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**Award  
NASD**

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In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 00-04490

Rod J. Moeller

Barbara C. Moeller

Donald E. Darden, individually and on behalf of Donald E. Darden, SEP IRA

Susan B. Darden

Names of the Respondents

Hearing Site: Tampa, Florida

D.E. Frey & Company, Inc.

Correspondent Services Corporation

Marshall Cassedy, Jr.

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**REPRESENTATION OF PARTIES**

For Rod J. Moeller ("R. Moeller"), Barbara C. Moeller ("B. Moeller"), Donald E. Darden, individually and on behalf of Donald E. Darden, SEP IRA ("D. Darden"), and Susan B. Darden ("S. Darden"), hereinafter collectively referred to as "Claimants": Scott W. Leeds, Esq., Leeds, Colby & Paris, Miami, Florida until his withdrawal as counsel on or about March 28, 2002. Thereafter, Russell Weigel III, Esq., Montello & Kenney, Miami, Florida appeared as counsel.

For Respondent D.E. Frey & Company, Inc. ("D.E. Frey"): Larry D. Hayden, D.E. Frey & Company, Inc. Denver, Colorado until on or about October 29, 2002. Thereafter, Paul Hocevar, Hocevar & Associates, LLC, Denver, Colorado appeared as its representative.

For Respondent Correspondent Services Corporation ("CSC"): Ronald Shindler, Esq., Fowler, White, Burnett, Hurley, Banick & Strickroot, P.A., Miami, Florida.

For Respondent Marshall Cassedy, Jr. ("Cassedy"): Thomas D. Birge, Esq., Birge & Minckley, P.C., Denver, Colorado.

**CASE INFORMATION**

Statement of Claim filed on or about: June 16, 2000.

Claimant R. Moeller signed the Uniform Submission Agreement: January 23, 2001.

Claimant B. Moeller signed the Uniform Submission Agreement: January 23, 2001.

Claimant D. Darden signed the Uniform Submission Agreement: January 22, 2001.

Claimant S. Darden signed the Uniform Submission Agreement: January 22, 2001.

Statement of Answer filed by Respondent D.E. Frey on or about: January 25, 2000.

Motion to Dismiss, Answer and Cross-claim filed by Respondent CSC on or about: April 18, 2001.

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Statement of Answer and Motion to Strike Portions of Statement of Claim filed by Respondent Cassidy on or about: February 8, 2001.

Respondent D.E. Frey signed the Uniform Submission Agreement: January 25, 2001.

Respondent Cassidy signed the Uniform Submission Agreement: January 23, 2001.

Respondent CSC did not file an executed Uniform Submission Agreement.

Claimants' Opposition to CSC's Motion to Dismiss filed on or about: May 3, 2001.

### **CASE SUMMARY**

Claimants asserted the following causes of action: churning; suitability; fraud; deceit; omission of facts; intentional misrepresentation; negligent misrepresentation; violation of Fl. Sta. 517.301; breach of fiduciary duty; breach of implied covenant of good faith and fair dealing; violation of the anti-fraud provisions of the Securities Exchange Act of 1934 and; failure to supervise. The causes of action relate to the purchase of various stocks in Claimants' accounts including, but not limited to, OPTI, Petsmart, Alliance Semiconductor, Integrated Silicon Solutions and IVAX of Florida.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Respondent CSC filed a Cross-claim against Respondent D.E. Frey asserting that the relationship between them was contractual in nature and subject to the terms of the clearing agreement.

### **RELIEF REQUESTED**

Claimants R. Moeller and B. Moeller requested compensatory damages in the amount of \$144,539.00 and disgorgement of Respondents' compensation in the amount of \$35,602.00, together with punitive (treble) damages, loss of opportunity profits, costs, attorney's and consulting fees, and other and further relief as the undersigned arbitrators (the "Panel") deems proper.

