

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

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In the Matter of the Arbitration Between:

Name of the Claimant:

Case Number: 03-05861

Stephen H. Downs, Trustee for  
The Tiede Metz & Downs, P.C. Profit Sharing Plan

Name of the Respondents

Hearing Site: Indianapolis, Indiana

McDonald Investments, Inc. and Philip D. Young

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**NATURE OF DISPUTE**

Customer vs. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Stephen H. Downs, Esq. appeared for Stephen H. Downs, Trustee for The Tiede Metz & Downs Profit Sharing Plan, hereinafter referred to as "Claimant."

Thomas E. Satrom, Esq. of the law firm Locke Reynolds, LLP located in Indianapolis, Indiana, represented the Respondents, McDonald Investments ("McDonald") and Philip D. Young ("Young"), hereinafter collectively referred to as "Respondents."

**CASE INFORMATION**

Statement of Claim filed on or about August 13, 2003.

Claimant Stephen H. Downs, Trustee signed the Uniform Submission Agreement on August 8, 2003.

Amended Statement of Claim filed on or about August 15, 2003.

Answer to Amended Statement of Claim filed by Respondents McDonald and Young on or about October 21, 2003.

Respondent McDonald signed the Uniform Submission Agreement on September 9, 2003.

Respondent Young signed the Uniform Submission Agreement on September 15, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract, negligence, failure to supervise, transfers, failure to execute, breach of fiduciary duty, misrepresentations and omissions. The causes of action relate to the failure to transfer management of Claimant's account from Engemann & Associates, Inc. and/or Rorer Asset Management.

Unless specifically admitted in their Amended Answer, Respondents McDonald and Young denied the allegations made in the Amended Statement of Claim and asserted the following defenses:

1. The Amended Statement of Claim and each purported claim asserted therein fail to state a valid claim for relief.
2. Claimant suffered no damages as the result of any act or omission of Respondents.
3. Any damages which Claimant may have suffered were, in whole or in part, the result of the acts and omissions of persons and/or entities other than Respondents, including but not limited to, Claimant.

#### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$66,961.75
Interest	8% per annum
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	unspecified

Respondents McDonald Investments, Inc. and Philip D. Young requested that Claimant take nothing by his claim, that Respondents be awarded their attorneys' fees and costs, including the costs of arbitration, and for such other and further relief as the arbitrators deem just and proper.

#### **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**

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. Respondents McDonald Investments, Inc. and Philip D. Young are jointly and severally liable for and shall pay to Claimant Stephen H. Downs, Trustee for The Tiede Metz & Downs, P.C. Profit Sharing Plan the sum of \$40,000.00 as compensatory damages, plus interest at the rate of 8% per annum on \$40,000.00 to accrue from August 20, 2001 to August 3, 2004.
2. Parties shall bear their own costs, including attorneys' fees, except as specified herein.
3. Any an 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

#### **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, McDonald Investments, Inc. is assessed the following fees:

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 at \$750.00 = \$ 750.00  
Pre-hearing conference: March 22, 2004 1 session

Two (2) Hearing sessions at \$750.00 = \$1,500.00  
Hearing Date: August 3, 2004 2 sessions

Total Forum Fees = \$2,250.00

1. The Panel has assessed 50% of the total forum fees in the amount of \$1,125.00 solely to Claimant, Stephen H. Downs, Trustee for The Tiede Metz & Downs, P.C. Profit Sharing Plan.
2. The Panel has assessed 50% of the total forum fees in the amount of \$1,125.00 jointly and severally to Respondents McDonald Investments, Inc. and Philip D. Young.

### **FEE SUMMARY**

1. Claimant Stephen H. Downs, Trustee is solely liable for:

Initial Filing Fee = \$ 225.00  
Forum Fees = \$1,125.00  
Total Fees = \$1,350.00  
Less payments = \$ 975.00  
Balance Due NASD Dispute Resolution = \$ 375.00

2. Respondent McDonald Investments, Inc., is solely liable for:

Member Fees	= \$3,550.00
Less payments	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents McDonald Investments, Inc. and Philip D. Young, are jointly and severally liable for:

Forum Fees	= \$1,125.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,125.00

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

ARBITRATION PANEL

Steve C. Bach, Esq.	-	Public Arbitrator, Presiding Chairperson
Donald G. Russell	-	Public Arbitrator
Michael J. Kelley, CPA, CFP	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Steve C. Bach, Esq.  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
8/5/04  
Signature Date

\_\_\_\_\_  
Donald G. Russell  
Public Arbitrator

\_\_\_\_\_  
8/6/04  
Signature Date

\_\_\_\_\_  
Michael J. Kelley, CPA, CFP  
Non-Public Arbitrator

\_\_\_\_\_  
8/6/04  
Signature Date

\_\_\_\_\_  
8/6/04  
Date of Service (For NASD Dispute Resolution office use only)

**NASD Dispute Resolution**  
**Arbitration No. 03-05861**  
**Award Page 4**

- 2. Respondent, McDonald Investments, Inc., is solely liable for:**

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

3. Respondents, McDonald Investments, Inc. and Philip D. Young, are jointly and severally liable for:

Forum Fees	= \$1,125.00
Less payments	= \$ 0.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$1,125.00</b>

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## ARBITRATION PANEL

Steve C. Bach, Esq.	-	Public Arbitrator, Presiding Chairperson
Donald G. Russell	-	Public Arbitrator
Michael J. Kelley, CPA, CFP	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Steve C. Bach, Esq.  
Public Arbitrator, Presiding Chairperson

8/5/04  
Signature Date

**Donald G. Russell**  
**Public Arbitrator**

**Signature Date**

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Non-Public Arbitrator

**Signature Date:**

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NASD Dispute Resolution

Arbitration No. 03-05861

Award Page 4

## 2. Respondent, McDonald Investments, Inc., is solely liable for:

Member Fees	= \$3,550.00
Less payments	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

## 3. Respondents, McDonald Investments, Inc. and Philip D. Young, are jointly and severally liable for:

Forum Fees	= \$1,125.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,125.00

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Donald G. Russell

Michael J. Kelley, CPA, CFP

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Steve C. Bach, Esq.


Public Arbitrator, Presiding Chairperson

Signature Date



Donald G. Russell

Public Arbitrator



Signature Date

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NASD Dispute Resolution  
Arbitration No. 03-05861  
Award Page 4

2. Respondent, McDonald Investments, Inc., is solely liable for:
- |                                     |              |
|-------------------------------------|--------------|
| Member Fees                         | = \$3,550.00 |
| Less payments                       | = \$3,550.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00    |
3. Respondents, McDonald Investments, Inc. and Philip D. Young, are jointly and severally liable for:
- |                                     |              |
|-------------------------------------|--------------|
| Forum Fees                          | = \$1,125.00 |
| Less payments                       | = \$ 0.00    |
| Balance Due NASD Dispute Resolution | = \$1,125.00 |

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