

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

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In the Matter of the Arbitration Between

Name of Claimant

The Caplan Family Trust

Case No. 01-00670

Names of Respondents

Louis Joseph Bacher, Jr.  
Hotovec Pomeranz & Co., Inc.

Hearing Site: Atlanta, Georgia

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**REPRESENTATION OF PARTIES**

For The Caplan Family Trust (the "Trust"), hereinafter referred to as "Claimant": Robert C. Port, Esq., Hassett Cohen Goldstein Port & Gottlieb, LLP, Atlanta, Georgia.

For Louis Joseph Bacher, Jr. ("Bacher") and Hotovec Pomeranz & Co., Inc. ("Hotovec"), hereinafter collectively referred to as "Respondents": Samuel Y. Edgerton, III, Esq. and Jon C. Furgison, Esq., Nash & Edgerton, Hermosa Beach, California.

**CASE INFORMATION**

Statement of Claim filed on or about: February 7, 2001.

Letter dated February 23, 2001 from Robert C. Port, Esq. to NASD Dispute Resolution, Inc. filed.

Claimant signed the Uniform Submission Agreement: January 31, 2001.

Statement of Answer filed by Respondents on or about: May 4, 2001.

Respondent Bacher signed the Uniform Submission Agreement: June 3, 2001.

Respondent Hotovec signed the Uniform Submission Agreement: May 17, 2001.

**CASE SUMMARY**

Claimant asserted the following causes of action: securities fraud; common law fraud; breach of fiduciary duty; breach of regulatory duties; violations of law and regulations with respect to margin trading; failure to supervise; negligence; and, joint and several liability. Claimant alleged the causes of action relate to an unauthorized margin trade of 1000 shares of Superconductor Technologies, Inc. effected in the Trust's account by an unlicensed individual who Respondents knew, or should have known, was representing himself to clients of Hotovec as a properly licensed

securities broker.

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

### **RELIEF REQUESTED**

Claimant requested actual damages, interest, attorneys' fees, costs and expenses, punitive damages, and such other and further damages as the panel deemed just and appropriate in the sum of between \$50,000.00 and \$100,000.00.

Respondents requested that Claimant take nothing by way of its Statement of Claim; that Respondents be awarded their costs and reasonable attorneys' fees; and, that Respondents be afforded such other and further relief as the arbitrators deemed just and proper.

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

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, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondents are liable, jointly and severally, and shall pay to Claimant the sum of \$78,091.00 plus interest at the rate of 7% per annum from February 27, 2002 until the date of payment of the Award.

Any and all relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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 | = \$225.00 |
|--------------------------|------------|

### **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 a party.

|                         |              |
|-------------------------|--------------|
| Member surcharge        | = \$1,000.00 |
| Pre-hearing process fee | = \$600.00   |
| Hearing process fee     | = \$1,500.00 |

### **Adjournment Fees**

Adjournments requested during these proceedings:

There were no adjournments requested during these proceedings.

### **Forum Fees and Assessments**

The arbitrator 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 arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

|  |              |
|--|--------------|
| Two Pre-hearing sessions with Panel x \$750.00 | = \$1,500.00 |
| Pre-hearing conferences: September 11, 2001    | 1 session    |
| January 10, 2002                               | 1 session    |
| Six Hearing sessions x \$750.00                | = \$4,500.00 |
| Hearing Date(s): February 25, 2002             | 2 sessions   |
| February 26, 2002                              | 2 sessions   |
| February 27, 2002                              | 2 sessions   |

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|                  |              |
|------------------|--------------|
| Total Forum Fees | = \$6,000.00 |
|------------------|--------------|

The panel has assessed the total forum fees of \$6,000.00 to Respondents, jointly and severally.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

### **Fee Summary**

Claimant be and hereby is solely liable for:

|   |            |
|---|------------|
| Initial Filing Fee                        | = \$225.00 |
| <hr/>                                     |            |
| Total Fees                                | = \$225.00 |
| Less payments                             | = \$225.00 |
| <hr/>                                     |            |
| Balance Due NASD Dispute Resolution, Inc. | = \$0.00   |

Respondent Hotovec be and hereby is solely liable for:

|   |              |
|---|--------------|
| Member Fees                               | = \$3,100.00 |
| <hr/>                                     |              |
| Total Fees                                | = \$3,100.00 |
| Less payments                             | = \$1,600.00 |
| <hr/>                                     |              |
| Balance Due NASD Dispute Resolution, Inc. | = \$1,500.00 |

Respondents be and hereby are jointly and severally liable for:

|   |              |
|---|--------------|
| Forum Fees                                | = \$6,000.00 |
| <hr/>                                     |              |
| Total Fees                                | = \$6,000.00 |
| Less payments                             | = \$0.00     |
| <hr/>                                     |              |
| Balance Due NASD Dispute Resolution, Inc. | = \$6,000.00 |

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

**ARBITRATION PANEL**

|                |   |                                    |
|----------------|---|------------------------------------|
| Timothy Keim   | - | Public Arbitrator, Presiding Chair |
| Karla Y. Vogel | - | Public Arbitrator                  |
| Merle I. Hoch  | - | Non-Public Arbitrator              |

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/S/\_\_\_\_\_  
Timothy Keim  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_/S/\_\_\_\_\_  
Karla Y. Vogel  
Public Arbitrator

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



Initial Filing Fee = \$225.00

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Total Fees = \$225.00

Less payments = \$225.00

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Balance Due NASD Dispute Resolution, Inc. = \$0.00

Respondent Hotovec be and hereby is solely liable for:

Member Fees = \$3,100.00

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Total Fees = \$3,100.00

Less payments = \$1,600.00

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Balance Due NASD Dispute Resolution, Inc. = \$1,500.00

Respondents be and hereby are jointly and severally liable for:

Forum Fees = \$6,000.00

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Total Fees = \$6,000.00

Less payments = \$0.00

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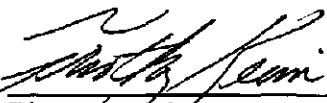
Balance Due NASD Dispute Resolution, Inc. = \$6,000.00

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**Concurring Arbitrators' Signatures**



Timothy Keim  
Public Arbitrator, Presiding Chair

3/5/02  
Signature Date

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Karla Y. Vogel  
Public Arbitrator

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Signature Date

Initial Filing Fee = \$225.00

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Total Fees = \$225.00

Less payments = \$225.00

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Balance Due NASD Dispute Resolution, Inc. = \$0.00

Respondent Hotovec be and hereby is solely liable for:

Member Fees = \$3,100.00

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Total Fees = \$3,100.00

Less payments = \$1,600.00

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Balance Due NASD Dispute Resolution, Inc. = \$1,500.00

Respondents be and hereby are jointly and severally liable for:

Forum Fees = \$6,000.00

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Total Fees = \$6,000.00

Less payments = \$0.00

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Balance Due NASD Dispute Resolution, Inc. = \$6,000.00

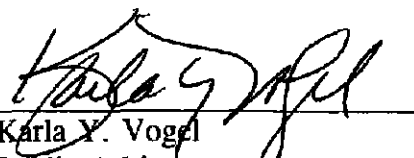
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Public Arbitrator, Presiding Chair

  
Karla Y. Vogel  
Public Arbitrator

Signature Date

  
Signature Date

