

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant
Alexander Vishnevsky

Case Number: 03-02773

Name of the Respondents
FSC Securities Corporation
Lincoln Financial Advisors Corporation
and
Lee A. Finkelstein

Hearing Site: Philadelphia, PA

Nature of Dispute: Customer v. Members and Associated Person

REPRESENTATION OF PARTIES

Claimant, Alexander Vishnevsky, hereinafter collectively referred to as "Claimant", was represented by Alan A. Frank, Esq., Frank, Rosen, Snyder & Moss, L.L.P., Elkins Park, Pennsylvania.

Respondent, FSC Securities Corporation ("FSC"), was represented by Samuel E. Cohen, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, P.C., Philadelphia, Pennsylvania.

Respondent, Lincoln Financial Advisors Corporation ("Lincoln Financial"), was represented by Keith R. Duthil, Esq., Stradley Ronon, Stevens & Young, LLP, Malvern, Pennsylvania.

Respondent, Lee A. Finkelstein ("Finkelstein"), was represented by Mark Durant, Esq., Durant & Durant, Philadelphia, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on April 15, 2003.

Claimant signed the Uniform Submission Agreement on April 11, 2003.

Amended Statement of Claim filed on April 29, 2004.

Preliminary Answer, Motion to Dismiss and Affirmative Defenses filed by Respondent FSC on July 2, 2003.

Preliminary Answer, Motion to Dismiss and Affirmative Defenses of Respondent FSC incorporated by reference as a response to Claimant's Amended Statement of Claim on May 7, 2004.

Statement of Answer and Affirmative Defenses filed by Respondent Lincoln Financial on July 3, 2003.

A representative of Respondent Lincoln Financial signed the Uniform Submission Agreement on May 8, 2003.

Answer and Affirmative Defenses of Respondent Lincoln Financial incorporated by reference in response to Claimant's Amended Statement of Claim on May 11, 2004.

Statement of Answer and Counterclaim filed by Respondent Finkelstein on June 16, 2003.

Respondent Finkelstein signed the Uniform Submission Agreement on April 29, 2003.

Answer and Counterclaim of Respondent Finkelstein incorporated by reference as response to Claimant's Amended Statement of Claim on May 21, 2004.

Statement of Answer and Affirmative Defenses to Counterclaim filed by Claimant on July 11, 2003.

Claimant's Response to Respondent FSC Securities Corporation's Motion to Dismiss the Amended Statement of Claim on June 17, 2004.

Respondent FSC Securities Corporation's Motion for a More Specific Statement of Claim filed on March 8, 2004.

Claimant's response to FSC Securities Corporation's Motion for a More Specific Statement of Claim filed on April 19, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: violation of section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder; violation of §§401,402, and 404 of the Pennsylvania Securities Act of 1972; violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law; Racketeering Influence and Corrupt Organization Act, 18 U.S.C. § 1961, et seq. and conspiracy to violate said Act; breach of contract; conversion; breach of fiduciary duty; common law fraud; unjust enrichment; failure to supervise; *respondeat superior*; civil conspiracy; and, punitive damages. The causes of action relate to the purchase and sale of mutual funds and unspecified stock, and to the execution of promissory notes between Claimant and Respondent Finkelstein while Finkelstein was a registered representative with Respondents FSC and Lincoln Financial.

Unless specifically admitted in its Answer, Respondent FSC denied the allegations made in the Amended Statement of Claim and asserted the following defenses among others: failure to allege a claim upon which relief may be granted; failure to mitigate; statute of limitations; assumption of the risk; and laches, waiver, estoppel and ratification.

Unless specifically admitted in its Answer, Respondent Lincoln Financial denied the allegations made in the Amended Statement of Claim and asserted the following defenses among others: estoppel; ratification; failure to mitigate; statute of limitations; and, the doctrine of *in pari delicto*.

Unless specifically admitted in his Answer, Respondent Finkelstein denied the allegations made in the Amended Statement of Claim and asserted the following defenses among others: failure to state a claim upon which relief may be granted; ratification; estoppel and laches; *in pari delicto*; statute of limitations; assumption of the risk; contributory and/or comparative negligence; and, failure to mitigate.

Respondent Finkelstein in his counterclaim asserted the following causes of action: extortion, fraud and conversion.

Unless specifically admitted in his Answer, Claimant denied the allegations made in the Counterclaim and explicitly denies that he was involved in the drafting of the promissory notes; that he was involved in his own investment scheme; that he threatened Finkelstein; and, that he violated any common law or applicable statutes.

RELIEF REQUESTED

In his Amended Statement of Claim and Answer to Counterclaim, Claimant requested compensatory damages in the amount of \$650,000.00; punitive damages in the amount of \$1,950,000.00; interest, attorneys' fees, and costs in unspecified amounts. In his Answer to the Counterclaim, Claimant requested that the Panel dismiss the Counterclaim.

