

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

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In the Matter of the Arbitration Between:

Mary H. Coleman, (Claimant) v. Michael D. Mathias, Interstate Financial Group, Inc., Gerald S. Berger, Gerald S. Berger, Inc. and National Planning Corp. (Respondents).

Case Number: 03-03229

Hearing Site: New York, NY

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

**REPRESENTATION OF PARTIES**

Claimant Mary Coleman ("Claimant") hereinafter referred to as "Claimant": Richard King, Esq., Ford, Flower & Hasbrouk, Linwood, NJ.

Respondents Michael D. Mathias ("Mathias"), Interstate Financial Group, Inc. ("Interstate") and National Planning Corp. ("NPC"): Barry R. Temkin, Esq., Fiedelman Garfinkel & Lesman, New York, NY.

Respondents Gerald S. Berger ("Berger") and Gerald S. Berger, Inc., ("Berger Inc."): Jonathan Harwood, Esq., Traub Eglin Lieberman & Strauss, Hawthorne, NY.

Respondents are hereinafter collectively referred to as "Respondents."

**CASE INFORMATION**

Statement of Claim filed on or about: April 21, 2003.

Claimant signed the Uniform Submission Agreement: April 6, 2003.

Statement of Answer filed by Respondents Mathias, Interstate and NPC on or about: September 29, 2003.

Mathias did not sign the Uniform Submission Agreement.

NPC signed the Uniform Submission Agreement: November 12, 2003.

Interstate did not sign the Uniform Submission Agreement.

Joint Statement of Answer filed by Respondents Berger and Berger Inc. on or about: October 1, 2003.

Berger did not sign the Uniform Submission Agreement.

Berger Inc. did not sign the Uniform Submission Agreement.

### **CASE SUMMARY**

Claimant asserted the following causes of action: alleged unsuitable recommendations, violations of federal securities law, breach of contract, violation of NASD Rules, negligence, breach of fiduciary duty, failure to supervise. Claimant's claims involved the following mutual funds: Alger American Growth; AST JanCap Growth; AST Merisco Capital Growth; Rydex OTC; AST Lord Abbett Growth and Income; and AST Janus Small-Cap Growth.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted the following defenses: The purchases were ratified, the claims were barred by the applicable statute of limitations, the subject accounts did not experience any decline beyond market losses, the claimant's accounts were well-diversified among various mutual funds, the claims were barred by the doctrines of waiver and estoppel, the statement of claim failed to state a claim upon which relief can be granted.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$101,107.00; punitive damages in the amount of \$398,000.00; costs; and attorneys' fees.

Respondents requested dismissal of the Statement of Claim in its entirety and expungement of their records before the Central Registration Depository (CRD).

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

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**

On November 18, 2004, the parties agreed to settle the within claim. Now, in lieu of a hearing and upon motion of the respondents for entry of an Award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. The parties have entered into a confidential settlement agreement resulting in the payment of a monetary amount.
2. The Claimant has dismissed all claims with prejudice against Respondents.

3. All other requests by claimants for relief are hereby denied.
4. The Panel recommends the expungement of all reference to the above captioned arbitration from registration records maintained by the NASD Central Registration Depository ("CRD") with respect to respondent Michael Mathias, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Michael Mathias must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
5. Any and all other relief not specifically addressed herein is denied.

#### **FEES**

Pursuant to the Code, the following fees are assessed:

##### **Filing Fees**

NASD Dispute Resolution, Inc. 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 person at the time of the events giving rise to the dispute. In this matter, the member firm National Planning Corp. is a party.

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
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 firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm Gerald S. Berger, Inc. is a party.

