2, 2000.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; money had and received; unjust enrichment; conversion; indemnification; interference with contract; and fraudulent concealment. Claimant's claim involved the stock of Interface System, Inc. ("INTF").

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's claims are barred by application of the doctrine of laches; Claimant failed to timely mitigate its damages; and Claimant's claim for punitive damages is not cognizable.

In their Counterclaim, Respondents asserted the following causes of action: misrepresentations; negligence; manipulative and deceptive sales practices; fraudulent promotion of stock sales; failure to exercise reasonable care; failure to conduct adequate due diligence; and unlawful conspiracy.

Unless specifically admitted in its Reply, Claimant denied the allegations made in the Counterclaim and asserted the following defenses: the Counterclaim fails to state a claim upon which relief may be granted; the Counterclaim is barred by the equitable doctrines of estoppel and/or waiver; the Counterclaim for negligence is barred in whole or in part by Respondents' own contributory negligence and/or assumption of risk; the Counterclaim for negligence is barred in whole or in part by the negligence of third parties who have not been named in this proceeding; the Counterclaim is barred because it fails to state with specificity representations purportedly made by Claimant to one or more of the Respondents; the Counterclaim is barred in whole or in part because it is based upon the actions of third parties, including D. Zimmer, Congressional, and individuals and corporations unaffiliated with Claimant; and the Counterclaim is barred by Respondents' failure to mitigate their damages, if any.

RELIEF REQUESTED

Claimant requested:

- a. An Award for damages against each Respondent in an aggregate amount of \$9,281,532.88;
- b. An Award for interest against each Respondent in an amount to be determined at the hearing, including but not limited to, interest as provided by contract and pre-judgment and post-judgment interest as provided by applicable statute;
- c. An Award against each Respondent for punitive damages in an amount to be proven at the final hearing in this matter;
- d. An Award against each Respondent based upon each of their contracts to pay Claimant's costs in this proceeding, including expert witness fees and attorneys' fees; and
- e. Such other relief against each Respondent as the Panel deems appropriate.

In their Answer and Counterclaim, Respondents requested an Award as follows:

- a. Denying Claimant's claims in all respects;
- b. Awarding judgment to Respondents against Claimant, jointly and severally, for compensatory damages in the approximate amount of \$50,000,000.00, bearing interest as provided by law;
- c. Awarding judgment to Respondents against Claimant for punitive damages in the approximate amount of \$100,000,000.00, bearing interest as provided by law;

- d. Awarding Respondents the costs of this proceeding, including reasonable attorneys' fees; and
- e. Awarding Respondents such other and further relief as the Panel may deem just, proper, and lawful.

OTHER ISSUES CONSIDERED AND DECIDED

Leffler did not file with NASD Dispute Resolution, Inc. 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 the claim, is bound by the determination of the Panel on all issues submitted.

Claimant moved to preclude claims or defenses of Respondents, and for sanctions against Respondents, pursuant to Rule 10305(b) of the Code for failure of Respondents to comply with discovery orders of the Panel. Claimant also moved to preclude Respondents from presenting evidence or exhibits at the hearing pursuant to Rule 10321(c) of the Code. The Panel denied both motions.

On or about May 16, 2002, Respondents filed a motion with the United States District Court for the Southern District of New York seeking a preliminary injunction temporarily staying this arbitration pending adjudication of a federal court proceeding venued in the Eastern District of Michigan. The hearing on the preliminary injunction was scheduled to be heard by the Honorable John Martin, Jr. on Friday, May 24, 2002. Respondents requested an adjournment of the arbitration hearing in this matter until after Judge Martin issued a ruling on the preliminary injunction. The Panel denied Respondents' adjournment request.

Respondents' counsel renewed the adjournment motion at the hearings in this matter, requesting that the arbitration be adjourned until (i) Judge Martin issues a ruling on Respondents' Motion to Stay the Arbitration, (ii) final adjudication of the pending action in Michigan Federal Court, (iii) two weeks after a decision by Judge Martin on the Motion to Stay the Arbitration and/or (iv) one month after a decision by Judge Martin on the Motion to Stay the Arbitration. The Panel denied said adjournment requests.

