

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

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In the Matter of the Arbitration Between:

Names of the Claimants

Ronald & Olivia Pickering, Joint Account  
Ronald A. Pickering

Case Number: 03-00814

Names of the Respondents

Florida Discount Securities, Inc.  
Bruce Elliot Rich  
Fernando Fernandez a/k/a Daniel Fernandez

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Ronald & Olivia Pickering, Joint Account ("Pickering") and Ronald A. Pickering ("RAP"), hereinafter referred to as "Claimants": Randall W. Henley, Esq., West Palm Beach, Florida.

Respondent Florida Discount Securities, Inc. ("FDS") did not appear.

For Respondent Bruce Elliot Rich ("Rich"): Jonathan S. Robbins, Esq., Akerman Senterfitt, Fort Lauderdale, Florida until his withdrawal as counsel on or about August 8, 2003. Thereafter, Respondent Rich did not appear.

For Respondent Fernando Fernandez a/k/a Daniel Fernandez ("Fernandez"): Delmer C. Gowing, III, Esq., Delmer C. Gowing, III, P.A., Delray Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: February 3, 2003.

Claimants signed the Uniform Submission Agreement: January 24, 2003.

Statement of Answer filed by Respondent Rich on or about: April 11, 2003.

Respondent Rich signed the Uniform Submission Agreement: March 3, 2003.

Statement of Answer filed by Respondent Fernandez on or about: May 8, 2003.

Respondent Fernandez did not file an executed Uniform Submission Agreement.

Respondent FDS did not file a Statement of Answer or an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) violation of Florida Statutes, Section 517.301; 2) fraud in the inducement; and 3) breach of fiduciary duty and/or negligence. The causes of action relate to the purchase of shares of stock of BSD Software, Inc. ("BSD") and

Combined Professional Services, Inc. ("CPS").

Unless specifically admitted in their Answers, Respondents Rich and Fernandez denied the allegations made in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages of \$500,000.00, plus interest, attorney's fees and costs.

Respondent Rich requested that all claims against him be dismissed in their entirety, that an award of costs and attorneys fees be rendered in Respondent Rich's favor, together with such other and further relief as is deemed just and proper.

Respondent Fernandez requested that all claims against him be dismissed and that all references to this arbitration proceeding be expunged from his registration records maintained by the NASD CRD.

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

Respondent FDS did not appear in this matter. Claimant advised that Respondent FDS is no longer conducting a brokerage business. Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Respondent FDS has 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 Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent Rich appeared at the Initial pre-hearing conference but did not appear at the evidentiary hearing in this matter. Upon review of the file and the representations made on behalf of the Claimants, the Panel determined that Respondent Rich has 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 Respondent present, in accordance with the Code.

Respondent FDS did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

Respondent Fernandez did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified (as a witness for Claimants at the hearing), is bound by the determination of the Panel on all issues submitted.

At the commencement of the evidentiary hearing, Claimants advised the Panel that they were withdrawing their claims against Respondent Fernandez and agreed to an expungement of his

registration records maintained by the NASD CRD.

During the evidentiary hearing, Claimants amended their Statement of Claim *ore tenus* to add a claim for punitive damages.

