

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Donald V. Peruski

and

Thomas M. Dolan  
Society for Lifetime Planning, and  
Vestax Securities Corporation

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01-02867  
Southfield, Michigan

**REPRESENTATION OF PARTIES**

Donald V. Peruski ("Claimant") was represented by Anthony V. Trogan, Esq., West Bloomfield, Michigan.

Thomas M. Dolan ("Dolan"), Society for Lifetime Planning ("SLP") and Vestax Securities Corporation ("Vestax"), hereinafter referred to as "Respondents", were represented by Melvin G. Mosley, Jr., Esq., Grand Rapids, Michigan.

**CASE INFORMATION**

The Statement of Claim was filed on or about June 6, 2001. The Submission Agreement of Claimant was signed on or about May 17, 2001.

Statement of Answer was filed jointly by Respondents Dolan, SLP and Vestax on or about July 25, 2001. The Submission Agreement of Respondent Dolan was signed on or about July 25, 2001. The Submission Agreement of Respondent SLP was signed on or about July 25, 2001. The Submission Agreement of Respondent Vestax Securities Corporation was signed on or about June 11, 2001, by Robert J. Conley.

Respondents, Dolan, SLP and Vestax filed a Motion to Dismiss the Claimant's claims with prejudice on or about July 3, 2002. Claimant filed a Response to Respondents' Motion to Dismiss on or about July 24, 2002.

**CASE SUMMARY**

Claimant's claim is based upon the following legal theories and principles: breach of contract, common law fraud, conspiracy, promissory estoppel, conversion, negligence, malpractice, breach of fiduciary duty, breach of Michigan Securities Law and Violation of Michigan Consumer's Protection Law. The causes of action relate to the Respondents' management of Claimant's retirement assets.

Unless specifically admitted in their Answer, Respondents Dolan and Vestax, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant has failed to state a claim upon which relief can be granted; some of

Claimant's claims are barred by the applicable statute of limitations, Claimant's claims are barred by the doctrines of laches, estoppel and/or equitable estoppel. Claimant's claims are barred by his comparative negligence or failure to mitigate. Claimant's claim under the *Michigan Consumer Protection Act* is barred and exempt in accordance with MCL 451.806 and 445.904(1)(a).

### **RELIEF REQUESTED**

Claimant requested an award of out-of-pocket losses in the amount of approximately \$200,000.00, plus interest, costs, attorney fees, punitive and exemplary damages, rescission and additional damages as allowed by the Panel.

Respondents requested that the Panel dismiss all claims against the Respondents with prejudice, recommend expungement of all such claims from the CRDs of Respondents and award Respondents their attorney fees, costs and expenses associated with defending against this matter.

### **OTHER ISSUES CONSIDERED & DECIDED**

The Society for Lifetime Planning is not a member of NASD. In its Answer, the Society for Lifetime Planning declined to submit to arbitration. The Panel did not adjudicate any claims against Respondent Society for Lifetime Planning.

The Panel denied Respondents' Motion to Dismiss on or about July 29, 2002.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondents, Thomas M. Dolan and Vestax Securities Corporation, are jointly and severally liable for and shall pay to Claimant, Donald V. Peruski the sum of \$67,000.00 in compensatory damages;
- 2.) That other than Forum Fees, which are specified below, the parties, shall each bear their own costs and expenses incurred in this matter;
- 3.) That any relief not specifically enumerated, including punitive and exemplary damages and attorneys fees, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee = \$ 300.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is Vestax Securities Corporation.

Member surcharge = \$ 1,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$ 2,500.00

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

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,125.00 = \$ 1,125.00

Pre-hearing conference: February 28, 2002 1 session

Six (6) Hearing sessions x \$1,125.00 = \$ 6,750.00

Hearing Dates: August 28, 2002 2 sessions  
August 29, 2002 2 sessions  
August 30, 2002 2 sessions

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Total Forum Fees = \$ 7,875.00

The Arbitration Panel has assessed \$3,937.50 of the forum fees to Donald V. Peruski.

The Arbitration Panel has assessed \$3,937.50 of the forum fees jointly and severally to Thomas M. Dolan and Vestax Securities Corporation.

### **Fee Summary**

Claimant, Donald V. Peruski, is liable for:

Initial Filing Fee = \$ 300.00

Forum Fees = \$ 3,937.50

Total Fees = \$ 4,237.50

Less payments = \$ 1,425.00

Balance Due NASD Dispute Resolution = \$ 2,812.50

Respondents, Thomas M. Dolan and Vestax Securities Corporation, are jointly and severally liable for:

Forum Fees	= \$3,937.50
Total Fees	= \$3,937.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,937.50

Respondent, Vestax Securities Corporation is liable for:

Member Fees	= \$ 4,600.00
Total Fees	= \$ 4,600.00
Less payments	= \$ 4,600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

E. Daniel Grady - Public Arbitrator, Presiding Chair  
Marvin I. Horowitz - Public Arbitrator  
Mark A. Cleland - Non-Public Arbitrator

Concurring Arbitrators:

/s/ E. Daniel Grady  
E. Daniel Grady  
Public Arbitrator, Presiding Chair

10/02/02  
Signature Date

/s/ Marvin I. Horowitz  
Marvin I. Horowitz  
Public Arbitrator

10/04/02  
Signature Date

/s/ Mark A. Cleland  
Mark A. Cleland  
Non-Public Arbitrator

10/01/02  
Signature Date

10/04/02  
Date of Service (For NASD office use only)

Respondents, Thomas M. Dolan and Vestax Securities Corporation, are jointly and severally liable for:

Forum Fees	= \$3,937.50
Total Fees	= \$3,937.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,937.50

Respondent, Vestax Securities Corporation is liable for:

Member Fees	= \$ 4,600.00
Total Fees	= \$ 4,600.00
Less payments	= \$ 4,600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

All balances are due to NASD Dispute Resolution

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Marvin I. Horowitz - Public Arbitrator  
Mark A. Cleland - Non-Public Arbitrator

Concurring Arbitrators:

E. Daniel Grady  
Public Arbitrator, Presiding Chair

Signature Date

*Marvin I. Horowitz*  
Marvin I. Horowitz  
Public Arbitrator

*10/4/02*  
Signature Date

Mark A. Cleland  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

Respondents, Thomas M. Dolan and Vestax Securities Corporation, are jointly and severally liable for:

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Concurring Arbitrators:

  
E. Daniel Grady  
Public Arbitrator, Presiding Chair

10-2-02  
Signature Date

\_\_\_\_\_  
Mark I. Horowitz  
Public Arbitrator

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

\_\_\_\_\_  
Mark A. Cleland  
Non-Public Arbitrator

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

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

10/01/02 TUE 08:30 FAX

NASD REGULATION

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NASD Dispute Resolution  
Arbitration No. 01-02867  
Award Page 4 of 4

Respondents, Thomas M. Dolan and Vestax Securities Corporation, are jointly and severally liable for:

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Respondent, Vestax Securities Corporation is liable for:

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Concurring Arbitrators:

E. Daniel Grady  
Public Arbitrator, Presiding Chair

Signature Date

Mark I. Horowitz  
Public Arbitrator

Signature Date

Mark A. Cleland  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)