

**Award  
NASD**

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In the Matter of the Arbitration Between:

Names of the Claimants

Robert Hamby  
Bobbie Hamby

Case Number: 01-02854

Names of the Respondents

D.E. Frey & Company, Inc.  
William Piontek

Hearing Site: Atlanta, Georgia

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**REPRESENTATION OF PARTIES**

Robert Hamby and Bobbie Hamby, hereinafter collectively referred to as "Claimants," appeared pro se.

For Respondent D. E. Frey & Company, Inc. ("Frey"): Larry D. Hayden, Larry D. Hayden & Associates, Arvada, Colorado.

Respondent William Piontek ("Piontek") appeared pro se.

**CASE INFORMATION**

Statement of Claim filed on or about: May 23, 2001.

Claimants signed the Uniform Submission Agreement: May 16, 2001.

Statement of Answer and Counterclaim filed by Respondent Piontek on or about: September 25, 2001.

Respondent Piontek signed the Uniform Submission Agreement: September 25, 2001.

Statement of Answer filed by Respondent Frey on or about: October 18, 2001.

Respondent Frey signed the Uniform Submission Agreement: November 3, 2001.

**CASE SUMMARY**

Claimants asserted the following causes of action: Respondents violated industry rules and the Georgia Statutes; Respondents breached the contract entered into between Claimants and Respondents; Respondents breached their fiduciary duties owed to Claimants; Respondents' misconduct constituted common law fraud; Claimants' account at issue was handled negligently; and, Respondent Frey was negligent in its supervision, hiring and retention of its employees. The causes of action relate to unspecified options transactions in Claimants' account.

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

**RELIEF REQUESTED**

Claimants requested compensatory damages of approximately \$50,000.00, plus interest at the

legal rate from the date of purchase or reasonable market return, rescission, reasonable attorneys' fees (to be determined by a court of competent jurisdiction), punitive damages, the costs of this proceeding and such other relief as is just and proper.

Respondent Frey requested that Claimants' Statement of Claim be dismissed in its entirety with respect to Frey.

Respondent Piontek requested that the arbitration panel find in his favor or, alternatively, if the panel should find in favor of Claimants, that the panel find only for Claimant Bobbie Hamby for one-half the total amount requested by Claimants and that Claimants pay to Respondent Piontek the sum of \$58,000.00 to cover actual legal expenses and punitive damages as may be deemed reasonable by the panel.

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

Respondent Frey did not attend the evidentiary hearing in this matter. Upon review of the file and the representations made by/on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Respondent Frey 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 said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

At the commencement of the evidentiary hearing, the arbitrators ruled that Respondent Piontek's counterclaim was dismissed, without prejudice, for his failure to pay the counterclaim filing fee and hearing session deposit required pursuant to Rule 10332 of the Code.

On or about September 18, 2001, NASD was informed that Dale Edward Frey had filed for bankruptcy protection pursuant to Chapter 7 of the United States Bankruptcy Code on or before the filing of the Statement of Claim. As such, all matters with respect to Dale Edward Frey were stayed and the arbitrators did not make any decisions with respect to Dale Edward Frey.

At the evidentiary hearing on November 13, 2002, Claimants and Respondent Piontek stipulated to amend the Statement of Claim to delete the allegation that Respondent Piontek made misrepresentations regarding options transactions in Claimants' account. Further, Claimants and Respondent Piontek agreed to delete the allegation that Claimants specifically told Respondent Piontek they were not looking to invest in options or margin trading.

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

### **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:

Respondents Frey and Piontek are found liable, jointly and severally, on the claims of engaging in options transactions without permission and violation of industry rules re: account documentation-improper execution of the new account form and the option agreement. As such, Respondents Frey and Piontek are liable, jointly and severally, and shall pay to Claimants the sum of \$10,000.00, pre-judgment interest specifically excluded.

Respondent Piontek's counterclaim is dismissed, without prejudice.

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

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$175.00
Counterclaim filing fee	= \$250.00

#### **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, Respondent Frey was no longer a member firm as of May 8, 2001, but having actively participated in this matter is assessed all member fees.

Member surcharge	= \$800.00
Pre-hearing process fee	= \$600.00
Hearing process fee	= \$1,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

May 14, 15 and 16, 2002 Hearing Dates, joint request for adjournment by Claimants and Respondent Piontek. The panel assessed the postponement fee of \$600.00 one-half to Claimants and one-half to Respondent Piontek.

