

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

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In the Matter of the Arbitration Between:

Glenn Wahl (Claimant) v. HSBC Brokerage (USA) Inc. and Damian Baird (Respondents)

Case Number: 03-04471

Hearing Site: Buffalo, New York

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

**REPRESENTATION OF PARTIES**

Claimant Glenn Wahl ("Wahl") hereinafter referred to as "Claimant": Donald G. McGrath, Esq., McGrath & Polvino, PLLC, Williamsville, NY.

Respondents HSBC Brokerage (USA) Inc. ("HSBC") and Damian Baird ("Baird") hereinafter collectively referred to as "Respondents": Paul K. Stecker, Esq., Phillips, Lytle, Hitchcock, Blaine & Huber, LLP, Buffalo, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: June 17, 2003.

Claimant signed the Uniform Submission Agreement: June 10, 2003.

Statement of Answer filed by Respondents on or about: August 28, 2003.

Respondent HSBC signed the Uniform Submission Agreement: August 25, 2003.

Respondent Baird signed the Uniform Submission Agreement: August 25, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; breach of duty; common law fraud; violation of federal and state securities laws; deceptive acts and practices; unsuitability; misrepresentation and omission of material facts; and failure to follow customer directives. The causes of action relate to a unit investment trust and AIM European Development, Class B mutual fund.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$55,547.06; appropriate earnings and appreciation; punitive damages; costs, expenses, and disbursements, including reasonable attorneys' fees pursuant to New York General Business Law §349; and for such other and further relief as the Panel deems just and proper.

Respondents requested that the Panel dismiss the claim and to award costs, including reasonable attorneys' fees.

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

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. Respondents HSBC and Baird are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$49,963.06.
2. Respondents HSBC and Baird are jointly and severally liable for and shall pay to Claimant the sum of \$ 225.00 to reimburse Claimant for the non-refundable filing fee previously paid to NASD Dispute Resolution.
3. Any and all relief not specifically addressed herein, including punitive damages, 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	= \$225.00
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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. Accordingly, HSBC Brokerage (USA) Inc. is a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

**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:

One (1) Pre-hearing session with Panel @ \$750.00	= \$ 750.00
Pre-hearing conference: May 18, 2004 1 session	
Four (4) Hearing sessions @ \$750.00	= \$3,000.00
Hearing Dates: March 15, 2005 2 sessions	
March 16, 2005 2 sessions	
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Total Forum Fees	= \$3,750.00

1. The Panel has assessed \$3,750.00 of the forum fees jointly and severally against Respondents HSBC and Baird.

**Fee Summary**

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 225.00
Total Fees	= \$ 225.00
<u>Less payments</u>	= \$ 975.00
Refund Due Claimant	= \$ 750.00

*As stated in the Award section above, Respondents HSBC and Baird are jointly and severally liable for and shall pay to Claimant \$225.00 to reimburse him for the non-refundable filing fee previously paid to NASD Dispute Resolution.*

2. Respondent HSBC is solely liable for:

<u>Member Fees</u>	= \$3,550.00
Total Fees	= \$3,550.00
<u>Less payments</u>	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$3,750.00
Total Fees	= \$3,750.00
<u>Less payments</u>	= \$ 750.00
Balance Due NASD Dispute Resolution	= \$3,000.00

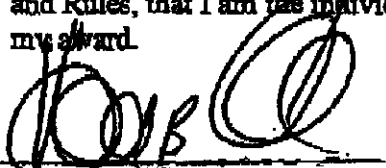
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Howard B. Cohen, Esq.	-	Public Arbitrator, Presiding Chairperson
Allan H. Kaminsky	-	Public Arbitrator
Michael Allen Zeller	-	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 which is my award.



Howard B. Cohen, Esq.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Allan H. Kaminsky  
Public Arbitrator

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

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Michael Allen Zeller  
Non-Public Arbitrator

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

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March 21, 2005  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

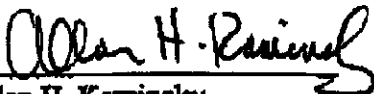
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Signature Date

  
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Allan H. Kaminsky  
Public Arbitrator

3-21-2005  
\_\_\_\_\_  
Signature Date

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Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

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Allan H. Kaminsky  
Public Arbitrator

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Michael Allen Zeller  
Non-Public Arbitrator

03/30/2005  
Signature Date

March 21, 2005

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