

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

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*In the Matter of the Arbitration Between:*

Mark J. Schmerge, Claimant v. Bryan E. Pifer and Alpha-Omega Capital Corp.,  
Respondents.

Case Number: 00-04690

Hearing Site: Cincinnati, Ohio

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**REPRESENTATION OF PARTIES**

Claimant/Counterrespondent Mark J. Schmerge ("Schmerge"), hereinafter referred to as "Claimant", was represented by Daniel G. Spraul, Esquire, of Spraul, Veith & Doan, Cincinnati, Ohio.

Respondent Bryan E. Pifer ("Pifer") and Respondent/Counterclaimant Alpha-Omega Capital Corp. ("Alpha-Omega"), hereinafter collectively referred to as "Respondents", were represented by Joseph J. Dehner, Esquire, of Frost Brown Todd, LLC, Cincinnati, Ohio.

**CASE INFORMATION**

The Statement of Claim was filed on or about October 23, 2000.  
Claimant signed the Uniform Submission Agreement on October 6, 2000.

Respondents filed a Joint Statement of Answer on or about December 14, 2000.  
Respondent Alpha-Omega filed a Counterclaim along with the Answer.  
Respondent Brian E. Pifer signed the Uniform Submission Agreement on his own behalf and on behalf of Respondent Alpha-Omega on October 27, 2000.

Claimant filed his Reply to Respondents' Counterclaim on or about February 22, 2001.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract, misrepresentation, breach of fiduciary duty, recklessness, malice, ambiguity, adhesion and unenforceability. These claims involved a Sales Representative Agreement between Claimant and Respondents.

Respondents denied the allegations set forth in the Statement of Claim. Respondent Alpha-Omega asserted the following allegations in its Counterclaim: failure to pay certain fees or charge-backs and breach of contract with respect to the disclosure of confidential information or trade secrets.

Claimant denied the allegations set forth in the Counterclaim in their entirety.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$49,210.00
Punitive Damages	\$49,210.00
Attorneys' Fees	unspecified
Other Costs	unspecified

Claimant also requested interest at 10% and an order directing a block transfer.

Respondents requested that the claims against them be dismissed in their entirety. In its Counterclaim, Respondent Alpha-Omega requested:

Compensatory Damages	\$ 2,718.01
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### **AWARD**

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

1. Respondent Alpha-Omega Capital Corp. is solely liable for, and shall pay to Claimant Mark J. Schmerge, the sum of \$33,502.15 (Thirty-three Thousand Five Hundred Two Dollars and Fifteen Cents) as Compensatory Damages.
2. Respondent Alpha-Omega Capital Corp. is solely liable for, and shall pay to Claimant Mark J. Schmerge, Interest at the Ohio legal rate on the amount awarded in paragraph 1 above. The interest shall accrue from April 1, 2000, until the date of payment of the award.
3. Claimant/Counterrespondent Mark J. Schmerge is solely liable for, and shall pay to Respondent/Counterclaimant Alpha-Omega Capital Corp., the sum of \$222.58 (Two Hundred Twenty-two Dollars and Fifty-eight Cents) as Compensatory Damages, with no Interest awarded thereon.
4. Respondents Alpha-Omega Capital Corp. and Bryan E. Pifer shall reimburse Claimant's Initial Filing Fee of \$225.00 (Two Hundred Twenty-five Dollars and No Cents). This reimbursement is assessed jointly and severally, and shall be paid directly to Claimant.

5. All other claims asserted by and against Respondent Bryan E. Pifer are dismissed.
6. Except as otherwise specified herein, each party shall bear its own costs and attorneys' fees.
7. Any and all relief not specifically addressed herein (including punitive [treble] damages) is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain the following non-refundable filing fees:

Initial claim filing fee	= \$ 225
Counterclaim filing fee	= \$ 400

#### **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 Alpha-Omega:

Member surcharge	= \$1,000
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$1,500

#### **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 - single arbitrator x \$450	= \$ 450
Pre-hearing conference: May 8, 2001	1 session
One (1) Pre-hearing session - full panel x \$750	= \$ 750
Pre-hearing conference: March 21, 2001	1 session
Three (3) Hearing sessions x \$750	= \$2,250
Hearing Date: August 14, 2001	3 sessions
Total Forum Fees	= \$3,450

The Panel has assessed one half of the forum fees incurred in this arbitration (\$1,725.00) to Claimant, and the other half of the forum fees incurred in this arbitration (\$1,725.00) to Respondents Alpha-Omega and Pifer, jointly and severally.

NASD Dispute Resolution, Inc.  
Arbitration Case # 00-04690  
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Fee Summary

1. Claimant, Mark J. Schmerge, is solely liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$1,725.00</u>
Total Fees	= \$1,950.00
<u>Less payments</u>	<u>= \$ 975.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 975.00

2. Respondent Alpha-Omega Capital Corp. be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 400.00
<u>Member Fees</u>	<u>= \$3,100.00</u>
Total Fees	= \$3,500.00
<u>Less payments</u>	<u>= \$1,775.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,725.00

3. Respondents, Alpha-Omega Capital Corp. and Bryan E. Pifer, be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$1,725.00</u>
Total Fees	= \$1,725.00
<u>Less payments</u>	<u>= \$ 0</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,725.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Joel K. Jensen, Esq.

Christopher Daniel Gryzen

Alex H. Keller

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Public Arbitrator, Presiding Chair

Non-Public Arbitrator

Public Arbitrator

  
Joel K. Jensen, Esq.

Public Arbitrator, Presiding Chair

9/26/01

Signature Date

Christopher Daniel Gryzen

Non-Public Arbitrator

Signature Date

Alex H. Keller

Public Arbitrator

Signature Date

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

NASD Dispute Resolution, Inc.  
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Total Fees	= \$1,725.00
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$1,725.00

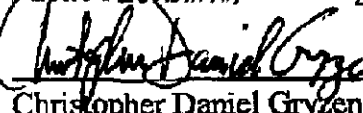
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### ARBITRATION PANEL

Joel K. Jensen, Esq.	-	Public Arbitrator, Presiding Chair
Christopher Daniel Gryzen	-	Non-Public Arbitrator
Alex H. Keller	-	Public Arbitrator

Joel K. Jensen, Esq.  
 Public Arbitrator, Presiding Chair

Signature Date

  
 Christopher Daniel Gryzen  
 Non-Public Arbitrator

9-25-01  
 Signature Date

Alex H. Keller  
 Public Arbitrator

Signature Date

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NASD Dispute Resolution, Inc.  
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**ARBITRATION PANEL**

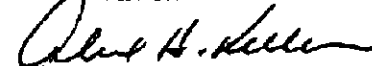
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Christopher Daniel Gryzen	-	Non-Public Arbitrator
Alex H. Keller	-	Public Arbitrator

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Public Arbitrator, Presiding Chair

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