#### **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:

One Pre-hearing session with the Panel @ \$600.00	= \$600.00
Pre-hearing conference: January 31, 2002	1 session
Four Hearing sessions @ \$600.00	= \$2,400.00
Hearing Dates: November 13, 2002	2 sessions
November 14, 2002	2 sessions
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Total Forum Fees	= \$3,000.00

The Panel has assessed \$1,000.00 of the forum fees to Claimants, jointly and severally.

The Panel has assessed \$1,000.00 of the forum fees to Respondent Piontek.

The Panel has assessed \$1,000.00 of the forum fees to Respondent Frey.

### **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.

Administrative costs of \$25.40 were assessed to Claimants representing the cost of returning documents to Claimants that were forwarded to NASD in error.

### **FEE SUMMARY**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$175.00
Adjournment Fee	= \$300.00
Forum Fees	= \$1,000.00
Administrative Costs	= \$25.40
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Total Fees	= \$1,500.40
Less payments	= \$775.00
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Balance Due NASD	= \$725.40

Respondent Piontek is solely liable for:

Filing Fee	= \$250.00
Adjournment Fee	= \$300.00
Forum Fees	= \$1,000.00
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Total Fees	= \$1,550.00
Less payments	= \$0.00

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Balance Due NASD	= \$1,550.00
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Respondent Frey is solely liable for:

Member Fees	= \$2,400.00
Forum Fees	= \$1,000.00

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Total Fees	= \$3,400.00
Less payments	= \$0.00

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Balance Due NASD	= \$3,400.00
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All balances are payable to NASD and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Helen E. Huyler, Esq.	-	Public Arbitrator, Presiding Chair
Ralph S. Paden	-	Public Arbitrator
Henry W. Grady, III	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/S/\_\_\_\_\_  
Helen E. Huyler, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_/S/\_\_\_\_\_  
Ralph S. Paden  
Public Arbitrator

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

\_\_\_\_\_/S/\_\_\_\_\_  
Henry W. Grady, III  
Non-Public Arbitrator

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

December 4, 2002  
Date of Service (For NASD office use only)

Total Fees	= \$1,550.00
Less payments	= \$0.00

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Balance Due NASD	= \$1,550.00
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Respondent Frey is solely liable for:

Member Fees	= \$2,400.00
Forum Fees	= \$1,000.00

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Total Fees	= \$3,400.00
Less payments	= \$0.00

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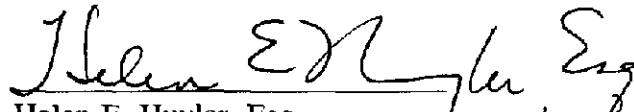
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Ralph S. Paden	-	Public Arbitrator
Henry W. Grady, III	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Helen E. Huyler, Esq.  
Public Arbitrator, Presiding Chair

11-27-02  
Signature Date

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Ralph S. Paden  
Public Arbitrator

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Signature Date

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Henry W. Grady, III  
Non-Public Arbitrator

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Signature Date

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Date of Service (For NASD office use only)

Total Fees	= \$1,550.00
Less payments	= \$0.00
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Balance Due NASD	= \$1,550.00

Respondent Frey is solely liable for:

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Less payments	= \$0.00
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Helen E. Huyler, Esq.  
Public Arbitrator, Presiding Chair

Ralph S. Paden  
Ralph S. Paden  
Public Arbitrator

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

Nov 26 2002  
Signature Date

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Henry W. Grady, III  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD office use only)

Total Fees	= \$1,550.00
Less payments	= \$0.00

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Balance Due NASD	= \$1,550.00
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Respondent Frey is solely liable for:

Member Fees	= \$2,400.00
Forum Fees	= \$1,000.00

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Total Fees	= \$3,400.00
Less payments	= \$0.00

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Balance Due NASD	= \$3,400.00
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**ARBITRATION PANEL**

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Ralph S. Paden	-	Public Arbitrator
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**Concurring Arbitrators' Signatures**

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Helen E. Huyler, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Ralph S. Paden  
Public Arbitrator

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Signature Date

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Henry W. Grady, III  
Non-Public Arbitrator

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Signature Date

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Date of Service (For NASD office use only)