

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

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In the Matter of the Arbitration Between:

Edward Zahorsky IRA, Claimant v. Centaurus Financial, Inc. and Douglas Rupiper,  
Respondents

Case Number: 03-00604

Hearing Site: San Francisco, California

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

**REPRESENTATION OF PARTIES**

For Claimant:

Brett A. Alcala, Esq.  
Alcala Law Firm  
San Mateo, California

For Respondents:

Robert C. Rosen, Esq.  
Rosen & Associates, PC  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: January 22, 2003

Claimant's Uniform Submission Agreement signed: January 22, 2003

Joint Statement of Answer filed by Respondents: May 1, 2003

**CASE SUMMARY**

Claimant alleged breach of contract, negligence, breach of fiduciary duty, unsuitability, breach of the implied covenant of good faith and fair dealing, and financial abuse of an elder. Claimant's allegations involved various technology stocks and mutual funds in his IRA account.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and set forth various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested \$156,387.00 in compensatory damages, \$150,000.00 in punitive damages, unspecified pre- and post-judgment interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, and costs, including attorney's fees.

**OTHER ISSUES CONSIDERED AND DECIDED**

Respondents Centaurus Financial, Inc. and Douglas Rupiper did not file with NASD Dispute Resolution properly executed submission agreements but are required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

On February 21, 2003, Edward Zahorsky, beneficiary of Edward Zahorsky IRA, and Claimant's counsel 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.

On March 31, 2003, Respondents Centaurus Financial, Inc.'s and Douglas Rupiper's counsel signed a Waiver Agreement on Respondents' behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

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) Claimant's claims are denied in their entirety.
- 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	= \$ 300.00
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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 Centaurus Financial, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
<b>Total Member Fees</b>	<b>= \$ 5,200.00</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 Chair or the parties and the Panel. The following fees are assessed:

(1) Pre-hearing conference session with a single arbitrator @ \$ 450.00/session	= \$ 450.00
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Pre-hearing conference:

May 11, 2004	1 session
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(1) Pre-hearing conference session with the Panel @ \$1,125.00/session = \$ 1,125.00  
Pre-hearing conference:

July 3, 2003 1 session

(4) Hearing sessions @ \$1,125.00/session = \$ 4,500.00

Hearings:

May 17, 2004 2 sessions

May 18, 2004 2 sessions

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**Total Forum Fees** = \$ 6,075.00

1. The Panel assessed \$3,037.50 of the forum fees to Claimant.
2. The Panel assessed \$3,037.50 of the forum fees jointly and severally to Respondents.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 3,037.50
Total Fees	= \$ 3,337.50
<u>Less payments</u>	= \$(1,425.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,912.50</b>

2. Respondent Centaurus Financial, Inc. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Less payments</u>	= \$(5,200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents, Centaurus Financial, Inc. and Douglas Rupiper, are charged jointly and severally with the following fees and costs:

<u>Forum Fees</u>	= \$ 3,037.50
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,037.50</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**

<b>William M. Samsel</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>James S. Martin, Esq.</b>	-	<b>Public Arbitrator</b>
<b>Gary A. Hooker</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**

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William M. Samsel  
Chair, Public Arbitrator

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Signature Date

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James S. Martin, Esq.  
Public Arbitrator

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Signature Date

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Gary A. Hooker  
Non-Public Arbitrator

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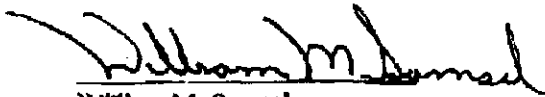
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5/24/04  
Date of Service

ARBITRATION PANEL

William M. Samsel	-	Public Arbitrator, Presiding Chair
James S. Martin, Esq.	-	Public Arbitrator
Gary A. Hooker	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures:



William M. Samsel  
Chair, Public Arbitrator

5/22/04

Signature Date

James S. Martin, Esq.  
Public Arbitrator

Signature Date

Gary A. Hooker  
Non-Public Arbitrator

Signature Date

**ARBITRATION PANEL**

<b>William M. Samsel</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>James S. Martin, Esq.</b>	-	<b>Public Arbitrator</b>
<b>Gary A. Hooker</b>	-	<b>Non-Public Arbitrator</b>

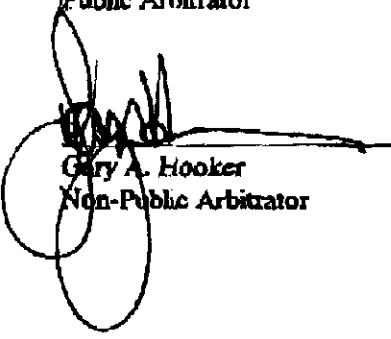
**Concurring Arbitrators' Signatures**

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**William M. Samsel**  
Chair, Public Arbitrator

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Signature Date

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**James S. Martin, Esq.**  
Public Arbitrator

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

  
**Gary A. Hooker**  
Non-Public Arbitrator

**5/24/2004**  
Signature Date