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 5,200.00

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**Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

Twop (2) Pre-hearing sessions with the Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-hearing conferences: May 6, 2004 1 session	
February 7, 2005 1 session	

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Total Forum Fees	= \$ 2,250.00
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1. The Panel has assessed \$562.50 of the forum fees solely against Claimant.
2. The Panel has assessed \$562.50 of the forum fees jointly and severally against Respondents.
3. The Panel has assessed \$1,125.00 of the forum fees solely against Respondent NPC.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 862.50
<u>Less payments</u>	= 1,425.00
Refund Due Claimant	= \$ 562.50

2. Respondent NPC is solely liable for:

Member Fees	= \$5,200.00
<u>Forum Fees</u>	= \$1,125.00
Total Fees	= \$6,325.00
<u>Less payments</u>	= \$6,387.50
Refund Due to NPC	= \$1,187.50

3. Respondent Berger Inc. is solely liable for:

<u>Member Fees</u>	= \$5,200.00
Total Fees	= \$5,200.00
<u>Less payments</u>	= \$2,450.00
Balance Due NASD Dispute Resolution	= \$2,750.00

4. Respondents Mathias, Interstate, NPC, Berger and Berger Inc. are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 562.50
<u>Total Fees</u>	= \$ 562.50
<u>Less Payments</u>	= \$ 562.50
Balance Due NASD Dispute Resolution	= \$ 0.00

All balances are due and payable to NASD Dispute Resolution

**Parties' Signatures**

Mary Coleman  
Mary Coleman  
Claimant

16 Dec 04  
Signature Date

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Interstate Financial Group, Inc.  
Respondent

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

\_\_\_\_\_  
Michael Mathias  
Respondent

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

\_\_\_\_\_  
National Planning Corp.  
Respondent

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

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Gerald S. Berger, Inc.  
Respondent

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Signature Date

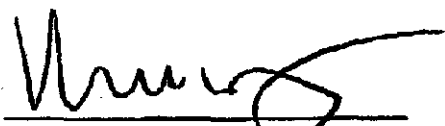
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Gerald S. Berger  
Respondent

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Signature Date

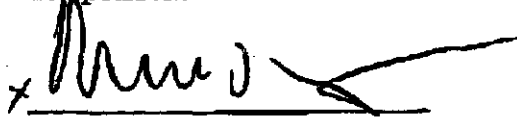
**Parties' Signatures**

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Mary Coleman  
Claimant

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

  
\_\_\_\_\_  
Interstate Financial Group, Inc.  
Respondent

1/5/04  
\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Michael Mathias  
Respondent

1/4/05  
\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
National Planning Corp.  
Respondent

1/13/05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Gerald S. Berger, Inc.  
Respondent

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

\_\_\_\_\_  
Gerald S. Berger  
Respondent

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

**Parties' Signatures**

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**Mary Coleman**  
**Cleimant**

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**Signature Date**

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**Interstate Financial Group, Inc.**  
**Respondent**

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**Signature Date**

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**Michael Mathias**  
**Respondent**

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**Signature Date**

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**National Planning Corp.**  
**Respondent**

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**Signature Date**

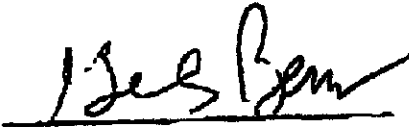
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**Gerald S. Berger, Inc.**  
**Respondent**

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**Signature Date**

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**Gerald S. Berger**  
**Respondent**

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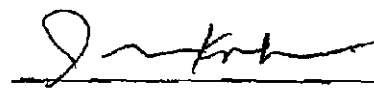
**Signature Date**



ARBITRATION PANEL

Irwin Kahn, Esq.	-	Public Arbitrator, Presiding Chair
Thomas Handford Bach, Esq.	-	Public Arbitrator
John B. Ryan	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
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Irwin Kahn, Esq.  
Public Arbitrator, Presiding Chair

2/7/05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Thomas Handford Bach, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
John B. Ryan  
Non-Public Arbitrator

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

March 2, 2005  
\_\_\_\_\_  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Irwin Kahn, Esq.	-	Public Arbitrator, Presiding Chair
Thomas Handford Bach, Esq.	-	Public Arbitrator
John B. Ryan	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Irwin Kahn, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Thomas Handford Bach, Esq.  
Public Arbitrator

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Signature Date

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John B. Ryan  
Non-Public Arbitrator

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2.23.05  
Signature Date

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March 2, 2005  
Date of Service (For NASD office use only)