Claimants D. Darden, S. Darden and D. Darden SEP IRA requested compensatory damages in the amount of \$107,014.00 and disgorgement of Respondents' compensation in the amount of \$45,300.00, together with punitive (treble) damages, loss of opportunity profits, costs, attorney's and consulting fees and other and further relief as the Panel deems proper.

Respondent D.E. Frey requested that the Statement of Claim be dismissed in its entirety.

Respondent CSC requested that the Statement of Claim be dismissed in its entirety plus other and further relief as the Panel deems just and proper. In its Cross-claim, CSC requested indemnification, including expenses and reasonable attorney's fees.

Respondent Cassidy requested that the Statement of Claim be dismissed in its entirety, costs of defending this action, reasonable attorney's fees, travel costs, and expungement of this matter from his Central Registration Depository ("CRD") records.

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

Respondent D.E. Frey did not appear at the evidentiary hearing. Upon review of the file and the representations made by/on behalf of the Claimants, the Panel determined that Respondent D.E. Frey 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 said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent CSC did not file with NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

Motion to Dismiss filed by Respondent CSC was never pursued by the Respondent, and therefore deemed moot by the Panel.

Motion to Strike Portions of the Statement of Claim filed by Respondent Cassedy was never pursued by the Respondent, and therefore deemed moot by the Panel.

Request for Expungement of this matter from his CRD records submitted by Respondent Cassedy was never pursued by the Respondent, and therefore deemed moot by the Panel.

At the final hearings, Claimants informed the Panel that that they had settled their claims against Respondent CSC and moved to conform the damages alleged in the Statement of Claim with the evidence. In addition, Claimants informed the Panel that the claim filed on behalf of S. Darden was withdrawn.

Upon further review of the Statement of Claim and the accounts involved, the Panel determined that Claimant B. Moeller was not a party to the accounts at issue in this proceeding.

The Panel considered Respondent D.E. Frey in default by not appearing at the final hearings. As a result, damages were assessed against them on Respondent CSC's Cross-claim.

During the final hearings, Respondent Cassedy requested an adjournment of these proceedings. The Panel denied Respondent Cassedy's request.

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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

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Respondents D.E. Frey and Cassedy are liable on the claims of suitability; misrepresentation; failure to supervise; violation of Florida Securities Act; and fraud and shall pay:

1. To R. Moeller compensatory damages in the amount of \$115,049.00, plus 6% interest per annum from June 16, 2000 until the date of payment of the Award;
2. To D. Darden compensatory damages in the amount of \$55,100.00, plus 6% interest per annum from June 16, 2000 until the date of payment of the Award;
3. To D. Darden SEP IRA compensatory damages in the amount of \$2,000.00, plus 6% interest per annum from June 16, 2000 until the date of payment of the Award.

Respondent Cassedy is liable and shall reimburse Claimants for the NASD initial claim filing fee in the amount of \$500.00.

Respondent D.E. Frey is liable and shall pay to CSC compensatory damages and attorney's fees, as provided for in the contract between D.E. Frey and CSC, in the total amount of \$26,278.35, plus 6% interest per annum from November 14, 2002 until the date of payment of the Award.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive (treble) damages and attorney's fees are denied. Respondent Cassedy's requests for attorney's fees are denied.

**FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

**Filing Fees**

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

Initial claim filing fee	= \$ 500.00
Cross-claim filing fee	= \$2,000.00

**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. Accordingly, CSC is a party to this dispute and was a member of the NASD at the time the following fees were assessed:

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

D.E. Frey is a party to this dispute, and was a member of the NASD until their termination on or about May 4, 2001. They continued to be an active participant in this matter; therefore the following fees were assessed:

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

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Balance Due NASD = \$ 0.00

Respondent D.E. Frey is solely liable for:

Member Fees = \$ 7,600.00

Total Fees = \$ 7,600.00

Less payments = \$ 0.00

Balance Due NASD = \$ 7,600.00

Respondent Cassidy is solely liable for:

Forum Fees = \$10,800.00

Total Fees = \$10,800.00

Less payments = \$ 0.00

Balance Due NASD = \$10,800.00

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

**ARBITRATION PANEL**

*Robert S. Bernard, Esq.*

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*Public Arbitrator, Presiding Chairperson*

*William E. Gottfried, Esq.*

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*Public Arbitrator*

*Sharon Lee Chernin*

-

*Non-Public Arbitrator*

**Concurring Arbitrators' Signatures**

/s/

Robert S. Bernard, Esq.

