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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Thomas W.H. Buck

Case Number: 03-01341

Names of the Respondents  
John Curran  
Jody L. Roberts  
Founders Equity Securities, Inc.  
Penson Financial Services, Inc.  
Centerpoint Securities, Inc.

Hearing Site: Atlanta, Georgia

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

**REPRESENTATION OF PARTIES**

Thomas W.H. Buck ("Buck"), referred to herein as "Claimant", appeared pro se.

Respondent John Curran ("Curran") appeared pro se.

For Respondents Founders Equity Securities, Inc. ("FES") and Centerpoint Securities, Inc. ("CSI"): John Curran, Personal Representative, Dallas, Texas.

For Respondent Penson Financial Services, Inc. ("PFS"): Wm. David Simmons, Esq., McGuire, Craddock & Strother, P.C., Dallas, Texas.

Respondent Jody L. Roberts ("Roberts") did not appear.

**CASE INFORMATION**

Statement of Claim filed on or about: February 24, 2003.

Claimant signed the Uniform Submission Agreement: February 20, 2003.

Statement of Answer and Motion to Dismiss filed by PFS on or about: May 5, 2003.

Statement of Answer and Motion to Dismiss filed by Respondent Curran on or about: May 19, 2003.

Statement of Answer and Motion to Dismiss filed by Respondent FES on or about: May 19, 2003.

Statement of Answer and Motion to Dismiss filed by Respondent CSI on or about: May 19, 2003.

Respondent PFS signed the Uniform Submission Agreement: April 29, 2003.

Respondents Curran, FES and CSI signed the Uniform Submission Agreements: May 12, 2003.

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

Objection to Motions to Dismiss and Proposed Amended Complaint filed by Claimant on or about: September 19, 2003.

Objection to Amended Statement of Claim filed jointly by Respondents Curran, FES and CSI on or about:

October 15, 2003.

Objection to Claimant's Proposed Amended Statement of Claim filed by Respondent PFS on or about: October 17, 2003.

### **CASE SUMMARY**

Claimant asserted the following causes of action against Respondent Curran: unauthorized trading; unauthorized use of margin; violation of Alabama securities laws, including unlicensed securities transactions; solicitation of a margin call payment by threatening to liquidate Claimant's account; breach of fiduciary duty; and negligence. Claimant asserted the following causes of action against Respondent Roberts: unauthorized trading; unauthorized use of margin; and violation of Alabama securities laws, including unlicensed securities transactions. Claimant asserted the cause of action of respondeat superior against Respondent FES. Claimant asserted the following causes of action against Respondent CSI: unauthorized transfer of Claimant's account from Respondent FES to Respondent CSI; and respondeat superior. Claimant further asserted the cause of action of negligence against Respondent PFS. The causes of action relate to margin calls in connection with Claimant's positions in the following stocks: GO2NET, acquired by and subsequently known as InfoSpace, and Zixit Corp.

Unless specifically admitted in their Answers, Respondents Curran, FES, CSI and PFS denied the allegations made in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$18,000.00, punitive damages in the amount of \$7,000.00, and costs, including forum fees, attorney's fees, witness and production fees, and other case-related costs.

Respondents Curran, FES, CSI and PFS requested that this matter be dismissed in its entirety, that Claimant recover nothing, and that Respondents Curran, FES, CSI and PFS recover their fees, costs and expenses incurred in connection with this claim. Respondent Curran further requested that he be reimbursed \$565.00, specifically, \$300.00 for Respondent Curran's air travel to the arbitration, and \$265.00 for Respondent Curran's hotel stay the night before the arbitration.

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

Respondent Roberts did not appear at the evidentiary hearings. Upon review of the file and the representations made by the Claimant, the arbitrator (the "Arbitrator") determined that Respondent Roberts 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 Roberts 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 Arbitrator on all issues submitted.

