

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

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In the Matter of the Arbitration Between:

Dr. Kenneth A. Barton (Claimant) v. First Security Van Kasper (Wells Fargo Van Kasper), Wayne Lourenco, and Franklin Vande Kasper (Respondents)

Case Number: 02-07348

Hearing Site: New York, New York

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Nature of the Dispute: Customer v. Member and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimant Dr. Kenneth A. Barton ("Barton") hereinafter referred to as "Claimant":  
Anthony J. Hom, Esq., New York, NY. Previously *pro se*.

Respondents First Security Van Kasper (Wells Fargo Van Kasper) ("WFVK"), Wayne Lourenco ("Lourenco"), and Franklin V. Kasper ("Van Kasper") hereinafter collectively referred to as "Respondents": Thomas F. Kopshever, Esq., Wells Fargo, San Francisco, CA. Previously represented by: Gordon C. Young, Esq., Keesal, Young & Logan, P.C., San Francisco, CA.

**CASE INFORMATION**

Statement of Claim filed on or about: December 4, 2002.

Claimant signed the Uniform Submission Agreement.

Joint Statement of Answer filed by Respondents on or about: January 30, 2003.

Joint Motion to Dismiss Respondent Franklin Van Kasper filed by Respondents on or about: January 30, 2003.

Respondent WFVK signed the Uniform Submission Agreement: December 24, 2002.

Respondent Lourenco signed the Uniform Submission Agreement: February 1, 2003.

Respondent Van Kasper did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; breach of contract; failure to monitor Claimant's account; negligence by not acting in a responsible fashion to prevent two "Reg. T. Sellouts"; inadequate supervision by Van Kasper; employer vicarious liability by Van Kasper; principal-agent liability by Van Kasper. Claimant's claim involved Javelin Systems (Aspeon), I Flow, A.T. G., Collectors Universe, E Globe, Nexstrat, and Flour City.

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

### **RELIEF REQUESTED**

Claimant requested stock loss damages in the amount of \$16,807.11; return of NEXSTRAT investment of \$24,991.16; 7% statutory interest in the amount of \$5,851.74; punitive damages in the amount of \$52,349.97; filing fees and hearing session deposit in the total amount of \$975.00; and any and all additional relief to which Claimant may be entitled in this matter.

In their Motion to Dismiss, Respondents requested that the Arbitrators dismiss the Statement of Claim against Respondent Kasper and order that Respondent Kasper's CRD be expunged of any reference to this action. Respondents also request an award of sanctions against Claimant in the amount of \$1,200.00 for Claimant's wrongful refusal to dismiss Respondent Kasper when it was abundantly clear that he should do so.

In their Answer, Respondents requested that Claimant not be allowed to recover any damages, that the Statement of Claim be dismissed with prejudice, and that Respondents be awarded their costs. In addition, Respondents requested that Respondents Kasper's and Lourenco's CRDs be expunged.

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

Respondent Van Kasper did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

By letter dated April 26, 2004, Claimant notified NASD Dispute Resolution that he withdrew his claims against Respondent Van Kasper with prejudice; as such, Respondent WFKV withdrew its motion to dismiss Van Kasper.

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, 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. Claimant's Counts 1-6 in Paragraph V, Page 8, of the Statement of Claim dated December 4, 2002, are denied.

2. Any and all relief not specifically addressed herein, including punitive damages, is denied.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Wayne Lourenco's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Lourenco must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.

### **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	= \$225.00
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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 persons at the time of the events giving rise to the dispute. Accordingly, First Security Van Kasper (Wells Fargo Van Kasper) is a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

May 4-6, 2004, adjournment by Claimant	= \$ 750.00
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#### **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 @ \$750.00	= \$ 750.00
Pre-hearing conference: September 16, 2003 1 session	

Two (2) Hearing sessions @ \$750.00	= \$1,500.00
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Hearing Date: July 7, 2004 2 sessions

Total Forum Fees = \$2,250.00

1. The Panel has assessed \$2,250.00 of the forum fees against Respondent WFVK.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
Adjournment Fee	= \$ 750.00
Total Fees	= \$ 975.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent WFVK is solely liable for:

Member Fees	= \$3,550.00
Forum Fees	= \$2,250.00
Total Fees	= \$5,800.00
Less payments	= \$5,250.00
Balance Due NASD Dispute Resolution	= \$ 550.00

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

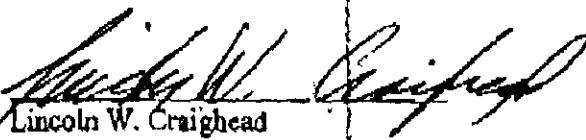
**ARBITRATION PANEL**

Lincoln W. Craighead  
Biagio A. Civalc  
John E. Shine

- Public Arbitrator, Presiding Chairperson  
- Public Arbitrator  
- 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.



Lincoln W. Craighead  
Public Arbitrator, Presiding Chairperson

7/13/04  
Signature Date

Biagio A. Civalc  
Public Arbitrator

Signature Date

John E. Shine  
Non-Public Arbitrator

Signature Date

July 13, 2004  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

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Lincoln W. Craighead  
Public Arbitrator, Presiding Chairperson

Signature Date

*Biagio A. Civalo*  
Biagio A. Civalo  
Public Arbitrator

*July 12, 2004*  
Signature Date

John E. Shine  
Non-Public Arbitrator

Signature Date

July 13, 2004  
Date of Service (For NASD Dispute Resolution use only)

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Public Arbitrator

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Signature Date

  
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John E. Shine  
Non-Public Arbitrator

  
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Signature Date

July 13, 2004

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Date of Service (For NASD Dispute Resolution use only)