The party present at the hearing has 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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Rich and FDS are jointly and severally liable and shall pay to Claimants the sum of \$194,648.00 in compensatory damages, plus interest of \$21,189.00 which accrued from September 2002 through April 2004. The interest was calculated as follows: 118 days in the year 2002 at nine percent (9%) interest for a sum of \$5,664.00; 365 days in the year 2003 at six percent (6%) interest for a sum of \$11,680.00; and 103 days in the year 2004 at seven percent (7%) interest for a sum of \$3,845.00. Damages are awarded based upon Respondents Rich and FDS' violation of Section 517.301, Florida Statutes, fraud in the inducement and breach of fiduciary duty.
2. Respondents Rich and FDS committed egregious fraud in the handling of Claimants' accounts. Specifically, BSD's Form 10-2SB reflected that as of December 31, 2001 the company's current assets amounted to \$57.00 and that as of June 30, 2002, its assets were \$330.00. CPS' Form 10-2SB reflected assets of \$296.00 as of December 31, 2000 and also as of September 30, 2001. Despite this, Respondents Rich and FDS recommended purchase of shares of stock in these companies to Claimants. It was patently fraudulent to sell shares of stock in these companies because Respondent Rich was a major stockholder of these companies and knew the financial positions of same.
3. Respondents Rich and FDS are liable and shall pay to Claimants the sum of \$215,837.00 in punitive damages. The Panel found, pursuant to Florida Statutes, Section 768.72 and 768.737, clear and convincing evidence of intentional misconduct. The Panel specifically finds that Respondents Rich and FDS had actual knowledge of the wrongfulness of the conduct and the high probability that damage to the Claimants would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in damage to the Claimants. The Panel specifically finds that Respondent FDS actively and knowingly participated in the conduct of Respondent Rich and ratified and consented to such conduct.
4. Claimant's claims for relief pursuant to Florida Statutes Chapter 517 are specifically granted. However, Claimant did not request attorney's fees during the evidentiary hearing as Claimant's attorney believed that as the Respondents

were not present at the hearing, Claimants would not be entitled to attorney's fees pursuant to Florida Statutes Chapter 517.

5. The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Fernandez' public and non-public 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 Fernandez must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
6. Any and all claims for relief not specifically addressed herein 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 persons at the time of the events giving rise to the dispute. Accordingly, Respondent FDS is a party and was a member firm until the termination of its membership with the NASD on or about November 13, 2002. Therefore, the member fees against Respondent FDS were waived by NASD Dispute Resolution.

#### **Adjournment Fees**

No adjournments were granted during these proceedings for which fees were assessed.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred during these proceedings.

#### **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 the Panel @ \$1,125.00	= \$1,125.00
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Pre-hearing conference:	September 9, 2003	1 session	
One (1) Hearing session @	\$1,125.00		= \$1,125.00
Hearing Date:	April 21, 2004	1 session	
Total Forum Fees			= \$2,250.00

The Panel has assessed the total forum fees of \$2,250.00 of the forum fees to Respondent Rich.

#### **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 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 during these proceedings.

#### **Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Rich is solely liable for:

Forum Fees	= \$2,250.00
Total Fees	= \$2,250.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$2,250.00

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

#### **ARBITRATION PANEL**

<i>Abe S. Hoppenstein, LL.B</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>George G. Kurschner, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Berthold T. Berkwich</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

/s/  
Abe S. Hoppenstein, LL.B  
Public Arbitrator, Presiding Chairperson

                      
Signature Date

/s/  
George G. Kurschner, Esq.  
Public Arbitrator

                      
Signature Date

/s/  
Berthold T. Berkwich  
Non-Public Arbitrator

                      
Signature Date

April 23, 2004  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures



Abe S. Hoppenstein, LL.B  
Public Arbitrator, Presiding Chairperson

April 23, 2004  
Signature Date

George G. Kurschner, Esq.  
Public Arbitrator

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Signature Date

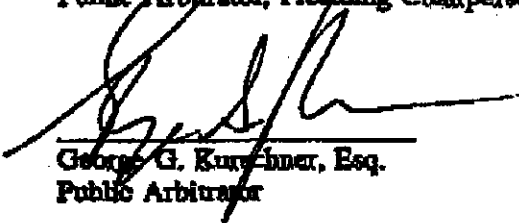
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Abe S. Hoppenstein, LL.B.  
Public Arbitrator, Presiding Chairperson

  
George G. Kurychew, Esq.  
Public Arbitrator

Signature Date

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Signature Date

Berthold T. Berkwich  
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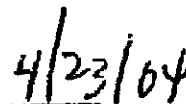
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