

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

---

In the Matter of the Arbitration Between:

William R. Thiede, III, Claimant v. Ernie Oregel and Henry Dack Fahman, Respondents

Case Number: 01-02094

Hearing Site: San Diego, California

---

Nature of the Dispute: Customer v. Associated Persons

**REPRESENTATION OF PARTIES**

For Claimant:

William R. Thiede, III  
In Propria Persona  
Oceanside, California

For Respondent Ernie Oregel:

Ernie Oregel  
In Propria Persona  
Mission Viejo, California

For Respondent Henry Dack Fahman:

Henry Dack Fahman  
In Propria Persona  
Huntington Beach, California

**CASE INFORMATION**

Statement of Claim filed: April 19, 2001

Claimant's Uniform Submission Agreement signed: April 20, 2001

**CASE SUMMARY**

Claimant alleged violation of Sections 10(B) and 20 of the Securities Exchange Act of 1934 and Rule 10B-5 of the Securities Exchange Commission, breach of fiduciary duty and breach of the implied covenant of good faith and fair dealing, violation of NYSE Rules 342, 401, and NASD Conduct Rules Section 2310, professional malpractice, common law fraud/intentional misrepresentation, and negligent misrepresentation, involving unspecified securities.

Respondents did not file a Statement of Answer.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$98,000.00, unspecified punitive and exemplary damages, pre-award and post-award interest, disgorgement of commissions, mark-ups and mark-downs paid, and costs, including attorney's fees.

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

Claimant's Statement of Claim asserted claims against Providential Securities, Inc. A review of NASD's records showed that Providential Securities, Inc.'s membership was expelled from the industry.

On June 13, 2001, NASD Dispute Resolution notified Claimant that Providential Securities, Inc.'s membership was expelled and Claimant's claims against this entity were ineligible for arbitration at NASD Dispute Resolution, unless Claimant agreed in writing to proceed against this entity.

Claimant did not agree in writing to proceed against this entity. On November 5, 2001, NASD Dispute Resolution sent notice to Claimant that this claim would proceed against Respondents Ernie Oregel and Henry Dack Fahman, but not against Providential Securities, Inc., pursuant to Rule 10301(a) of the *NASD Code of Arbitration Procedure* (Code).

On March 12, 2004, NASD Dispute Resolution received notice that Jeffrey L. Gaffney, Esq. withdrew as counsel for Claimant.

On July 8, 2005, NASD Dispute Resolution sent via certified mail a request to all parties that they confer and provide NASD Dispute Resolution with four mutually agreed upon dates and times to schedule the initial telephonic pre-hearing conference with the Arbitration Panel. Such dates were to be submitted on or before July 22, 2005. The parties were notified that absent a written response by the July 22, 2005 deadline, the Arbitration Panel would schedule the date and time of the conference, pursuant to Rule 10315 of the Code. NASD Dispute Resolution did not receive a response from any party by the deadline noted. Accordingly, pursuant to Rule 10315 of the Code, the Arbitration Panel scheduled the date and time for the conference.

On August 2, 2005 and September 2, 2005, NASD Dispute Resolution sent notice via certified mail to all parties that a telephonic pre-hearing conference was scheduled for September 8, 2005.

On September 8, 2005, the Arbitration Panel conducted the telephonic pre-hearing hearing conference as scheduled. No party made an appearance at the hearing. After due deliberation, the Panel determined that Claimant's claims should be dismissed without prejudice.

Respondents did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

### **AWARD**

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

- 1) Claimant's claims are dismissed without prejudice.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the *Code of Arbitration Procedure* ("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	= \$ 225.00
--------------------------	-------------

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

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, 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 conference session with the Panel @ \$750.00/session	= \$ 750.00
Pre-hearing conference: September 8, 2005	1 session

---

<b>Total Forum Fees</b>	<b>= \$ 750.00</b>
-------------------------	--------------------

1. The Panel assessed \$375.00 of the forum fees to Claimant.
2. The Panel assessed \$375.00 of the forum fees jointly and severally to Respondents.

**Fee Summary**

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

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$ 375.00</u>
Total Fees	= \$ 600.00
<u>Less payments</u>	<u>= \$( 975.00)</u>
<b>Refund Due Claimant</b>	<b>= \$( 375.00)</b>

2. Respondents are charged jointly and severally with the following fees and costs:

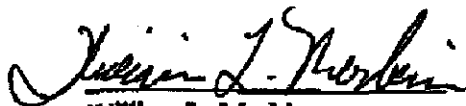
<u>Forum Fees</u>	<u>= \$ 375.00</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 375.00</b>

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**

William L. Merkin	-	Public Arbitrator, Presiding Chair
William W. Huss	-	Public Arbitrator
Alfred E. Monahan	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



William L. Merkin  
Chair, Public Arbitrator



Signature Date

\_\_\_\_\_  
William W. Huss  
Public Arbitrator

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

\_\_\_\_\_  
Alfred E. Monahan  
Non-Public Arbitrator

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

9/9/05  
Date of Service

**ARBITRATION PANEL**

William L. Merkin	-	Public Arbitrator, Presiding Chair
William W. Huss	-	Public Arbitrator
Alfred E. Monahan	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
William L. Merkin  
Chair, Public Arbitrator



\_\_\_\_\_  
William W. Huss  
Public Arbitrator

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

\_\_\_\_\_  
9/8/05  
Signature Date

\_\_\_\_\_  
Alfred E. Monahan  
Non-Public Arbitrator

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

\_\_\_\_\_  
9/9/05  
Date of Service

**ARBITRATION PANEL**

William L. Merkin	-	Public Arbitrator, Presiding Chair
William W. Huss	-	Public Arbitrator
Alfred E. Monahan	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
William L. Merkin  
Chair, Public Arbitrator

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

\_\_\_\_\_  
William W. Huss  
Public Arbitrator

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

Alfred E. Monahan  
Alfred E. Monahan  
Non-Public Arbitrator

Sept 9, 2005  
Signature Date

9/9/05  
Date of Service