

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Alan K. Goldberg, Trustee, on behalf of the Plan Participants and Beneficiaries of the Alan K. Goldberg, DDS, Inc., Profit Sharing Plan (Claimant) vs. Prim Securities, Inc., Brecek & Young Advisors, Inc., and Patrick J. Watters (Respondents)

Case Number: 03-02621

Hearing Site: Cleveland, Ohio

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

REPRESENTATION OF PARTIES

Claimant Alan K. Goldberg, Trustee, on behalf of the Plan Participants and Beneficiaries of the Alan K. Goldberg, DDS, Inc., Profit Sharing Plan hereinafter referred to as "Claimant": Eric A. Lanigan, Esq., Attorney At Law, Winter Park, FL.

Respondent Prim Securities, Inc. ("Prim"): Jim Koutrodimos, Esq., previously represented by Michael C. Brady, Esq., Prim Securities, Inc., Cleveland, OH and Karl E. May, Esq., Cowden Humphrey Nagorney Lovett Co., Cleveland, OH.

Respondent Brecek & Young Advisors, Inc. ("Brecek"): David A. Baugh, Esq., Mora Baugh Waitzman & Unger, LLC, Chicago, IL.

Respondent Patrick J. Watters ("Watters"): J. Michael Gatien, Esq., Law Office of J. Michael Gatien, North Canton, OH.

CASE INFORMATION

Statement of Claim filed on or about: April 8, 2003.

Answer to Counterclaim filed on or about: June 30, 2003.

Claimant signed the Uniform Submission Agreement.

Statement of Answer filed by Respondent Prim on or about: June 10, 2003.

Respondent Prim signed the Uniform Submission Agreement: June 10, 2003.

Statement of Answer filed by Respondent Brecek on or about: June 6, 2003.

Respondent Brecek signed the Uniform Submission Agreement: June 2, 2003.

Statement of Answer and Counterclaim filed by Respondent Watters on or about: May 29, 2003.

Respondent Watters signed the Uniform Submission Agreement: May 29, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty and violation of ERISA. The causes of action relate to equities.

Unless specifically admitted in its Answer, Respondent Prim denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in its Answer, Respondent Brecek denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Respondent Watters denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Respondent Watters asserted the following cause of action in his Counterclaim: that the Statement of Claim was brought solely for the purpose of causing malicious injury.

Unless specifically admitted in his Answer to the Counterclaim, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$350,000.00; reasonable attorneys' fees and, costs.

Respondent Prim requested that the Statement of Claim be dismissed and that it be awarded costs; attorneys' fees and forum fees

Respondent Brecek requested dismissal of the Statement of Claim; expungement of this arbitration from Brecek's CRD record; costs; attorneys' fees and any other relief that the Panel believes to be just and equitable.

Respondent Watters requested dismissal of the Statement of Claim; attorneys' fees; costs and the forum fees should be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

By letter dated November 9, 2005, Claimant notified NASD Dispute Resolution that it entered into a settlement with Respondent Brecek and all claims against Brecek were withdrawn.

In closing arguments made at the December 2, 2005 hearing, attorney J. Michael Gatien requested that the Panel expunge this arbitration from Respondent Watters' CRD record.

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, 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 claims are dismissed in their entirety.
2. Claimant shall pay to Respondent Watters attorneys' fees in the amount of \$16,841.00 pursuant to Respondent Watters' Counterclaim and the exhibit submitted to the Panel at the hearing.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Watters 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 Watters must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. 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	= \$ 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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent Prim is a party.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	= \$ 2,750.00
Total Member fees	= \$ 5,200.00

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, Respondent Brecek is a party.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	= \$ 2,750.00
Total Member fees	= \$ 5,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

February 1, 2, & 3, 2005, adjournment by Respondent Prim = \$ 1,125.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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 @ \$1,125.00 per session = \$ 2,250.00

Pre-hearing conferences: December 8, 2003 1 session
March 19, 2004 1 session

Seven (7) Hearing sessions @ \$1,125.00 per session = \$ 7,875.00

Hearing Dates: November 29, 2005 2 sessions
November 30, 2005 2 sessions
December 1, 2005 2 sessions
December 2, 2005 1 sessions

Total Forum Fees = \$ 10,125.00

1. The Panel has assessed \$3,375.00 of the forum fees against Claimant.
2. The Panel has assessed \$3,375.00 of the forum fees against Respondent Prim.
3. The Panel has assessed \$3,375.00 of the forum fees against Respondent Watters.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 3,375.00
Total Fees	= \$ 3,675.00
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 2,250.00

2. Respondent Prim is solely liable for:

Member Fees	= \$ 5,200.00
Adjournment Fees	= \$ 1,125.00
<u>Forum Fees</u>	= \$ 3,375.00
Total Fees	= \$ 9,700.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 4,500.00

3. Respondent Bereck is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
Total Fees	= \$ 5,200.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$.00

4. Respondent Watters is solely liable for

<u>Forum Fees</u>	= \$ 3,375.00
<u>Total Fees</u>	= \$ 3,375.00
<u>Less payments</u>	= \$ 1,250.00
Balance Due NASD Dispute Resolution	= \$ 2,125.00

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

ARBITRATION PANEL

Thomas R. Skulina, Esq.	- Public Arbitrator, Presiding Chairperson
Elmer G. Cowan, Esq.	- Public Arbitrator
Robert Shiffra, Esq.	- Non-Public Arbitrator

Concurring Arbitrators' Signatures



Thomas R. Skulina, Esq.
Public Arbitrator, Presiding Chairperson

12-09-05

Signature Date

Elmer G. Cowan, Esq.
Public Arbitrator

Signature Date

Robert Shiffra, Esq.
Non-Public Arbitrator

Signature Date

December 13, 2005
Date of Service (For NASD Dispute Resolution use only)

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Robert Shiffra, Esq.	- Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

Signature Date



Elmer G. Cowan, Esq.
Public Arbitrator

DEC 12 2005
Signature Date

Robert Shiffra, Esq.
Non-Public Arbitrator

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Elmer G. Cowan, Esq.
Public Arbitrator

Signature Date



Robert Shiffra, Esq.
Non-Public Arbitrator

12-12-05

Signature Date

December 13, 2005

Date of Service (For NASD Dispute Resolution use only)