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

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In the Matter of the Arbitration Between:

Names of the Claimants

Richard Conti  
Barbara Conti

Case Number: 01-01169

Names of the Respondents

Preferred Securities Group, Inc.  
Theodore Kaprel Malkasian

Hearing Site: Tampa, Florida

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Richard Conti ("RC") and Barbara Conti ("BC"), hereinafter collectively referred to as "Claimants":  
Stephen D. Spivey, Esq., Law Offices of Stephen D. Spivey, P.A., Ocala, Florida, and Robert E. Landt, Esq.,  
Landt and Landt, Ocala, Florida.

For Respondent Preferred Securities, Inc. ("PSI"): Victor Lessinger, PSI Custodian of Records, Coral Springs,  
Florida.

Respondent Theodore Kaprel Malkasian ("Malkasian") appeared pro se.

**CASE INFORMATION**

Statement of Claim filed on or about: March 6, 2001.

Claimants signed the Uniform Submission Agreement: February 21, 2001.

Statement of Answer and Motion to Dismiss filed by Respondent Malkasian on or about: May 21, 2001.

Respondent PSI did not file a Statement of Answer or executed Uniform Submission Agreement.

Respondent Malkasian did not file an executed Uniform Submission Agreement.

Letter with attachments dated June 21, 2003 from Victor Lessinger to NASD Dispute Resolution filed.

Copy of Claimants' General Release filed by Respondent PSI on or about: September 5, 2003.

Motion for Default Judgment against Respondent PSI and Supporting Memorandum of Law filed by Claimants  
on or about: September 23, 2003.

Motion for Re-hearing on Motion for Default Judgment against Respondent PSI filed by Claimants on or about:  
December 4, 2003.

Response to Motion for Re-hearing on Motion for Default Judgment against Respondent PSI filed by  
Respondent PSI on or about: December 5, 2003.

### **CASE SUMMARY**

Claimants asserted the following causes of action: violations of the Florida Securities Investor Protection Act, the Securities Act of 1934, the Securities Exchange Act of 1933, state and federal laws for fraud, and NASD rules; misrepresentation; unsuitability; negligent supervision; omission of fact; breach of fiduciary duty; and failure to conduct due diligence on securities offered to Claimants. The causes of action relate to the purchase in Claimants' account of a U.S. Automobile Acceptance 1995-1, Inc. promissory note.

Unless specifically admitted in his Answer, Respondent Malkasian denied the allegations made in the Statement of Claim and asserted an affirmative defense.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$18,541.08, interest at the legal rate, plus all costs for bringing this action, including a reasonable attorney's fee.

Respondent Malkasian requested to be dismissed from this arbitration.

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

Respondent PSI did not appear at the evidentiary hearing. Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrator ("Arbitrator") determined that Respondent PSI has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Respondent PSI present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

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

Respondent Malkasian did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code, and having answered the claim, is bound by the determination of the Arbitrator on all issues submitted.

On or about April 11, 2001, Respondent PSI filed in the Circuit Court of the 15<sup>th</sup> Judicial Circuit in and for Palm Beach County, Florida ("Circuit Court") a Motion for Temporary Stay of Arbitration. In response thereto, Claimants filed in Circuit Court a Motion to Dismiss for Lack of Subject Matter Jurisdiction, or alternatively, a Motion for Change of Venue. Thereafter, the parties filed with the Circuit Court a Stipulated Order providing for entry of an order temporarily staying NASD Dispute Resolution's arbitration proceeding until such time as the Circuit Court issued its rulings on the motions filed. On May 14, 2001, the Circuit Court issued an Order for Temporary Stay of Arbitration. On August 15, 2002, the Circuit Court issued an Order Dismissing Respondent PSI's Case For Lack of Prosecution. On or about April 17, 2003, Claimants filed with NASD Dispute

Resolution a copy of the Circuit Court's Order Dismissing Case for Lack of Prosecution, and requested that the arbitration be placed back on NASD Dispute Resolution's arbitration docket.

On or about November 20, 2003, Claimants filed with NASD Dispute Resolution a Notice of Dismissal with Prejudice of Respondent Malkasian from this matter.

On or about September 23, 2003, Claimants filed a Motion for Default Judgment against Respondent PSI which asserted that Respondent PSI failed to file any responsive pleadings in this action. Respondent PSI did not file a response. On November 24, 2003, the Arbitrator issued a ruling denying Claimants' Motion for Default against Respondent PSI.

On December 13, 2003, the Arbitrator issued a ruling denying Claimants' Motion for Re-hearing on Claimants' Motion for Default against Respondent PSI.

Inasmuch as Respondent PSI did not appear at the evidentiary hearing, Claimants moved for default judgment against Respondent PSI, which was granted by the Arbitrator. However, the Arbitrator requested that Claimants present their case to the Arbitrator. Thereafter, the Arbitrator rendered her decision on the papers submitted.

The parties present at the hearing 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, specifically including, but not limited to, Claimants' General Release filed by PSI, and the post-hearing submissions (if any), the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Claimants' claims are dismissed in their entirety, with prejudice.

Any and all claims for relief not specifically addressed herein, including Claimants' claims for relief pursuant to the Florida Securities Investor Protection Act and Claimants' request for attorney's fees, are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$125.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Respondent PSI is not presently a member firm of NASD. However, at the time the Statement of Claim was served upon

Respondents, Respondent PSI was a member firm of NASD. Accordingly, the following member fee is assessed to Respondent PSI:

Member surcharge	= \$400.00
Total Member Fees	= \$400.00

**Adjournment Fees**

No adjournments were requested in this matter.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

Injunctive relief fees were not assessed in this matter.

**Forum Fees and Assessments**

The Arbitrator has assessed forum fees for each session conducted. A 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:

One (1) Pre-hearing session @ \$450.00/session	= \$450.00
Pre-hearing conference: September 5, 2003 1 session	

One (1) Hearing session @ \$450.00/session	= \$450.00
Hearing Date: January 8, 2004 1 session	

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Total Forum Fees	= \$900.00
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The Arbitrator has assessed the total forum fees of \$900.00 to Claimants, jointly and severally.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred in this matter.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 125.00
Forum Fees	= \$ 900.00
Total Fees	= \$ 1,025.00

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<u>Less Payments</u>	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 425.00

Respondent PSI is solely liable for:

<u>Member Fees</u>	= \$ 400.00
Total Fees	= \$ 400.00
<u>Less Payments</u>	= \$ 0.00

Balance Due NASD Dispute Resolution	= \$ 400.00
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All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATOR

Gail E. Sasnett-Stauffer, M.S.

Public Arbitrator

Arbitrator's Signature

/s/  
Gail E. Sasnett-Stauffer, M.S.  
Public Arbitrator

January 26, 2004  
Signature Date

January 27, 2004

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

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<u>Less Payments</u>	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 425.00

Respondent PSI is solely liable for:

<u>Member Fees</u>	= \$ 400.00
<u>Total Fees</u>	= \$ 400.00
<u>Less Payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 400.00

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

ARBITRATOR

Gail E. Sasnett-Stauffer, M.S.

Public Arbitrator

Arbitrator's Signature

Gail E. Sasnett-Stauffer

Gail E. Sasnett-Stauffer, M.S.  
Public Arbitrator

1/26/04  
Signature Date

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