

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

In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 02-04805

Russell B. Adler

Names of the Respondents

Hearing Site: Boca Raton, Florida

Werbel-Roth Securities, Inc.  
and Michael Zaccaro

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**REPRESENTATION OF PARTIES**

For Russell B. Adler, hereinafter referred to as "Claimant": Jeffrey A. Winikoff, Esq., Stein, Rosenberg & Winikoff, P.A. until his withdrawal of counsel on or about February 3, 2003. Thereafter, Claimant appeared pro se.

Respondent Michael Zaccaro, hereinafter referred to as "Zaccaro", appeared pro se.

Respondent Werbel-Roth Securities, Inc., hereinafter referred to as "Werbel-Roth", did not appear.

**CASE INFORMATION**

Statement of Claim filed on or about: August 15, 2002.

Claimant signed the Uniform Submission Agreement: August 7, 2002.

Statement of Answer filed by Respondent Zaccaro on or about: October 13, 2002.

Respondents Zaccaro and Werbel-Roth did not file executed Uniform Submission Agreements.

Respondent Werbel-Roth did not file a Statement of Answer.

Motion to Bar Respondents Zaccaro and Werbel-Roth from Presenting any Matters, Arguments or Defenses filed by Claimant on or about: November 14, 2002.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; conversion; negligence; breach of fiduciary duty; and, negligent hiring, retention and supervision by Respondent Werbel-Roth. The causes of action relate to Claimant's delivery of 190,000 shares of Regenesys Holding, Inc. stock to Respondents for which Claimant received neither payment nor return of the stock.

Unless specifically admitted in his Answer, Respondent Zaccaro denied the allegations made in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$380,000.00, plus interest, punitive damages, costs and any other relief deemed just and proper.

Respondent Zaccaro did not specifically delineate a relief request.

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

Respondents Zaccaro and Werbel-Roth did not appear at the evidentiary hearing on May 19, 2003. Upon review of the file and the representations made by Claimant, the Panel determined that Respondents Zaccaro and Werbel-Roth have 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 Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents Zaccaro and Werbel-Roth did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and are bound by the determinations of the Panel on all issues submitted.

On or about March 11, 2003, the Panel issued an order which directed Respondents Zaccaro and Werbel-Roth to file responses to Claimant's initial request for discovery and confirm their acceptance of the Panel within 20 days of the date of the order. Said order further stated that if Respondent Zaccaro and/or Respondent Werbel-Roth failed to respond to Claimant's initial request for discovery and/or respond to said order, Claimant's Motion to Bar Respondents Zaccaro and Werbel-Roth from Presenting any Matters, Arguments or Defenses would be granted. Respondents Zaccaro and Werbel-Roth did not respond to Claimant's initial request for discovery or to the Panel's March 11, 2003 order. As such, on or about April 7, 2003, the Panel issued an order which granted Claimant's Motion to Bar Respondents Zaccaro and Werbel-Roth from Presenting any Matters, Arguments or Defenses.

Claimant 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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondents Zaccaro and Werbel-Roth are found liable on the claims of breach of contract, conversion, negligence and breach of fiduciary duty. In addition, Respondent Werbel-Roth is found liable on the claim for negligent hiring, retention and supervision. As such, Respondents Zaccaro and Werbel-Roth are liable, jointly and severally, and shall pay to Claimant compensatory damages in the amount of \$380,000.00, plus interest at the rate of 10% per annum from June 1, 2000 to the date of payment of the Award.

Respondents Zaccaro and Werbel-Roth are liable, jointly and severally, and shall pay to Claimant the sum of \$300.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

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

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$300.00
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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 that employed the associated person at the time of the event giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,700.00
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#### **Adjournment Fees**

No requests for adjournment were filed in this matter.

#### **Injunctive Relief Fees**

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 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 Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: March 11, 2003	1 session

One (1) Hearing session @ \$1,125.00	= \$1,125.00
Hearing Date: May 19, 2003	1 session

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Total Forum Fees	= \$2,250.00
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The Panel has assessed the total forum fees of \$2,250.00 jointly and severally to Respondents Zaccaro and Werbel-Roth.

### 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	= \$300.00
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Total Fees	= \$300.00
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Less payments	= \$300.00
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Balance Due NASD Dispute Resolution	= \$0.00
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Respondent Werbel-Roth is solely liable for:

Member Fees	= \$1,700.00
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Total Fees	= \$1,700.00
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Less payments	= \$0.00
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Balance Due NASD Dispute Resolution	= \$1,700.00
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Respondents Zaccaro and Werbel-Roth are jointly and severally liable for:

Forum Fees	= \$2,250.00
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Total Fees	= \$2,250.00
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Less payments	= \$0.00
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Balance Due NASD Dispute Resolution	= \$2,250.00
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All balances are payable to NASD Dispute Resolution and are due immediately upon the parties' receipt of the Award pursuant to Rule 10330(g) of the Code.

### ARBITRATION PANEL

Steven N. Ainbinder, Esq.	-	Public Arbitrator, Presiding Chair
James D. Keeney, Esq.	-	Public Arbitrator
Richard G. Bennett	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

05/21/03

\_\_\_\_\_  
Steven N. Ainbinder, Esq.  
Public Arbitrator, Presiding Chair

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

/s/

05/22/03

\_\_\_\_\_  
James D. Keeney, Esq.  
Public Arbitrator

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

/s/

05/21/03

\_\_\_\_\_  
Richard G. Bennett  
Non-Public Arbitrator

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

05/30/03

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

**RECEIVED**

MAY 29 2003

**FL ARBITRATION**

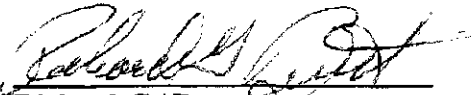
Concurring Arbitrators' Signatures

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Steven N. Ainbinder, Esq.  
Public Arbitrator, Presiding Chair

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

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James D. Keeney, Esq.  
Public Arbitrator

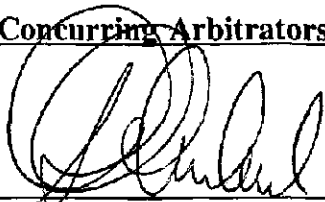
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Richard G. Bennett  
Non-Public Arbitrator

25/21/03  
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Signature Date

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

Concurring Arbitrators' Signatures



Steven N. Ainbinder, Esq.  
Public Arbitrator, Presiding Chair

8/24/03  
Signature Date

James D. Keeney, Esq.  
Public Arbitrator

Signature Date

Richard G. Bennett  
Non-Public Arbitrator

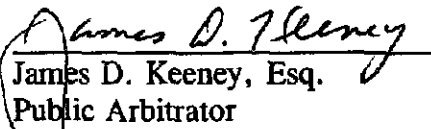
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\_\_\_\_\_  
Steven N. Ainbinder, Esq.  
Public Arbitrator, Presiding Chair

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

  
James D. Keeney, Esq.  
Public Arbitrator

5/22/03  
Signature Date

\_\_\_\_\_  
Richard G. Bennett  
Non-Public Arbitrator

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Signature Date

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