

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Richard S. Breiman, Leslie S. Breiman, The Breiman Family Trust, East Bay Medical Imaging Associates & Medical Group, Inc. DBPP fbo Richard S. Breiman, Richard Breiman IRA Rollover and David Stamm IRA (deceased) fbo Leslie Breiman, Claimants v. Round Hill Securities, Inc., Hotovec, Pomeranz & Co., Inc., Louis J. Bacher, Jr., Robert J. Holub, Robert S. Minka, Gerald H. Burchard, Jr., and Jeffrey Pomeranz, Respondents

Case Number: 01-00254

Hearing Site: San Francisco, California

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**REPRESENTATION OF PARTIES**

For Claimants:

Cary S. Lapidus, Esq.  
Law Offices of Cary S. Lapidus  
San Francisco, California

For Respondents Round Hill Securities, Inc.,  
Robert J. Holub, Robert S. Minka, and  
Gerald H. Burchard, Jr.:

Gilbert R. Serota, Esq.  
Howard Rice Nemerovski Canady  
Falk & Rabkin  
San Francisco, California

For Respondents Hotovec, Pomeranz & Co., Inc.  
and Jeffrey Pomeranz:

Philip A. McLeod, Esq.  
Zara Santos, Esq.  
Keesel, Young & Logan  
San Francisco, California

For Respondent Louis J. Bacher, Jr.:

Michael J. Abbott, Esq.  
John L. Erikson, Jr.  
Jennifer A. Zolezzi, Esq.  
Jones, Bell, Abbott, Fleming & Fitzgerald  
Los Angeles, California  
and  
David L. Casterline, Esq.  
Law Offices of David L. Casterline  
Manhattan Beach, California

### **CASE INFORMATION**

Statement of Claim filed: January 17, 2001

Joint Statement of Answer filed by Respondents Round Hill Securities, Inc., Robert J. Holub,  
Robert S. Minka and Gerald Burchard: March 20, 2001

Joint Statement of Answer filed by Respondents Hotovec, Pomeranz & Co., Inc. and Jeffrey  
Pomeranz: March 19, 2001

Statement of Answer filed by Respondent Louis J. Bacher, Jr.: April 11, 2002

Claimants' Joint Uniform Submission Agreement signed: January 5, 2000

Respondent Round Hill Securities, Inc.'s Uniform Submission Agreement signed:  
January 31, 2001

Respondent Hotovec, Pomeranz & Co., Inc.'s Uniform Submission Agreement signed:  
March 19, 2001

Respondent Robert J. Holub's Uniform Submission Agreement signed: February 7, 2001

Respondent Robert S. Minka's Uniform Submission Agreement signed: February 7, 2001

Respondent Gerald H. Burchard, Jr.'s Uniform Submission Agreement signed: January 31, 2001

Respondent Jeffrey Pomeranz's Uniform Submission Agreement signed: August 16, 2001

Respondent Louis J. Bacher, Jr.'s Uniform Submission Agreement: None filed

### **CASE SUMMARY**

Claimants alleged breach of fiduciary duty, negligence, negligence per se, negligent representation, common law fraud, breach of contract, respondeat superior, violations of California Corporations Code §§ 25210 and 25410, and violation of NASD Conduct Rules 2310, 2210, 2110, 2120, 3010 and 1031 involving unspecified securities.

Respondents each denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

**RELIEF REQUESTED**

Claimants requested \$3,000,000.00 in compensatory damages, \$6,000,000.00 in punitive damages and costs, including attorney's fees.

Respondents each requested dismissal of the Claimant's Statement of Claim in its entirety and reimbursement of arbitration costs.

**OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Louis J. Bacher, Jr. did not file with the NASD Dispute Resolution a properly executed submission agreement 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.

During the Hearing, the following motions were brought and subsequently and ruled on by the Panel:

1. Respondent Gerald H. Burchard, Jr.'s Motion to Dismiss was granted.
2. Respondent Robert S. Minka's Motion to Dismiss was denied.
3. Respondent Round Hill Securities, Inc.'s Motion to Strike certain testimony and exhibits was denied.

