

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Name of the Claimant

Dr. Burton Zeiger, as trustee for  
the South Chicago Eye Associates, Ltd  
Defined Benefit Plan

Case Number: 01-03288

Name of the Respondent

Strong Investments, Inc.

Hearing Site: Chicago, Illinois

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**REPRESENTATION OF PARTIES**

Claimant, Dr. Burton Zeiger, as trustee for the South Chicago Eye Associates, Ltd. Defined Benefit Plan ("Zeiger") appeared *pro se*.

Respondent Strong Investments, Inc. ("Strong Investments"): Adym Rygmyr, Esq. in-house counsel for Strong Investments, Inc.

**CASE INFORMATION**

Statement of Claim filed on or about: June 20, 2001

Claimant signed the Uniform Submission Agreement: June 15, 2001

Statement of Answer filed by Respondent Strong Investments on or about: August 15, 2001

Respondent Strong Investments signed the Uniform Submission Agreement: August 28, 2001

Respondent Strong Investment's Motion to Dismiss filed on or about: July 5, 2002

Claimant Zeiger's Response to Respondent Strong Investment's Motion to Dismiss filed on or about: July 24, 2002

Respondent Strong Investment's Pre-Hearing Arbitration Brief filed on or about: August 12, 2002

Claimant Zeiger's Post-Hearing Arbitration Brief filed on or about: September 04, 2002

Respondent Strong Investment's Post-Hearing Arbitration Brief filed on or about: September, 04 2002

**CASE SUMMARY**

Claimant asserted the following causes of action: Unjust Enrichment and Breach of Fiduciary Duty.

The causes of action relate to the account entitled "For the Exclusive Benefit of Strong Fund Customers.

Unless specifically admitted in its Answer, Respondent Strong Investments, denied the allegations made in the Statement of Claim and asserted the following defenses: Failure to state a claim upon which relief may be granted; Ratification; Waiver; Claimant's losses were proximately caused by its own conduct and negligence, or contributory negligence; Failure to Mitigate; and Claimant's failure to exercise due diligence.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$32,388.72
Interest	\$14,699.89
Attorneys' Fees	\$ 750.00
Other Costs	unspecified

Respondent Strong Investments requested:

Other Monetary/Non-Monetary Relief if any:	dismissal and any relief the panel may deem appropriate
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### **OTHER ISSUES CONSIDERED AND DECIDED**

At hearing, Claimant Zeiger withdrew with prejudice the unjust enrichment cause of action. Consequently, the cause of action was not adjudicated.

### **AWARD**

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

1. Respondent Strong Investments, Inc. is liable for and shall pay to Dr. Burton Zeiger, as trustee for the South Chicago Eye Associates, Ltd. Defined Benefit Plan the sum of \$808.00 as compensatory damages.
2. Respondent Strong Investment's Motion to Dismiss is denied.
3. Parties shall bear their own costs, including attorney's fees.
4. Any and all relief not specifically addressed herein is 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	= \$175.00
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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 at the time of the events giving rise to the dispute. Accordingly, Strong Investments, Inc. is a party.

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$1,000.00</u>
Total	= \$2,400.00

#### **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 session with a single arbitrator at \$450.00	= \$450.00
Pre-hearing conference: June 14, 2002 1 session	

One (1) Hearing sessions at \$450.00	= \$450.00
<u>Hearing Dates: August 27, 2002 1 session</u>	<u></u>
Total Forum Fees	= \$900.00

1. The Panel has assessed \$450.00 of the forum fees to Dr. Burton Zeiger, as trustee for the South Chicago Eye Associates, Ltd. Defined Benefit Plan.
2. The Panel has assessed \$450.00 of the forum fees to Strong Investments, Inc.

### **FEE SUMMARY**

1. Claimant, Dr. Burton Zeiger, as trustee for the South Chicago Eye Associates, Ltd. Defined Benefit Plan, is solely liable for:

Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	<u>= \$ 450.00</u>
Total Fees	= \$ 625.00
<u>Less payments</u>	<u>= \$ 750.00</u>
Refund Due from NASD Dispute Resolution, Inc.	= \$ 125.00

2. Respondent, Strong Investments, Inc., is solely liable for:	
Member Fees	= \$ 2,400.00
Forum Fees	= \$ 450.00
Total Fees	= \$ 2,850.00
Less payments	= \$ 2,900.00
Refund Due from NASD Dispute Resolution, Inc.	= \$ 50.00

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

**ARBITRATION PANEL**

Andrew B. David, Esq. - Public Arbitrator, Presiding Chairperson

**Arbitrator's Signature**



Andrew B. David, Esq.  
Public Arbitrator, Presiding Chairperson

9/17/02

Signature Date

9/17/02

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