

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

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In the Matter of the Arbitration Between:

Keith James Hale and Linda Kay Hale, Claimants v. Gary Lloyd Smith dba Invest Quest,  
Respondent

Case Number: 02-06144

Hearing Site: San Francisco, California

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Nature of the Dispute: Customers v. Associated Person

**REPRESENTATION OF PARTIES**

For Claimants:

Keith James Hale  
Linda Kay Hale  
In Propria Persona  
Glen Ellen, California

For Respondent:

Michael J.M. Brook, Esq.  
Lanahan & Reilley  
Santa Rosa, California

**CASE INFORMATION**

Statement of Claim filed: October 11, 2002

Claimants' Joint Uniform Submission Agreement signed: October 9, 2002

Statement of Answer filed by Respondent: August 25, 2003

Respondent's Uniform Submission Agreement: None Filed

### **CASE SUMMARY**

Claimants alleged misrepresentation, negligence, breach of fiduciary duty, breach of contract and unauthorized trading. The Claimants' allegations involved various securities transactions, including, but not limited to Orbitex, PBHG, Profunds, CMF, Fortis, Grand Prix and Pilgrim mutual funds.

Respondent denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$50,000.00.

Respondent requested dismissal of the Claimants' Statement of Claim in its entirety and costs.

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

On December 6, 2002, Claimants signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waivers of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

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 Arbitrator decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable to and shall pay Claimant Linda K. Hale the sum of \$8,379.00 in compensatory damages. This amount is based upon Mrs. Hale's 50% share of the loss in the Hale Trust Account.
2. The parties shall bear their respective costs, including attorney's fees.
3. 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 = \$ 175.00

#### **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 McClurg Capital Corporation employed the Respondent at the time of the events giving rise to this dispute and the following fees are assessed:

Member Surcharge	= \$ 875.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 1,000.00</u>
<b>Total Member Fees</b>	<b>= \$ 2,625.00</b>

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

The Arbitrator 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 Chair/Panel. The following fees are assessed:

Three (3) Pre-hearing conference sessions with a single arbitrator @ \$450.00/session = \$ 1,350.00

Pre-hearing conferences:	October 21, 2003	1 session
	January 7, 2004	1 session
	January 8, 2004	1 session

Six (6) Hearing sessions @ \$450.00/session = \$ 2,700.00

Hearings:	February 24, 2004	3 sessions
	February 25, 2004	3 sessions

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**Total Forum Fees** = **\$ 4,050.00**

1. The Arbitrator assessed \$2,025.00 of the forum fees jointly and severally to Claimants.
2. The Arbitrator assessed \$2,025.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimants are jointly and severally charged with the following fees and costs:

Initial Filing Fee	= \$ 175.00
Forum Fees	= \$ 2,025.00
Total Fees	= \$ 2,200.00
<u>Less payments</u>	= \$( 625.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,575.00</b>

2. Respondent Gary Lloyd Smith is charged with the following fees and costs:

Forum Fees	= \$ 2,025.00
<u>Less payments</u>	= \$( 0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,025.00</b>

3. McClurg Capital Corporation is charged with the following fees and costs:

Member Fees	= \$ 2,625.00
<u>Less payments</u>	= \$( 2,625.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

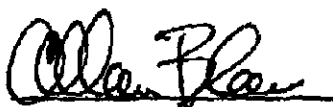
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Allan Blau, Esq.

Public Arbitrator

Arbitrator's Signature



Allan Blau, Esq.  
Public Arbitrator

3/12/04  
Signature Date

3/15/04  
Date of Service