Public Arbitrator, Presiding Chairperson

1/9/03

Signature Date

/s/

William E. Gottfried, Esq.

Public Arbitrator

1/7/03

Signature Date

/s/

Sharon Lee Chernin

Non-Public Arbitrator

1/8/03

Signature Date

1/14/03

Date of Service (For NASD use only)

**NASD**

Arbitration No. 00-04490

**Award**

Balance Due NASD = \$ 0.00

Respondent D.E. Frey is solely liable for:

<u>Member Fees</u>	= \$ 7,600.00
<u>Total Fees</u>	= \$ 7,600.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD</u>	= \$ 7,600.00

Respondent Cassidy is solely liable for:

<u>Forum Fees</u>	= \$10,800.00
<u>Total Fees</u>	= \$10,800.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD</u>	= \$10,800.00

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

**ARBITRATION PANEL**

Robert S. Bernard, Esq.

William E. Gottfried, Esq.

Sharon Lee Chernin


-  
-  
-

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Robert S. Bernard, Esq.  
Public Arbitrator, Presiding Chairperson

1/9/03  
Signature Date

\_\_\_\_\_  
William E. Gottfried, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Sharon Lee Chernin  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD use only)

Jan. 7. 2003 3:45PM NASD

Arbitration No. 00-04490

Award

Balance Due NASD = \$ 0.00

Respondent D.E. Frey is solely liable for:

Member Fees = \$ 7,600.00Total Fees = \$ 7,600.00Less payments = \$ 0.00

Balance Due NASD = \$ 7,600.00

Respondent Cassedy is solely liable for:

Forum Fees = \$10,800.00Total Fees = \$10,800.00Less payments = \$ 0.00

Balance Due NASD = \$10,800.00

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

**ARBITRATION PANEL**

Robert S. Bernard, Esq.

Public Arbitrator, Presiding Chairperson

William E. Gottfried, Esq.

Public Arbitrator

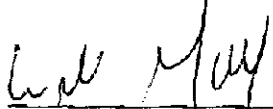
Sharon Lee Chernin

Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Robert S. Bernard, Esq.

Public Arbitrator, Presiding Chairperson



William E. Gottfried, Esq.

Public Arbitrator

Sharon Lee Chernin

Non-Public Arbitrator

Date of Service (For NASD use only)

Signature Date

1-7-03

Signature Date

Signature Date

Jan. 7. 2003 3:41PM NASD  
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No. 1540 P. 7/7

Balance Due NASD = \$ 0.00

Respondent D.E. Frey is solely liable for:

<u>Member Fees</u>	= \$ 7,600.00
<u>Total Fees</u>	= \$ 7,600.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD</u>	= \$ 7,600.00

Respondent Cassidy is solely liable for:

<u>Forum Fees</u>	= \$10,800.00
<u>Total Fees</u>	= \$10,800.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD</u>	= \$10,800.00

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

ARBITRATION PANEL

Robert S. Bernard, Esq.	-	Public Arbitrator, Presiding Chairperson
William E. Gottfried, Esq.	-	Public Arbitrator
Sharon Lee Chernin	-	Non-Public Arbitrator

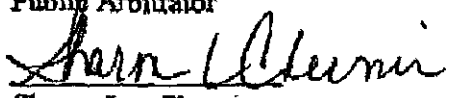
Concurring Arbitrators' Signatures

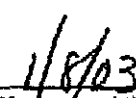
Robert S. Bernard, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

William E. Gottfried, Esq.  
Public Arbitrator

Signature Date

  
Sharon Lee Chernin  
Non-Public Arbitrator

  
Signature Date

Date of Service (For NASD use only)