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, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents Round Hill Securities, Inc. and Louis J. Bacher, Jr. are jointly and severally liable to and shall pay Claimants the sum of \$1,447,298.00 in compensatory damages.
- 2) Respondents Round Hill Securities, Inc. and Louis J. Bacher, Jr. are jointly and severally liable to and shall pay Claimants interest in the amount of 5.0% per annum, compounded annually, on \$1,447,298.00 from September 1, 1999 until the date compensatory damages are paid to Claimant.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) 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 received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 600.00
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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 that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Round Hill Securities, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 3,000.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$ 5,000.00
<b>Total Member Fees</b>	<b>= \$ 8,600.00</b>

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 that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Hotovec, Pomeranz & Co., Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 3,000.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$ 5,000.00
<b>Total Member Fees</b>	<b>= \$ 8,600.00</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 Chair or Panel. The following fees are assessed:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session = \$ 450.00

Pre-hearing conference:	December 18, 2001	1 session
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Two (2) Pre-hearing conference session(s) with the Panel @ \$1,200.00/session = \$ 2,400.00

Pre-hearing conferences:	September 10, 2001	1 session
	March 11, 2002	1 session

Thirty (30) Hearing sessions @ \$1,200.00/session = \$36,000.00

Hearings:

March 6, 2002	2 sessions
March 7, 2002	2 sessions
March 8, 2002	2 sessions
April 16, 2002	2 sessions
April 17, 2002	2 sessions
April 18, 2002	2 sessions
June 3, 2002	2 sessions
June 4, 2002	2 sessions
June 5, 2002	2 sessions
June 6, 2002	2 sessions
June 7, 2002	2 sessions
August 7, 2002	2 sessions
August 8, 2002	2 sessions
August 9, 2002	2 sessions
August 12, 2002	2 sessions

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**Total Forum Fees** = \$38,850.00

1. The Panel assessed \$12,950.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$12,950.00 of the forum fees to Respondent Round Hill Securities, Inc.
3. The Panel assessed \$12,950.00 of the forum fees to Respondent Louis J. Bacher, Jr.

**Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimants requested copies of hearing tapes: =\$ 150.00

Additional expenses related to Claimant's request to change venue,  
assessed jointly and severally to Claimants: =\$ 359.02

**Fee Summary**

1. Claimants are jointly and severally charged with the following fees and costs:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$12,950.00
Administrative Costs	= \$ 509.02
Total Fees	= \$14,059.02
Less payments	= \$( 1,950.00)
Balance Due NASD Dispute Resolution	= \$12,109.02

2. Respondent Round Hill Securities, Inc. is charged with the following fees and costs:

Member Fees	= \$ 8,600.00
Forum Fees	= \$12,950.00
Total Fees	= \$21,550.00
Less payments	= \$( 8,600.00)
Balance Due NASD Dispute Resolution	= \$12,950.00

3. Respondent Hotovec, Pomeranz & Co., Inc. is charged with the following fees and costs:

Member Fees	= \$ 8,600.00
Total Fees	= \$ 8,600.00
Less payments	= \$( 8,600.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondent Louis J. Bacher, Jr. is charged with the following fees and costs:

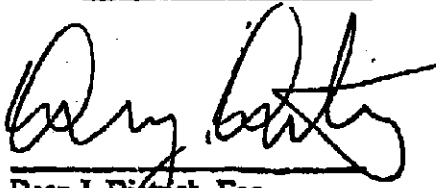
Forum Fees	= \$12,950.00
Total Fees	= \$12,950.00
Less payments	= \$( 0.00)
Balance Due NASD Dispute Resolution	= \$12,950.00

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

**ARBITRATION PANEL**

Dean J. Dietrich, Esq.	•	Public, Presiding Chair
Laurie "Moon" S. Meyer	-	Public Arbitrator
Carlos Richard Mangum	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Dean J. Dietrich, Esq.  
Chair, Public Arbitrator

Sept. 17, 2002  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Laurie "Moon" S. Meyer  
Public Arbitrator

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

\_\_\_\_\_  
Carlos Richard Mangum  
Non-Public Arbitrator

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

9/17/02  
\_\_\_\_\_  
Date of Service



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Laurie "Moon" S. Meyer	-	Public Arbitrator
Carlos Richard Mangum	-	Non-Public Arbitrator

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Dean J. Dietrich, Esq.  
Chair, Public Arbitrator

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

  
Laurie "Moon" S. Meyer  
Public Arbitrator

9/15/02  
Signature Date

\_\_\_\_\_  
Carlos Richard Mangum  
Non-Public Arbitrator

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Signature Date

9/17/02  
Date of Service

NASD Dispute Resolution  
Arbitration No. 01-00254  
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Public Arbitrator  
Non-Public Arbitrator

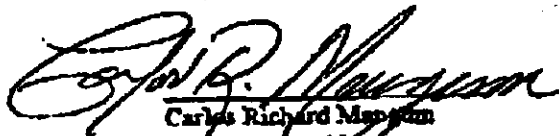
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Dean J. Dietrich, Esq.  
Chair, Public Arbitrator

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

Laurie "Moon" S. Meyer  
Public Arbitrator

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

  
Carlos Richard Mangum  
Non-Public Arbitrator

9/13/02  
Signature Date

9/13/02  
Date of Service