

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

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In the Matter of the Arbitration Between

Name of Claimant

Marc S. Goldberg

Case No. 00-05167

Name of Respondent

Samuel J. Augustine

Hearing Site: Philadelphia, PA

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**REPRESENTATION OF PARTIES**

Claimant, Marc S. Goldberg ("Goldberg"), hereinafter referred to as "Claimant": Sol H. Weiss, Esq., Anapol, Schwartz, Weiss, Cohan & Feldman, Philadelphia, PA.

Respondent, Samuel J. Augustine ("Augustine"), hereinafter referred to as "Respondent": Jay A. Dubow, Esq., Wolf Block Schorr & Solis-Cohen, LLP, Philadelphia, PA.

**CASE INFORMATION**

Statement of Claim filed on: January 8, 2001

Claimant signed the Uniform Submission Agreement: November 15, 2000

Statement of Answer filed by Respondent on: April 4, 2001

Respondent signed the Uniform Submission Agreement: April 4, 2001

Respondent filed a Motion to Dismiss Claimant's Statement of Claim on: April 4, 2001

Claimant filed an Answer to Respondent's Motion to Dismiss on: April 16, 2001

Respondent filed a Reply Brief in Support of His Motion to Dismiss on: June 11, 2001

**CASE SUMMARY**

Claimant asserted, among other things, the following causes of action: negligence, and failure to supervise. Claimant alleged that Respondent, in his capacity as a supervisor at CPA Advisors Network, Inc. (CAN) failed to supervise a principal of CAN who conducted unauthorized transfers from Claimant's account and Claimant's clients' accounts. This matter involved the defalcation on Convertible Debentures.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to

state a claim upon which relief can be granted; Claimant lacks standing; failure to establish jurisdiction; and, that Respondent owes no fiduciary duty to Claimant.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$ 266,125
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondent requested that Claimant's claim be dismissed in its entirety, that Respondent be granted costs and disbursements, including attorneys fees, incurred in defending against this matter, and any other relief as the panel deems just and proper.

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

On October 22, 2001, the panel denied Respondent's Motion to Dismiss in its entirety.

At the hearing on the merits, Claimant withdrew his claim against Respondent with prejudice, leaving as the only issue Respondent's request that he be awarded attorneys' fees.

### **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. That Respondent's request for \$38,443.53 in attorneys fees is denied in its entirety;
2. The parties shall bear their respective costs and expenses, including attorneys fees, except as Fees are specifically addressed below; and,
3. Any request for relief not specifically addressed herein is denied in its entirety.

### **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	= \$ 300
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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 that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is the Respondent's firm.

Member surcharge	= waived
Pre-hearing process fee	= waived
Hearing process fee	= waived

### **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 arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$ 1,125	= \$ 1,125
Pre-hearing conference: October 22, 2001 1 session	

Two (2) Hearing sessions x \$ 1,125	= \$ 2,250
Hearing Date: December 19, 2001 2 sessions	

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Total Forum Fees	= \$ 3,375
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The panel has assessed \$ 1,687.50 of the forum fees to Claimant.

The panel has assessed \$ 1,687.50 of the forum fees to Respondent.

### **Fee Summary**

Claimant, Marc S. Goldberg, is assessed and shall pay:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,687.50

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Total Fees	= \$ 1,987.50
Less payments	= \$ 1,425.00

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Balance Due NASD Dispute Resolution, Inc.	= \$ 562.50
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Respondent, Samuel J. Augustine, is assessed and shall pay:

Forum Fees	= \$ 1,687.50
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Total Fees	= \$ 1,687.50
Less payments	= \$ 00

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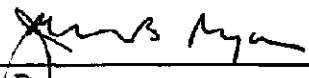
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,687.50
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All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

John B. Ryan	-	Non-Public Arbitrator, Presiding Chairperson
Diane Ciccone, Esq.	-	Public Arbitrator, Panelist
Richard E. Lerner, Esq.	-	Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**

  
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John B. Ryan  
Non-Public Arbitrator, Presiding Chairperson

1.14.02  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Diane Ciccone, Esq.  
Public Arbitrator, Panelist

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

\_\_\_\_\_  
Richard E. Lerner, Esq.  
Public Arbitrator, Panelist

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

January 24, 2002  
\_\_\_\_\_  
Date of Service (For NASD-Dispute Resolution office use only)

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John B. Ryan	-	Non-Public Arbitrator, Presiding Chairperson
Diane Ciccone, Esq.	-	Public Arbitrator, Panelist
Richard E. Lerner, Esq.	-	Public Arbitrator, Panelist

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Diane Ciccone, Esq.  
Public Arbitrator, Panelist

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Signature Date

Richard E. Lerner  
Richard E. Lerner, Esq.  
Public Arbitrator, Panelist

01/12/02  
Signature Date

January 24, 2002  
Date of Service (For NASD-Dispute Resolution office use only)