

## **Award**

**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of the Claimant

Interbay Coatings, Inc.

Case Number: 01-02392

Name of the Respondent

Woodbury Financial Services, Inc. f/k/a

Fortis Investors, Inc.

Hearing Site: Tampa, Florida

Name of the Third Party Respondent

Anthony J. Nelli, Jr.

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### **REPRESENTATION OF PARTIES**

For Interbay Coatings, Inc. ("Interbay"), hereinafter referred to as "Claimant": Kalju Nekvasil, Esq., Goodman & Nekvasil, P.A., Clearwater, Florida.

For Woodbury Financial Services, Inc. f/k/a Fortis Investors, Inc. ("Woodbury"), hereinafter referred to as "Respondent": Geoffrey J. Jarpe, Mason Edelman Borman & Brand, LLP, Minneapolis, Minnesota.

Anthony J. Nelli, Jr. ("Nelli"), hereinafter referred to as "Third-Party Respondent," appeared pro se.

### **CASE INFORMATION**

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

Claimant signed the Uniform Submission Agreement: December 16, 1999.

Statement of Answer and Third-Party Claim filed by Respondent on or about: July 19, 2001.

Motion of Respondent and Third-Party Claimant Woodbury Financial Services, Inc. for Summary Judgment filed on or about: April 18, 2002.

Respondent signed the Uniform Submission Agreement: July 17, 2001.

Statement of Answer filed by Third-Party Respondent Nelli on or about: September 10, 2001.

Third-Party Respondent Nelli signed the Uniform Submission Agreement: August 15, 2001.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; common law fraud; breach of fiduciary duty; and, negligence and gross negligence. The causes of action relate to Respondent's recommendation that Claimant invest in a promissory note issued by First Lenders Indemnity Corporation.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the

Statement of Claim and asserted various defenses. Further, Respondent asserted a third-party claim against Third-Party Respondent Nelli which alleged that in the event that Respondent is found liable to Claimant upon any claim or ground asserted in the Statement of Claim, or for any other reason, Respondent is entitled to indemnity or contribution from Third-Party Respondent Nelli.

Unless specifically admitted in his Answer, Third-Party Respondent Nelli denied the allegations made in the third-party claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimant requested actual damages of \$75,000.00 together with benefit of the bargain damages, lost opportunity costs, model portfolio damages, prejudgment interest, attorneys' fees, punitive damages, costs and such other relief as is deemed necessary and proper.

Respondent requested that the relief sought in the Statement of Claim be denied in its entirety, that the Statement of Claim be dismissed with prejudice and that it be granted such other and further relief as the arbitration panel determines is just, proper, equitable, and in accordance with the NASD Code of Arbitration Procedure (the "Code"). Alternatively, Respondent requested that it be granted contribution or indemnity from Third-Party Respondent in the event it is found liable to Claimant.

Third-Party Respondent Nelli requested that the claims against him be dismissed.

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

The parties have agreed that the Award in this matter may be executed in counterpart copies.

On or about March 14, 2002, Claimant informed NASD Dispute Resolution, Inc. that it had settled its case with Respondent Woodbury.

The arbitration panel denied the Motion of Respondent and Third-Party Claimant Woodbury Financial Services, Inc. for Summary Judgment.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

Third-Party Respondent Nelli is liable and shall pay to Respondent Woodbury the sum of \$71,865.00 plus interest at the rate of 9% per annum from April 8, 2002 until the date of payment of the Award. This damage amount has been reduced by 10% as a result of Respondent Woodbury's failure to substantiate its own proper supervision of Third-Party Respondent Nelli.

The issues of entitlement to and amount, if any, of costs to be awarded to Respondent Woodbury from Third-Party Respondent Nelli shall be determined by a court of competent jurisdiction.

Any and all requests for relief not specifically addressed herein are denied.

### FEES

Pursuant to 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
Third party claim filing fee	= \$1,000.00

#### 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:

No requests for adjournment were filed 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.

No injunctive relief fees were incurred in this matter.

#### Forum Fees and Assessments

The Panel 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:

Two Pre-hearing sessions with the Panel @ \$750.00	= \$1,500.00
Pre-hearing conferences: January 15, 2002	1 session
May 10, 2002	1 session
Two Hearing sessions @ \$750.00	= \$1,500.00
Hearing Dates: May 13, 2002	1 session
May 14, 2002	1 session

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Total Forum Fees = \$3,000.00

The Panel has assessed \$1,500.00 of the forum fees to Respondent Woodbury.

The Panel has assessed \$1,500.00 of the forum fees to Third-Party Respondent Nelli.

**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 are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

**FEE SUMMARY**

Claimant is solely liable for:

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 is solely liable for:

Filing Fee = \$1,000.00

Member Fees = \$3,100.00

Forum Fees = \$1,500.00

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Total Fees = \$5,600.00

Less payments = \$4,850.00

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Balance Due NASD Dispute Resolution, Inc. = \$750.00

Third-Party Respondent is solely liable for:

Forum Fees = \$1,500.00

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Total Fees = \$1,500.00

Less payments = \$0.00

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

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

**ARBITRATION PANEL**

William J. Schifino, Jr., Esq.

Cheryl Mitchell

- Public Arbitrator, Presiding Chair  
- Public Arbitrator

Paul Lilling

- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/S/\_\_\_\_\_  
William J. Schifino, Jr., Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

\_\_\_\_\_/S/\_\_\_\_\_  
Cheryl Mitchell  
Public Arbitrator

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Signature Date

\_\_\_\_\_/S/\_\_\_\_\_  
Paul Lilling  
Non-Public Arbitrator

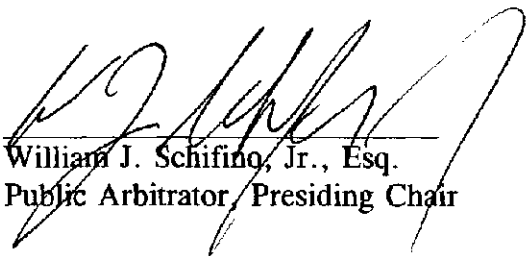
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Signature Date

June 21, 2002  
Date of Service (For NASD-Dispute Resolution office use only)

Paul Lilling

Non-Public Arbitrator

Concurring Arbitrators' Signatures



William J. Schifano, Jr., Esq.  
Public Arbitrator / Presiding Chair

6/7/02  
Signature Date

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Cheryl Mitchell  
Public Arbitrator

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Signature Date

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Paul Lilling  
Non-Public Arbitrator

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Non-Public Arbitrator

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William J. Schifano, Jr., Esq.  
Public Arbitrator, Presiding Chair

Signature Date

Cheryl Mitchell

Cheryl Mitchell  
Public Arbitrator

6/20/02  
Signature Date

Paul Lilling  
Non-Public Arbitrator

Signature Date

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Paul Lilling

Non-Public Arbitrator

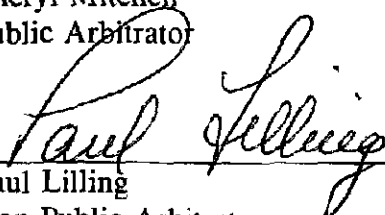
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