During the hearings in this matter, Respondents' counsel made a motion to dismiss all claims in this arbitration. The Panel denied said motion.

Respondents did not appear at the hearings in this matter, although they were represented by their counsel, Jonathan C. Uretsky, Esq. Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Congressional, D. Zimmer, S. Zimmer, D. Zimmer Plan, S. Zimmer Plan, S. Contract, H. Contract, Contract PSP, Diephouse, Y. Hendifar, M. Hendifar, Joseph, Klitzner, Lachance, Leffler, K. Merguerian, W. Merguerian, Merguerian Plan, J. Newman, S. Newman, M. Newman, Ratcliffe, and Walshon have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with Code.

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:

Respondents Contract PSP and Congressional are jointly and severally liable to and shall pay to Claimant the sum of \$855,784.11, which includes interest under the margin agreement to May 31, 2002, together with additional interest on such amount from May 31, 2002, until paid, at the rate of 8% compounded annually, plus Claimant's attorney fees and costs in the sum of \$7,170.05, together with 8% interest compounded annually upon such fees and costs from the date of the award herein until paid.

Respondents Diephouse and Congressional are jointly and severally liable to and shall pay to Claimant the sum of \$103,145.72, which includes interest under the margin agreement to May 31, 2002, together with additional interest on such amount from May 31, 2002, until paid, at the rate of 8% compounded annually, plus Claimant's attorney fees and costs in the sum of \$864.19, together with 8% interest compounded annually upon such fees and costs from the date of the award herein until paid.

Respondents Y. Hendifar, M. Hendifar, and Congressional are jointly and severally liable to and shall pay to Claimant the sum of \$368,627.06, which includes interest under the margin agreement to May 31, 2002, together with additional interest on such amount from May 31, 2002, until paid, at the rate of 8% compounded annually, plus Claimant's attorney fees and costs in the sum of \$3,088.48, together with 8% interest compounded annually upon such fees and costs from the date of the award herein until paid.

Respondents Klitzner and Congressional are jointly and severally liable to and shall pay to Claimant the sum of \$31,068.02, which includes interest under the margin agreement to May 31, 2002, together with additional interest on such amount from May 31, 2002, until paid, at the rate of 8% compounded annually, plus Claimant's attorney fees and costs in the sum of \$260.30, together with 8% interest compounded annually upon such fees and costs from the date of the award herein until paid.

Respondents Lachance and Congressional are jointly and severally liable to and shall pay to Claimant the sum of \$88,654.42, which includes interest under the margin agreement to May 31, 2002, together with additional interest on such amount from May 31, 2002, until paid, at the rate of 8% compounded annually, plus Claimant's attorney fees and costs in the sum of \$742.78, together with 8% interest compounded annually upon such fees and costs from the date of the award herein until paid.

Respondents Leffler and Congressional are jointly and severally liable to and shall pay to Claimant the sum of \$2,476,306.50, which includes interest under the margin agreement to May 31, 2002, together with additional interest on such amount from May 31, 2002, until paid, at the rate of 8% compounded annually, plus Claimant's attorney fees and costs in the sum of \$20,747.33, together with 8% interest compounded annually upon such fees and costs from the date of the award herein until paid.

Respondents Merguerian Plan and Congressional are jointly and severally liable to and shall pay to Claimant the sum of \$240,043.37, which includes interest under the margin agreement to May 31, 2002, together with additional interest on such amount from May 31, 2002, until paid, at the rate of 8% compounded annually, plus Claimant's attorney fees and costs in the sum of \$2,011.16, together with 8% interest compounded annually upon such fees and costs from the date of the award herein until paid.

