

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

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In the Matter of the Arbitration Between:

Isak Altman and Hava Jakobson (Claimants) vs. Herzog Heine Geduld, Investec Ernst & Company, and Dennis G. Collins, III (Respondents)

Case Number: 03-04577

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimants Isak Altman ("Altman") and Hava Jakobson ("Jakobson"), hereinafter collectively referred to as "Claimants": Anthony J. Hom, Esq., Attorney at Law, New York, NY. Previously represented by Anthony J. Ferrara, Esq., Polstein, Ferrara, Dwyer & Speed, P.C., New York, NY.

Respondents Herzog Heine Geduld ("Herzog") and Dennis G. Collins, III ("Collins"): Hugo A. Hilgendorff, IV, Esq., Bressler Amery & Ross, P.C., New York, NY. Representation of Collins is limited to claims arising from transactions that occurred while Claimants' account was maintained by Herzog.

Respondents Investec Ernst & Company ("Investec") and Dennis G. Collins III ("Collins"): William D. Briendel and David A. Travin, Esq., Greenberg Traurig, New York, NY. Representation of Collins is limited to claims arising from transactions that occurred while Claimants' account was maintained by Investec.

**CASE INFORMATION**

Statement of Claim filed on or about: June 23, 2003.

Altman signed the Uniform Submission Agreement: April 15, 2003.

Jakobson signed the Uniform Submission Agreement: April 23, 2003.

Joint Statement of Answer filed by Respondents Herzog and Collins on or about: September 22, 2003.

Herzog did not submit a signed Uniform Submission Agreement.

Collins did not submit a signed Uniform Submission Agreement.

Joint Statement of Answer filed by Respondents Investec and Collins on or about: September 16, 2003.

Investec signed the Uniform Submission Agreement: October 1, 2003.

Collins did not submit a signed Uniform Submission Agreement.

### **CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability, churning, negligence, failure to supervise, and excessive trading. The causes of action relate to Siebel, ESPS Inc., US Interactive, Exodus and Portal Software.

Unless specifically admitted in their Answer, Respondents Herzog and Collins denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in their Answer, Respondents Investec and Collins denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$316,816.00, punitive damages in the amount of \$950,488.00, interest at the New York judgment rate of 9%, forum fees, and reimbursement of travel costs.

Respondents Herzog and Collins requested dismissal of the Statement of Claim in its entirety with prejudice and that the arbitrators award them costs and other further relief as they deem just and proper.

Respondents Investec and Collins requested dismissal of the Statement of Claim in its entirety, award them costs for defending this action, expungement of Collins' CRD record and grant such other relief that the arbitration Panel deems fair and equitable.

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

Respondents Herzog and Collins did not file with NASD Dispute Resolution, Inc. a properly executed submission agreement but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

On or about June 20, 2004, Claimants dismissed their claims with prejudice against Respondents Investec and Collins, for the time period Collins was employed with Investec.

On or about September 15, 2005, Claimants entered into a settlement agreement with Respondents Herzog and Collins.

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**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. Claimants dismissed their claims with prejudice against Respondents Herzog, Investec and Collins.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Dennis G. Collin, III's 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 Dennis G. Collins III, must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
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, Inc. will retain or collect the non-refundable filing fees for each claim:

|                          |             |
|--------------------------|-------------|
| Initial claim filing fee | = \$ 500.00 |
|--------------------------|-------------|

#### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firm Herzog, Heine, Geduld, Inc., and Investec Ernst & Company are parties.

|                         |               |
|-------------------------|---------------|
| Member Surcharge        | = \$ 2,800.00 |
| Pre-Hearing Process Fee | = \$ 750.00   |
| Hearing Process Fee     | = \$ 5,000.00 |

#### **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:

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session = \$ 1,200.00  
Pre-hearing conference: December 16, 2004 1 session  
Total Forum Fees = \$ 1,200.00

1. The parties have agreed that Claimants shall pay \$400.00 of the forum fees.
2. The parties have agreed that Respondent Herzog shall pay \$400.00 of the forum fees.
3. The parties have agreed that Respondent Collins shall pay \$400.00 of the forum fees.

**Fee Summary**

1. Claimants are jointly and severally liable for:

|                                     |               |
|-------------------------------------|---------------|
| Initial Filing Fee                  | = \$ 500.00   |
| Forum Fees                          | = \$ 1,200.00 |
| Total Fees                          | = \$ 1,700.00 |
| <u>Less payments</u>                | = \$ 1,700.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00     |

*Pursuant to Rule 10332(f) of the Code of Arbitration Procedure, NASD is retaining the total amount of the hearing session deposited by the Claimants because this office was notified by the parties that they settled within eight business days of the first scheduled hearing session.*

2. Respondent Herzog is solely liable for:

|                                     |               |
|-------------------------------------|---------------|
| Member Fees                         | = \$ 8,550.00 |
| Forum Fees                          | = \$ 400.00   |
| Total Fees                          | = \$ 8,950.00 |
| <u>Less payments</u>                | = \$ 8,000.00 |
| Balance Due NASD Dispute Resolution | = \$ 950.00   |

3. Respondent Investec is solely liable for:

|                                     |               |
|-------------------------------------|---------------|
| Member Fees                         | = \$ 8,550.00 |
| Total Fees                          | = \$ 8,550.00 |
| <u>Less payments</u>                | = \$ 8,000.00 |
| Balance Due NASD Dispute Resolution | = \$ 550.00   |

4. Respondent Collins is solely liable for:

|                                     |             |
|-------------------------------------|-------------|
| Forum Fees                          | = \$ 400.00 |
| Total Fees                          | = \$ 400.00 |
| <u>Less payments</u>                | = \$ 0.00   |
| Balance Due NASD Dispute Resolution | = \$ 400.00 |

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Arbitration No.03-04577  
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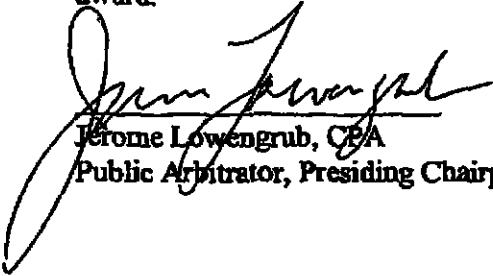
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

|                       |   |  |
|-----------------------|---|--|
| Jerome Lowengrub, CPA | - | Public Arbitrator, Presiding Chairperson |
| Abraham Harry Bunis   | - | Public Arbitrator                        |
| Thomas Caiaffa        | - | 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.

  
\_\_\_\_\_  
Jerome Lowengrub, CPA  
Public Arbitrator, Presiding Chairperson

5/10/06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Thomas Caiaffa  
Non-Public Arbitrator

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

**Dissenting Arbitrator's Signature**

\_\_\_\_\_  
Abraham Harry Bunis  
Public Arbitrator

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

May 15, 2006  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only).

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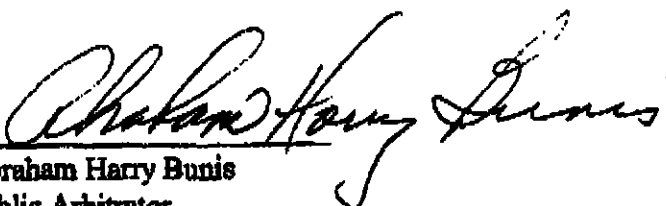
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5/9/06  
Signature Date

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