On October 6, 2003, the Arbitrator issued an Order which stated the following: since Claimant filed a proposed Amended Statement of Claim, the Arbitrator's rulings on the motions to dismiss filed by Respondents Curran, CSI, FES and PFS were deferred; pursuant to Rule 10328(c) of the Code, no amendment to the Statement of Claim is permitted without the Arbitrator's consent; Respondents were to file any opposition to the proposed Amended Statement of Claim no later than October 17, 2003; and upon the Arbitrator's receipt of any opposition to the proposed Amended Statement of Claim, or upon notice from NASD Dispute Resolution that no opposition had been filed, the Arbitrator would issue a ruling on the motions to dismiss.

On October 22, 2003, the Arbitrator issued an Order which permitted the proposed Amended Statement of Claim and denied Respondents' Curran's, CSI's, FES's and PFS's motions to dismiss.

On or about December 31, 2003, an executed Notice of Dismissal with Prejudice of Respondent PFS from this matter was filed with NASD Dispute Resolution.

At the conclusion of Claimant's case, Respondents Curran, CSI and FES moved for dismissal of the claim. The Arbitrator took the motion under advisement.

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

Claimant's claims are denied in their entirety.

Claimant shall reimburse Respondent Curran the sum of \$565.00, of which \$300.00 represents the cost of Respondent Curran's air travel to the arbitration, and \$265.00 represents the cost of Respondent Curran's hotel stay the night before the arbitration.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, 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	= \$125.00
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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 firms that employed the associated persons at the time of the events giving rise to the dispute. Respondent CSI is not presently a member firm of NASD. As Respondent CSI participated in this matter, Respondent CSI is assessed all member fees. Further, Respondents FES and PFS are member firms and parties. Accordingly, the following fees are assessed to Respondents CSI, FES and PFS:

<u>Respondent CSI's Member surcharge</u>	<u>= \$ 425.00</u>
<u>Total Member Fees for Respondent CSI</u>	<u>= \$ 425.00</u>
<u>Respondent FES's Member surcharge</u>	<u>= \$ 425.00</u>
<u>Total Member Fees for Respondent FES</u>	<u>= \$ 425.00</u>
<u>Respondent PFS's Member surcharge</u>	<u>= \$ 425.00</u>
<u>Total Member Fees for Respondent PFS</u>	<u>= \$ 425.00</u>

**Adjournment Fees**

No adjournments were requested in this matter.

**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.

Injunctive relief fees were not assessed in this matter.

**Forum Fees and Assessments**

The Arbitrator 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:

Three (3) Pre-hearing sessions @\$450.00/session		= \$1,350.00
Pre-hearing conferences:		
	September 2, 2003	1 session
	December 18, 2003	1 session
	January 6, 2004	1 session
Two (2) Hearing sessions @\$450.00/session		= \$ 900.00
Hearing Dates:	January 15, 2004	2 sessions
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Total Forum Fees		= \$2,250.00

The Arbitrator has assessed the total forum fees of \$2,250.00 to Claimant.

**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.

There were no administrative costs incurred in this matter.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 125.00
<u>Forum Fees</u>	= <u>\$2,250.00</u>
Total Fees	= \$2,375.00
<u>Less Payments</u>	= <u>\$ 575.00</u>
Balance Due NASD Dispute Resolution	= \$1,800.00

Respondent CSI is solely liable for:

<u>Member Fees</u>	= <u>\$425.00</u>
Total Fees	= \$425.00
<u>Less Payments</u>	= <u>\$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$425.00

Respondent FES is solely liable for:

<u>Member Fees</u>	= <u>\$425.00</u>
Total Fees	= \$425.00
<u>Less Payments</u>	= <u>\$425.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent PFS is solely liable for:

<u>Member Fees</u>	= <u>\$425.00</u>
Total Fees	= \$425.00
<u>Less Payments</u>	= <u>\$425.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATOR**

Frank A. Lightmas, Jr., Esq.

- Public Arbitrator

Arbitrator's Signature

/s/  
Frank A. Lightmas, Jr., Esq.  
Public Arbitrator

January 26, 2004  
Signature Date

January 26, 2004  
Date of Service (For NASD Dispute Resolution office use only)

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Arbitrator's Signature



Frank A. Lightmas, Jr., Esq.  
Public Arbitrator

1/26/04

Signature Date

Date of Service (For NASD Dispute Resolution office use only)