Respondents J. Newman, S. Newman, and Congressional are jointly and severally liable to and shall pay to Claimant the sum of \$28,017.75, which includes interest under the margin agreement to May 31, 2002, together with additional interest on such amount from May 31, 2002, until paid, at the rate of 8% compounded annually, plus Claimant's attorney fees and costs in the sum of \$234.74, together with 8% interest compounded annually upon such fees and costs from the date of the award herein until paid.

Respondents M. Newman and Congressional are jointly and severally liable and shall pay to Claimant the sum of \$256,608.19, which includes interest under the margin agreement to May 31, 2002, together with additional interest on such amount from May 31, 2002, until paid, at the rate of 8% compounded annually, plus Claimant's attorney fees and costs in the sum of \$2,149.95, together with 8% interest compounded annually upon such fees and costs from the date of the award herein until paid.

Respondents Ratcliffe and Congressional are jointly and severally liable to and shall pay to Claimant the sum of \$477,353.79, which includes interest under the margin agreement to May 31, 2002, together with additional interest on such amount from May 31, 2002, until paid, at the rate of 8% compounded annually, plus Claimant's attorney fees and costs in the sum of \$3,999.43, together with 8% interest compounded annually upon such fees and costs from the date of the award herein until paid.

Respondents Walshon and Congressional are jointly and severally liable to and shall pay to Claimant the sum of \$84,920.60, which includes interest under the margin agreement to May 31, 2002, together with additional interest on such amount from May 31, 2002, until paid, at the rate of 8% compounded annually, plus Claimant's attorney fees and costs in the sum of \$711.49, together with 8% interest compounded annually upon such fees and costs from the date of the award herein until paid.

Respondents S. Zimmer and Congressional are jointly and severally liable to and shall pay to Claimant the sum of \$1,505,241.42, which includes interest under the margin agreement to May 31, 2002, together with additional interest on such amount from May 31, 2002, until paid, at the rate of 8% compounded annually, plus Claimant's attorney fees and costs in the sum of \$12,611.42, together with 8% interest compounded annually upon such fees and costs from the date of the award herein until paid.

Respondents D. Zimmer Plan and Congressional are jointly and severally liable to and shall pay to Claimant the sum of \$1,820,818.04, which includes interest under the margin agreement to May 31, 2002, together with additional interest on such amount from May 31, 2002, until paid, at the rate of 8% compounded annually, plus Claimant's attorney fees and costs in the sum of \$15,255.43, together with 8% interest compounded annually upon such fees and costs from the date of the award herein until paid.

Respondents S. Zimmer Plan and Congressional are jointly and severally liable to and shall pay to Claimant the sum of \$2,092,352.76, which includes interest under the margin agreement to May 31, 2002, together with additional interest on such amount from May 31, 2002, until paid, at the rate of 8% compounded annually, plus Claimant's attorney fees and costs in the sum of \$17,530.44, together with 8% interest compounded annually upon such fees and costs from the date of the award herein until paid.

Respondents Joseph and Congressional are jointly and severally liable to and shall pay to Claimant the sum of \$16,183.02 as compensatory damages, together with 10% simple interest thereupon from April 3, 2000 until paid, plus claimant's attorney fees and costs in the sum of \$135.59, together with 10% simple interest annually upon such fees and costs from the date of the award herein until paid.

The Panel awarded attorneys' fees and costs pursuant to the terms of the Fully Disclosed Correspondent Agreement between Claimant and Congressional (Claimant's Exhibit 3), as well as the agreement disclosed on the back of the trade confirmations for the investments in question (Claimant's Exhibit 8).

Respondents D. Zimmer and S. Zimmer are jointly and severally liable and shall pay to Claimant the sum of \$375,000.00, together with 10% simple interest thereupon from April 3, 2000 until paid.

Respondents D. Zimmer and D. Zimmer Plan are jointly and severally liable and shall pay to Claimant the sum of \$250,000.00, together with 10% simple interest thereupon from April 3, 2000 until paid.

