

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

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In the Matter of the Arbitration Between:

Donald V. Healy, Claimant v. Fletcher and Faraday, Inc., Ben L. Wilson, Kirk J. Graham, and Yury Sapir, Respondents

Case Number: 00-05561

Hearing Site: Los Angeles, California

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**REPRESENTATION OF PARTIES**

For Claimant:

Steven B. Caruso, Esq.  
Andrew J. Stoltman, Esq.  
Maddox, Koeller, Hargett &  
Caruso  
New York, New York

For Respondent Fletcher and Faraday, Inc.:

Alex Zonis  
Fletcher and Faraday, Inc.  
West Hempstead, New York

For Respondent Ben L. Wilson:

Ben L. Wilson  
In Pro Per  
Flushing, New York

For Respondent Kirk J. Graham:

Kirk J. Graham  
In Pro Per  
West Hempstead, New York

For Respondent Yury Sapir:

Yury Sapir  
In Pro Per  
Brooklyn, New York

**CASE INFORMATION**

Statement of Claim filed: December 15, 2000

Claimant's Uniform Submission Agreement signed: November 28, 2000

Joint Statement of Answer filed by Respondent Fletcher and Faraday, Inc., Kirk J. Graham, and Yury Sapir: August 3, 2001

### **CASE SUMMARY**

Claimant alleged fraud, negligence, breach of contract, breach of fiduciary duty, and violations of the Securities Exchange Act of 1934, NASD Rules of Conduct, California Corporate Securities Law, California Consumer Legal Remedies Act, California Business & Professions Code, and California Welfare & Institutions Code. The dispute involved the purchase and/or sale of Dega Technology, Inc. and Low Trade, Inc. securities.

Respondents Fletcher and Faraday, Inc., Kirk J. Graham, and Yury Sapir denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

Respondent Ben L. Wilson did not file a Statement of Answer.

### **RELIEF REQUESTED**

Claimant requested \$100,262.00 in compensatory damages and \$375,000.00 in punitive damages. Claimant also sought reimbursement for attorney's fees and arbitration costs.

Respondents Fletcher and Faraday, Inc., Kirk J. Graham, and Yury Sapir requested dismissal of the Claimant's Statement of Claim in its entirety, and sought reimbursement for arbitration costs.

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

Upon review of the file and the representations made on behalf of the Claimant, the undersigned Panel determined that Respondents Fletcher and Faraday, Inc., Ben L. Wilson, and Yury Sapir were 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 the NASD Code of Arbitration Procedure (the "Code").

Respondents Fletcher and Faraday, Inc., Kirk J. Graham, and Yury Sapir did not file with the NASD Dispute Resolution, Inc. properly executed submission agreements, but are required to submit to arbitration pursuant to the Code, and having answered the claim are bound by the determination of the Panel on all issues submitted.

Respondent Ben L. Wilson did not file with the NASD Dispute Resolution, Inc. a properly executed submission agreement, but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

The parties 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, testimony, and evidence presented at the hearing, and the post-hearing submission, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Fletcher and Faraday, Inc. is liable to and shall pay Claimant \$7,750.00 in compensatory damages.
- 2) Respondent Ben L. Wilson is liable to and shall pay Claimant \$43,400.00 in compensatory damages.
- 3) Respondent Kirk J. Graham is liable to and shall pay Claimant \$3,100.00 in compensatory damages.
- 4) Respondent Yury Sapir is liable to and shall pay Claimant \$7,750.00 in compensatory damages.
- 5) Respondent Ben L. Wilson is liable to and shall pay Claimant \$25,000.00 in punitive damages pursuant to California Civil Code Section 3294.
- 6) Respondent Fletcher and Faraday, Inc. is liable to and shall pay Claimant \$2,558.00 in attorney's fees.
- 7) Respondent Ben L. Wilson is liable to and shall pay Claimant \$14,322.00 in attorney's fees.
- 8) Respondent Kirk J. Graham is liable to and shall pay Claimant \$1,023.00 in attorney's fees.
- 9) Respondent Yury Sapir is liable to and shall pay Claimant \$2,558.00 in attorney's fees.
- 10) Respondent Fletcher and Faraday, Inc. is liable to and shall pay Claimant \$312.50 in arbitration costs.
- 11) Respondent Ben L. Wilson is liable to and shall pay Claimant \$1,750.00 in arbitration costs.
- 12) Respondent Kirk J. Graham is liable to and shall pay Claimant \$125.00 in arbitration costs.
- 13) Respondent Yury Sapir is liable to and shall pay Claimant \$312.50 in arbitration costs.
- 14) Except as noted above, the parties shall bear their respective costs, including attorney's fees.
- 15) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Fletcher and Faraday, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$ 2,500.00
<b>Total Member Fees</b>	<b>= \$ 4,600.00</b>

#### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel. The following fees are assessed:

2 Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-hearing conferences: July 23, 2001	1 session
July 26, 2001	1 session

1 Hearing session @ \$1,125.00/session	= \$ 1,125.00
Hearing: October 10, 2001	1 session

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<b>Total Forum Fees</b>	<b>= \$ 3,375.00</b>
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1. The Panel assessed \$ 675.00 of the forum fees to Claimant Donald V. Healy.
2. The Panel assessed \$ 675.00 of the forum fees to Respondent Fletcher and Faraday, Inc.
3. The Panel assessed \$ 675.00 of the forum fees to Respondent Ben L. Wilson.
4. The Panel assessed \$ 675.00 of the forum fees to Respondent Kirk J. Graham.

5. The Panel assessed \$ 675.00 of the forum fees to Respondent Yury Sapir.

**Fee Summary**

1. Claimant Donald V. Healy is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 675.00
Total Fees	= \$ 975.00
<u>Less payments</u>	= \$(1,425.00)
<b>Refund Due Claimant</b>	<b>= \$ (450.00)</b>
  
2. Respondent Fletcher and Faraday, Inc. is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
<u>Forum Fees</u>	= \$ 675.00
Total Fees	= \$ 5,275.00
<u>Less payments</u>	= \$(1,000.00)
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 4,275.00</b>
  
3. Respondent Ben L. Wilson is charged with the following fees and costs:

<u>Forum Fees</u>	= \$ 675.00
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 675.00</b>
  
4. Respondent Kirk J. Graham is charged with the following fees and costs:

<u>Forum Fees</u>	= \$ 675.00
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 675.00</b>
  
5. Respondent Yury Sapir is charged with the following fees and costs:

<u>Forum Fees</u>	= \$ 675.00
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 675.00</b>

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

**ARBITRATION PANEL**

Harris J. Howard	-	Public Arbitrator, Presiding Chair
Harry J. Krebs	-	Public Arbitrator
Dorothy B. Strackbein, CFP	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Harris J. Howard  
Chair, Public Arbitrator

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Signature Date

  
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Harry J. Krebs  
Public Arbitrator

10/24/01  
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Signature Date

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Dorothy B. Strackbein, CFP  
Non-Public Arbitrator

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

10/25/01  
\_\_\_\_\_  
Date of Service

ARBITRATION PANEL

Harris J. Howard	-	Public Arbitrator, Presiding Chair
Harry J. Krebs	-	Public Arbitrator
Dorothy B. Strackbein, CFP	-	Non-Public Arbitrator


Concurring Arbitrators' Signatures

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Harris J. Howard  
Chair, Public Arbitrator

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Signature Date

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Harry J. Krebs  
Public Arbitrator

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

  
Dorothy B. Strackbein, CFP  
Non-Public Arbitrator

10/27/01  
Signature Date

10/29/01  
Date of Service