Respondent FSC requested that this matter be dismissed and that all costs, fees and attorneys' fees be assessed against Claimant or his counsel.

Respondent Lincoln Financial requested that Claimant's claims be denied in all respects, and that Lincoln Financial be compensated for costs, including attorney's fees.

Respondent Finkelstein requested an award in his favor in an amount to be determined after the completion of discovery and production of all of the pertinent financial records, in addition to costs, expenses and attorney's fees and all other such relief the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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

On May 14, 2004, the Panel granted Respondent FSC's Motion for a More Specific Statement of Claim.

On June 28, 2004, the Panel denied without prejudice FSC's Motion to Dismiss the Amended Statement of Claim.

At the hearing on the merits, Respondents FSC and Lincoln Financial made motions to dismiss. The Panel denied both.

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. Respondent Finkelstein is liable to and shall pay to Claimant the sum of eighty-two thousand three hundred fifty dollars and no cents (\$82,350.00) in compensatory damages;
2. Respondents FSC, Lincoln and Finkelstein are jointly and severally liable to and shall pay to Claimant the sum of five hundred dollars and no cents (\$500.00) as reimbursement for his claim filing fee;
3. Respondent Finkelstein's counterclaim is denied in its entirety;
4. The parties shall be responsible for their costs and attorneys' fees except as Fees are specifically set forth below; and,
5. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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
Counter claim filing fee	= \$250.00

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, FSC and Lincoln Financial are parties.

<u>FSC</u>	
Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

<u>Lincoln Financial</u>	
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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$ 450.00 = \$ 450.00
Pre-hearing conference: April 16, 2004 1 session

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$ 1,200.00
Pre-hearing conference: December 12, 2003 1 session

Ten (10) Hearing sessions @ \$1,200.00 = \$12,000.00
Hearing Dates: July 19, 2004 2 sessions
July 20, 2004 2 sessions
July 21, 2004 2 sessions
July 22, 2004 2 sessions
July 23, 2004 2 sessions

Total Forum Fees = \$13,650.00

1. The Panel has assessed \$6,825.00 of the forum fees to Respondent FSC.
2. The Panel has assessed \$6,825.00 of the forum fees to Respondent Lincoln Financial.

Fee Summary

1. Claimant is assessed and shall pay:

Initial Filing Fee	= \$ 500.00
Total Fees	= \$ 500.00
Less payments	= \$ 4,100.00
Refund owed Claimant from NASD Dispute Resolution	= \$ 3,600.00

2. Respondent FSC is assessed and shall pay:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 6,825.00
Total Fees	= \$15,375.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 6,825.00

3. Respondent Lincoln Financial is assessed and shall pay:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 6,825.00
Total Fees	= \$15,375.00
Less payments	= \$ 9,350.00
Balance Due NASD Dispute Resolution	= \$ 6,025.00

4. Respondent Finkelstein is assessed and shall pay:


Counterclaim Filing Fee	= \$ 250.00
Total Fees	= \$ 250.00
Less payments	= \$ 750.00
Refund owed Finkelstein from NASD Dispute Resolution	= \$ 500.00

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

ARBITRATION PANEL

John R. Crayton, Esq.	-	Public Arbitrator, Presiding Chairperson
Richard F. Bieker, PhD	-	Public Arbitrator, Panelist
John P. Azzopardi, CFP	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



John R. Crayton, Esq.
Public Arbitrator, Presiding Chairperson

8/23/04

Signature Date

Richard F. Bieker, PhD
Public Arbitrator, Panelist

Signature Date

John P. Azzopardi, CFP
Non-Public Arbitrator, Panelist

Signature Date

August 23, 2004

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

ARBITRATION PANEL

John R. Crayton, Esq.
Richard F. Bieker, PhD
John P. Azzopardi, CFP

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator, Panelist
- Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

John R. Crayton, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Richard F. Bieker
Richard F. Bieker, PhD
Public Arbitrator, Panelist

8/23/04
Signature Date

John P. Azzopardi, CFP
Non-Public Arbitrator, Panelist

Signature Date

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

ARBITRATION PANEL

John R. Crayton, Esq.
Richard F. Bieker, PhD
John P. Azzopardi, CFP

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator, Panelist
- Non-Public Arbitrator, Panelist

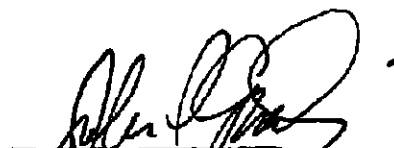
Concurring Arbitrators' Signatures

John R. Crayton, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Richard F. Bieker, PhD
Public Arbitrator, Panelist

Signature Date



John P. Azzopardi, CFP
Non-Public Arbitrator, Panelist



Signature Date



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