

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

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In the Matter of the Arbitration Between:

Bruce Andrew Merino and Marielena Merino, Claimants v. Hotovec, Pomeranz & Co., LLC,  
Steven D. Hotovec, Jeffrey J. Pomeranz, Louis J. Bacher, Jr., and John M. Vanderwal,  
Respondents

Case Number: 02-03897

Hearing Site: Las Vegas, Nevada

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Nature of the Dispute: Customers vs. Member and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimants:

Theodore A. Griffinger, Jr., Esq.  
Ellen A. Cirangle, Esq.  
Stein & Lubin LLP  
San Francisco, California

For Respondents

Hotovec, Pomeranz & Co., LLC,  
Steven D. Hotovec and  
Jeffrey J. Pomeranz:

David E. Reynolds, Esq.  
Lewis Brisbois Bisgaard & Smith LLP  
Los Angeles, California

For Respondent Louis J. Bacher, Jr.:

Louis J. Bacher, Jr.  
In Pro Per  
Benicia, California

For Respondent John M. Vanderwal:

John M. Vanderwal  
In Pro Per  
San Anselmo, California

**CASE INFORMATION**

Statement of Claim filed: July 2, 2002

Amended Statement of Claim filed: November 25, 2002

Claimants' Joint Uniform Submission Agreement signed: June 22, 2002

Joint Statement of Answer to Statement of Claim filed by Respondents Hotovec, Pomeranz & Co., LLC, Steven D. Hotovec, and Jeffrey J. Pomeranz: August 28, 2002

Joint Statement of Answer to Amended Statement of Claim filed by Respondents Hotovec, Pomeranz & Co., LLC, Steven D. Hotovec, and Jeffrey J. Pomeranz: February 10, 2003

Respondent Louis J. Bacher, Jr.'s Statement of Answer to Statement of Claim and Amended Statement of Claim filed: January 22, 2004

Respondent Hotovec, Pomeranz & Co., LLC's Uniform Submission Agreement signed: August 16, 2002

Respondent Steven D. Hotovec's Uniform Submission Agreement received: August 29, 2002

Respondent Jeffrey J. Pomeranz's Uniform Submission Agreement signed: August 16, 2002

**CASE SUMMARY**

In their Initial and Amended Statement of Claim, Claimants alleged breach of contract, negligence, failure to supervise, breach of fiduciary duty, misrepresentations, and omission of facts. The dispute involved unspecified securities.

Respondents Hotovec, Pomeranz & Co., LLC, Steven D. Hotovec, Jeffrey J. Pomeranz, and Louis J. Bacher, Jr. denied the allegations of wrongdoing set forth in the Claimants' Initial and Amended Statements of Claim.

Respondent John M. Vanderwal did not file a Statement of Answer.

### **RELIEF REQUESTED**

In their Initial and Amended Statement of Claim, Claimants requested compensatory damages in the amount of \$1,300,000.00, unspecified punitive damages, interest, attorney's fees, and arbitration costs.

Respondents Hotovec, Pomeranz & Co., LLC, Steven D. Hotovec, Jeffrey J. Pomeranz, and Louis J. Bacher, Jr. requested dismissal of the Claimants' Initial and Amended Statements of Claim in their entirety. Additionally, Respondents Hotovec, Pomeranz & Co., LLC, Steven D. Hotovec, and Jeffrey J. Pomeranz requested arbitration costs.

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

On August 19, 2003, NASD Dispute Resolution received notice that Respondent John Van Der Wal was dismissed with prejudice.

On January 23, 2004, NASD Dispute Resolution received notice that Respondent Jeffrey J. Pomeranz filed for bankruptcy.

On January 26, 2004, Claimants dismissed Respondent Louis J. Bacher, Jr., with prejudice.

Respondent Louis J. Bacher, Jr. did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

Respondent John M. Vanderwal did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

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

- 1) Respondents Hotovec, Pomeranz & Co., LLC and Steven D. Hotovec are jointly and severally liable to and shall pay Claimants Bruce Andrew Merino and Marielena Merino \$798,297.00 in compensatory damages.
- 2) Respondents Hotovec, Pomeranz & Co., LLC and Steven D. Hotovec are jointly and severally liable to and shall pay Claimants Bruce Andrew Merino and Marielena Merino \$1,596,594.00 in punitive damages.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the 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	= \$ 500.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Hotovec, Pomeranz & Co., LLC is a party and the following fees are assessed:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 5,000.00</u>
<b>Total Member Fees</b>	<b>= \$ 8,550.00</b>

### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel. The following fees are assessed:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences: July 2, 2003	1 session
September 17, 2003	1 session

Seven (7) Hearing sessions @ \$1,200.00/session	= \$ 8,400.00
Hearings: January 26, 2004	2 sessions
January 27, 2004	3 sessions
January 28, 2004	2 sessions

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<b>Total Forum Fees</b>	<b>= \$10,800.00</b>
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The Panel assessed \$10,800.00 of the forum fees jointly and severally to Respondents Hotovec, Pomeranz & Co., LLC and Steven D. Hotovec.

### **Fee Summary**

1. Claimants Bruce Andrew Merino and Marielena Merino are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 500.00
<u>Less payments</u>	<u>= \$(1,800.00)</u>
<b>Refund Due Claimants</b>	<b>= \$(1,300.00)</b>

2. Respondent Hotovec, Pomeranz & Co., LLC is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
<u>Less payments</u>	<u>= \$(8,550.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents Hotovec, Pomeranz & Co., LLC, Steven D. Hotovec are charged jointly and severally with the following fees and costs:

<u>Forum Fees</u>	<u>= \$10,800.00</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$10,800.00</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**

Neil J. Beller, Esq.	-	Public Arbitrator, Presiding Chair
Michael B. Laikin, Esq.	-	Public Arbitrator
Steven A. Budin	-	Non-Public Arbitrator

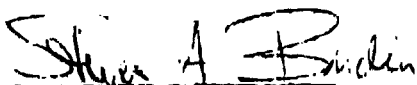
**Concurring Arbitrators' Signatures**

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Neil J. Beller, Esq.  
Chair, Public Arbitrator

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Signature Date

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Michael B. Laikin, Esq.  
Public Arbitrator

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

  
\_\_\_\_\_  
Steven A. Budin  
Non-Public Arbitrator

02/06/04  
Signature Date

2/11/04  
Date of Service

ARBITRATION PANEL

Neil J. Beller, Esq.

Public Arbitrator, Presiding Chair

Michael B. Larkin, Esq.

Public Arbitrator

Steven A. Budin

Non-Public Arbitrator

Concerning Arbitrators' Signatures

Neil J. Beller, Esq.  
Chair, Public Arbitrator

Signature Date

  
Michael B. Larkin, Esq.  
Public Arbitrator

2-10-04  
Signature Date

Steven A. Budin  
Non-Public Arbitrator

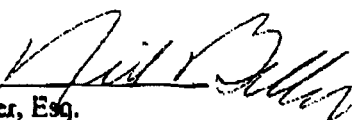
Signature Date

2/11/04  
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Michael B. Laikin, Esq.	-	Public Arbitrator
Steven A. Budin	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Neil J. Beller, Esq.  
Chair, Public Arbitrator

2/9/04  
\_\_\_\_\_  
Signature Date

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Michael B. Laikin, Esq.  
Public Arbitrator

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Signature Date

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Steven A. Budin  
Non-Public Arbitrator

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