

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

---

In the Matter of the Arbitration Between:

Name of the Claimants  
Horizon Benefit Administration  
Mark H. Fischer

Case Number: 02-05314

Name of the Respondents  
Richard J. Beach  
RF Disbursements Co.  
Reserve Financial Agency Corporation  
William Henry Gerber, Jr.

Hearing Site: Cleveland, Ohio

---

**REPRESENTATION OF PARTIES**

Claimants, Horizon Benefit Administration ("Horizon") and Mark H. Fischer ("Fischer"), hereinafter collectively referred to as "Claimants": Michael A. Gross, Esq., Ulmer & Berne LLP, Cleveland, Ohio.

Respondents, Richard J. Beach ("Beach") and William Henry Gerber, Jr. ("Gerber"), hereinafter collectively referred to as "Respondents": Dieter Domanovic, Esq., Dieter Domanovic Attorney At Law, Cleveland, Ohio.

Respondents, RF Disbursements Co. and Reserve Financial Agency Corporation are not member firms of the NASD and did not submit to NASD jurisdiction.

**CASE INFORMATION**

Statement of Claim filed on or about: September 7, 2002  
Amended Statement of Claim filed on or about: January 27, 2003  
Claimants' Response to Motion to Dismiss filed on or about: January 2003  
Claimant, Mark H. Fischer, signed the Uniform Submission Agreement: March 24, 2003  
Claimant, Horizon Benefit Administration, signed the Uniform Submission Agreement: September 6, 2002

Motion to Dismiss and Statement of Answer filed by Respondents Beach and Gerber, on or about: December 13, 2002

Motion to Dismiss and Statement of Answer to Claimants' Amended Claim filed on or about: February 5, 2003

Supplement to Motion to Dismiss filed on or about: January 14, 2003

Respondent Beach did not sign the Uniform Submission Agreement

Respondent Gerber did not sign the Uniform Submission Agreement

Respondents Reserve Financial Agency Corporation, and RF Disbursements Co. did not submit to NASD's jurisdiction since they are not members.

### **CASE SUMMARY**

Claimants asserted the following causes of action: alleged violation of NASD rules, tortious inference, defamation of character and slander, respondeat superior. Claimants' claims relate to the administration of 403(b) retirement plans for the employees of Avon Local School District and River View Local School District. The investments include mutual funds, and variable and fixed annuities.

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

### **RELIEF REQUESTED**

Claimants requested compensatory damages in excess of \$100,000.00; punitive damages in excess of \$1,000,000.00; and other unspecified monetary relief.

Respondents requested Claimant's claim be dismissed in its entirety, and that they be reimbursed for costs and fees incurred as a result of these proceedings.

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

Respondents filed a Complaint in Lorain County Court of Common Pleas, Ohio, against Claimants and others. By Order dated December 12, 2002 the Court stayed that action pending arbitration of this case.

On or about December 13, 2002, Respondents Beach and Gerber filed a motion to dismiss the claim based, *inter alia* on their contention that Horizon was not a customer of Respondents and therefore did not have standing to bring this action under this particular provision of the NASD Code of Arbitration. Claimants opposed the Respondents' motions. The matter was briefed and submitted to the duly constituted arbitration panel, which had been accepted by the parties. A telephonic hearing on the motion was held on May 8, 2003 and the parties presented arguments for their respective positions. After consideration of the pleadings and the arguments, it is the unanimous decision of the arbitrators that the Respondents' motion is well taken, and therefore the motion to dismiss is granted without prejudice. The arbitrators express no opinion as to the arbitrability of the issues raised by these pleadings under any other provision of the NASD Code.

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.

### **AWARD**

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

1. Claimants' claims are dismissed in their entirety without prejudice.
2. Any and all relief not specifically addressed herein, including punitive damages, are denied, without prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 500.00
--------------------------	-------------

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

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

Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$2,400.00
Pre-hearing conferences: April 1, 2003 1 session	
May 8, 2003 1 session	
<hr/> Total Forum Fees	<hr/> = \$2,400.00

1. The Panel has assessed \$1,200.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$1,200.00 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimants, Horizon and Fischer, are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$1,200.00
<u>Total Fees</u>	<u>= \$1,700.00</u>
<u>Less Payments</u>	<u>= \$1,700.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00
  
2. Respondents, Beach and Gerber, are jointly and severally liable for:

Forum Fees	= \$1,200.00
Balance Due NASD Dispute Resolution	= \$1,200.00

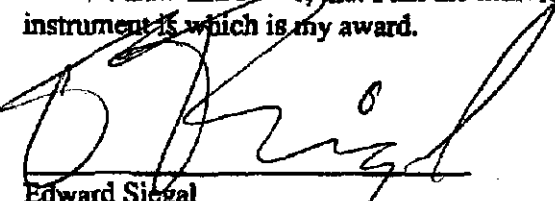
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.
---

**ARBITRATION PANEL**

Edward Siegal	-	Public Arbitrator, Presiding Chairperson
James Laurenson	-	Public Arbitrator
Howard Buchler	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.

  
\_\_\_\_\_  
Edward Siegal  
Public Arbitrator, Presiding Chairperson

06/30/03  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
James Laurenson  
Public Arbitrator

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

\_\_\_\_\_  
Howard Buchler  
Non-Public Arbitrator

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

July 17, 2003

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

**ARBITRATION PANEL**

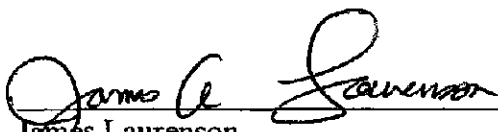
Edward Siegal	-	Public Arbitrator, Presiding Chairperson
James Laurenson	-	Public Arbitrator
Howard Buchler	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument is which is my award.

\_\_\_\_\_  
Edward Siegal  
Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
James Laurenson  
Public Arbitrator

7/1/03  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Howard Buchler  
Non-Public Arbitrator

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

July 17, 2003  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Edward Siegal	-	Public Arbitrator, Presiding Chairperson
James Laurenson	-	Public Arbitrator
Howard Buchler	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.

\_\_\_\_\_  
Edward Siegal  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
James Laurenson  
Public Arbitrator

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

  
\_\_\_\_\_  
Howard Buchler  
Non-Public Arbitrator

7/11/03  
\_\_\_\_\_  
Signature Date

July 17, 2003

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