Respondents D. Zimmer and S. Zimmer Plan are jointly and severally liable and shall pay to Claimant the sum of \$250,000.00, together with 10% simple interest thereupon from April 3, 2000 until paid.

All claims against S. Contract, H. Contract, K. Merguerian, and W. Merguerian in their individual capacities are hereby dismissed.

Claimant's request for punitive damages is hereby denied.

Respondents' Counterclaim is hereby dismissed in its entirety.

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	= \$2,500.00
Counterclaim filing fee	= \$ 5,000.00

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 persons at the time of the events giving rise to the dispute. In this matter, Fiserv Correspondent Services, Inc. n/k/a Fiserv Securities, Inc. and Congressional Securities, Inc. are parties.

Fiserv Correspondent Services, Inc. n/k/a Fiserv Securities, Inc.

Member surcharge	= \$3,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$5,000.00

Congressional Securities, Inc.

Member surcharge	= \$3,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$5,000.00

Adjournment Fees

Adjournments requested during these proceedings:

Jul. 30 & 31 and Aug. 1, 2 & 3, 2001, adjournment by Respondents	= \$1,200.00
--	--------------

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 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 a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: November 13, 2001 1 session	

Three (3) Pre-hearing sessions with Panel x \$1,200.00	= \$3,600.00
Pre-hearing conferences: April 17, 2001 1 session	
March 14, 2002 1 session	
April 8, 2002 1 session	

Three (3) Hearing sessions x \$1,200.00	= \$3,600.00
Hearing Dates: May 20, 2002 2 sessions	
May 21, 2002 1 session	

Total Forum Fees	= \$7,650.00
------------------	--------------

The Panel has assessed all of the forum fees jointly and severally against Respondents .

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 2,500.00
<u>Member Fees</u>	= \$ 8,600.00
Total Fees	= \$11,100.00
<u>Less payments</u>	= \$17,700.00
Refund Due Claimant	= \$ 6,600.00

2. Congressional be and hereby is solely liable for:

<u>Member Fees</u>	= \$ 8,600.00
<u>Total Fees</u>	= \$ 8,600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 8,600.00

3. Respondents be and hereby are jointly and severally liable for:

Counterclaim Filing Fee	= \$ 5,000.00
Adjournment Fee	= \$ 1,200.00
<u>Forum Fees</u>	= \$ 7,650.00
<u>Total Fees</u>	= \$13,850.00
<u>Less payments</u>	= \$ 1,800.00
Balance Due NASD Dispute Resolution, Inc.	= \$12,050.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Bruce K. Isenberg, Esq.	-	Public Arbitrator, Presiding Chair
Denise Appel Baird, Esq.	-	Public Arbitrator
Philip J. Guilford	-	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.

Bruce Isenberg
Bruce K. Isenberg, Esq.
Public Arbitrator, Presiding Chair

May 9, 2002
Signature Date

Denise Appel Baird, Esq.
Public Arbitrator

Signature Date

Philip J. Guilford
Industry Arbitrator

Signature Date

June 28, 2002

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

ARBITRATION PANEL

Bruce K. Isenberg, Esq.	-	Public Arbitrator, Presiding Chair
Denise Appel Baird, Esq.	-	Public Arbitrator
Philip J. Guilford	-	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.

Bruce K. Isenberg, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Denise Appel Baird Esq.
Denise Appel Baird, Esq.
Public Arbitrator

Signature Date

Philip J. Guilford
Industry Arbitrator

Signature Date

June 28, 2002

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

ARBITRATION PANEL

Bruce K. Isenberg, Esq.	-	Public Arbitrator, Presiding Chair
Denise Appel Baird, Esq.	-	Public Arbitrator
Philip J. Guilford	-	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.

Bruce K. Isenberg, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Denise Appel Baird, Esq.
Public Arbitrator

Signature Date


Philip J. Guilford
Industry Arbitrator

6/19/02
Signature Date

June 28, 2002

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