

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

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In the Matter of the Arbitration Between:

The Katrine V. Warfield Trust, by William J. O'Hare, as Trustee, and Katrine V. Warfield, individually (Claimants) v. Golden Harris Capital Group, Inc., J.B. Hanauer & Co., and Gerard O'Hare (Respondents)

Case Number: 03-02614

Hearing Site: New York, New York

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Nature of the Dispute: Customers v. Members and Associated Person.

**REPRESENTATION OF PARTIES**

Claimants The Katrine V. Warfield Trust, William J. O'Hare, as Trustee ("The Katrine V. Warfield Trust") and Katrine V. Warfield ("Warfield") hereinafter collectively referred to as "Claimants": Thomas P. Halley, Esq., Poughkeepsie, NY.

Respondents Golden Harris Group, Inc. ("Golden Harris") and J.B. Hanauer & Co. ("J.B. Hanauer"): Richard C. Szuch, Esq., Dillon, Bitar & Luther, LLC, Morristown, NJ. Previously represented by: Richard C. Szuch, Esq., Lowenstein Sandler, PC, Roseland, NJ.

Respondent Gerard O'Hare ("O'Hare") appeared *pro se*.

Golden Harris, J.B. Hanauer and O'Hare are hereinafter collectively referred to as "Respondents."

**CASE INFORMATION**

Statement of Claim filed on or about: April 3, 2003.  
Claimants signed the Uniform Submission Agreement.

Joint Statement of Answer and Motion to Dismiss filed by Respondents Golden Harris and J.B. Hanauer on or about: October 3, 2003.

Respondent Golden Harris signed the Uniform Submission Agreement: November 26, 2003.

Respondent J.B. Hanauer signed the Uniform Submission Agreement: July 16, 2003.

Statement of Answer filed by Respondent O'Hare on or about: July 30, 2003.  
Respondent O'Hare signed the Uniform Submission Agreement: October 30, 2003.

### **CASE SUMMARY**

Claimants asserted the following causes of action: misrepresentations; omission of facts; negligence; unsuitability; failure to supervise; unauthorized trading; churning; fraud; securities fraud; breach of fiduciary duty; breach of contract; and control person liability. Claimants' claim involved unspecified securities.

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

Unless specifically admitted in his Answer, Respondent O'Hare denied the allegations made in the Statement of Claim.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$1,200,000.00, plus interest from the date of losses incurred; punitive damages; attorneys' fees; costs; and any other damages the Panel may deem just and fair.

Respondents Golden Harris and J.B. Hanauer requested dismissal of all claims against J.B. Hanauer and Golden Harris; attorneys' fees; and such other and further relief as the Panel deems just and appropriate.

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

During the hearing, Respondent J.B. Hanauer made a motion to dismiss, which was denied. Respondent J.B. Hanauer renewed its motion to dismiss, and the Panel granted the motion.

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, and 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. Respondent Golden Harris is solely liable for and shall pay to Claimant Warfield compensatory damages in the sum of \$120,000.00 plus interest at the rate of 9% from November 30, 2001, until payment of the award. If the award remains unpaid 90 days after the award is served, interest shall be paid at the rate of 12% from 90 days after the award until it is paid.

2. Respondent O'Hare is solely liable for and shall pay to Claimant Warfield compensatory damages in the amount of \$60,000.00 plus interest at the rate of 9% from November 30, 2001, until payment of the award. If the award remains unpaid 90 days after the award is served, interest shall be paid at the rate of 12% from 90 days after the award until it is paid.
3. Any and all relief not specifically addressed herein, is 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	= \$500.00
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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 person at the time of the events giving rise to the dispute. Accordingly, Golden Harris Capital Group, Inc. is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, J.B. Hanauer & Co. is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

#### **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:

Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$2,400.00
Pre-hearing conferences:	
February 12, 2004	1 session
April 27, 2004	1 session

Four (4) Hearing sessions @ \$1,200.00		= \$4,800.00
Hearing Dates:	August 3, 2004	2 sessions
	August 4, 2004	2 sessions

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Total Forum Fees	= \$7,200.00
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1. The Panel has assessed \$3,600.00 of the forum fees against Claimant Warfield.
2. The Panel has assessed \$1,800.00 of the forum fees against Respondent Golden Harris.
3. The Panel has assessed \$1,800.00 of the forum fees against Respondent O'Hare.

**Fee Summary**

1. Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less payments</u>	= \$ 500.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Claimant Warfield is solely liable for:

<u>Forum Fees</u>	= \$ 3,600.00
<u>Total Fees</u>	= \$ 3,600.00
<u>Less payments</u>	= \$ 1,200.00
Balance Due NASD Dispute Resolution	= \$ 2,400.00

3. Respondent Golden Harris is solely liable for:

<u>Member Fees</u>	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 1,800.00
<u>Total Fees</u>	= \$10,350.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$10,350.00

4. Respondent J.B. Hanauer is solely liable for:

<u>Member Fees</u>	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 0.00
<u>Total Fees</u>	= \$ 8,550.00
<u>Less payments</u>	= \$ 7,800.00
Balance Due NASD Dispute Resolution	= \$ 750.00

5. Respondent O'Hare is solely liable for:

<u>Forum Fees</u>	= \$1,800.00
<u>Total Fees</u>	= \$1,800.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$1,800.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.
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Arbitration No. 03-02614  
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**ARBITRATION PANEL**

Ernest Fanwick, Esq.	-	Public Arbitrator, Presiding Chairperson
Richard W. Cutler, Esq.	-	Public Arbitrator
Peter Bennett, Esq.	-	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 is which is my award.

*Ernest Fanwick*

Ernest Fanwick, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Richard W. Cutler, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Peter Bennett, Esq.  
Non-Public Arbitrator

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

\_\_\_\_\_  
August 25, 2004  
Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution  
Arbitration No. 03-02614  
Award Page 6 of 6

**ARBITRATION PANEL**

Ernest Farwick, Esq.	-	Public Arbitrator, Presiding Chairperson
Richard W. Cutler, Esq.	-	Public Arbitrator
Peter Bennett, Esq.	-	Non-Public Arbitrator

**Consenting 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.

\_\_\_\_\_  
Ernest Farwick, Esq.  
Public Arbitrator, Presiding Chairperson



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Richard W. Cutler, Esq.  
Public Arbitrator

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Signature Date

8/19/04  
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Signature Date

\_\_\_\_\_  
Peter Bennett, Esq.  
Non-Public Arbitrator

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

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**ARBITRATION PANEL**

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Ernest Fanwick, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Richard W. Cutler, Esq.  
Public Arbitrator

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Signature Date

  
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Peter Bennett, Esq.  
Non-Public Arbitrator

  
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Signature Date

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