

Modified Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Jennie Chicarilla (Claimant) v. Steven L. Falk & Associates, Inc. and Morton Erenstein
(Respondents)

Case Number: 03-06409

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant Jennie Chicarilla ("Chicarilla") hereinafter referred to as "Claimant": Richard Gantner, Esq., Nee, Beacham & Gantner, Hillsboro, NJ. Previously represented by: Robert R. Hynes, Esq., Nolan & Hynes, L.L.P., Perth Amboy, NJ.

Respondent Steven L. Falk & Associates, Inc. ("Falk"): Steve M. Kalebic, Esq., Kalebic McDonnell & Miller, P.C., Hackensack, NJ.

Respondent Morton Erenstein ("Erenstein"): John J. Phelan, III, Esq., John J. Phelan, III, P.A., Boynton Beach, FL.

Falk and Erenstein are hereinafter collectively referred to as "Respondents".

CASE INFORMATION

Statement of Claim filed on or about: September 2, 2003.

Claimant signed the Uniform Submission Agreement: August 26, 2003.

Statement of Answer filed by Respondent Falk on or about: July 16, 2004.

Respondent Falk signed the Uniform Submission Agreement: September 9, 2003.

Statement of Answer filed by Respondent Erenstein on or about: October 27, 2003.

Respondent Erenstein signed the Uniform Submission Agreement: October 25, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: control person liability; unsuitability; breach of fiduciary duty; fraud; embezzlement/conversion; and negligence. The causes of action relate to shares of ICON Cash Flow 7 Limited Partnership as well as IBF Special Purpose Corporation,

Western Real Estate Investment Trust; Passco Real Estate Fund; East West Communities Real Estate Fund; and PMC Income Fund Series A.

Unless specifically admitted in its Answer, Respondent Falk denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Respondent Erenstein denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$1,010,000.00; pre and post-award interest at the maximum rate allowed by law from the date of the original investment; punitive damages in the amount of \$1,000,000.00; costs, including reasonable attorneys' fees, consulting fees, expert witness fees; and any other costs deemed reasonable.

Respondent Falk requested that all claims be dismissed; attorneys' fees; and that all costs, forum fees and hearing fees be assessed against Claimant.

Respondent Erenstein requested that all claims be dismissed; attorneys' fees; and that all costs, forum fees and hearing fees be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

On November 5, 2004, Claimant settled her claims with Respondent Falk. The Settlement Agreement with the amount of settlement redacted was placed into evidence as Respondent Falk's exhibit.

At the hearing, Claimant orally amended the Statement of Claim on Count 4, conversion, to increase the damages by \$95,000.00.

Respondent Erenstein made a motion to strike all claims time barred by the six year time period. This applies to the ICON investment only. After due consideration, the Panel granted the motion.

Respondent Erenstein made a motion to dismiss the claim due to incompetence of Claimant and in the alternative, to strike all testimony of Jamie Chicarilla. After due consideration, the Panel denied the motions.

Respondent Erenstein made a motion to dismiss for failure to prove Claimant's case. After due consideration, the Panel denied the motion.

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. Respondent Erenstein will pay to the claimant the sum of \$472,200.00; at the time of the payment, the claimant will transfer any ownership interest she has remaining in the IBF, Inland, and Passco investments to Respondent Erenstein.

Offsets: The sum of the following will be subtracted from the \$472,200.00 award listed in item 1 above:

- a) The greater of \$141,660.00 or the amount of the Falk settlement.
 - b) Any disbursements from the investments listed in item 1 above, made payable to the Claimant after November 11, 2004.
 - c) The sum of \$556.00 for adjournment expenses.
2. On Count 4 – Conversion: Respondent Erenstein will pay to Claimant the sum of \$138,400.00 as compensatory damages plus the sum of \$210,000.00 for punitive damages in accordance with *Borkowski v. Borkowski*, 39 N.Y. 2d 982, *Mastrobuono v. Shearson*, U.S. Supreme Court 514 U.S. 52 (1995), and Rule 10214 of the Code of Arbitration Procedure.
3. Respondent Erenstein will pay Claimant interest at the current New York legal rate from the date of the award through the date of payment of the award.
4. Respondent Erenstein will pay Claimant the sum of \$17,289.00 as attorneys' fees and witness fees.
5. Respondent Erenstein is liable and will pay Claimant the sum of \$500.00 to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution.
6. Any and all relief not specifically addressed herein 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 = \$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 person at the time of the events giving rise to the dispute. Accordingly, Steven L. Falk & Associates, Inc. is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

September 20-23, 2004, adjournment by Claimant	= \$1,200.00
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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 a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: July 6, 2004 1 session	

Three (3) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 3,600.00
Pre-hearing conferences: March 15, 2004 1 session	
September 7, 2004 1 session	
November 11, 2004 1 session	

Six (6) Hearing sessions @ \$1,200.00	= \$ 7,200.00
Hearing Dates: November 3, 2004 2 sessions	
November 4, 2004 2 sessions	
November 5, 2004 2 sessions	

Total Forum Fees	= \$11,250.00
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1. The Panel assessed forum fees of \$11,250.00 jointly and severally against Respondents.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
Adjournment Fee	= \$ 1,200.00
Total Fees	= \$ 1,700.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 0.00

As stated in the "Award" section above, Respondent Erenstein is liable and shall reimburse Claimant for the \$500.00 filing fee.

2. Respondent Falk is solely liable for:

<u>Member Fees</u>	= \$ 8,550.00
<u>Total Fees</u>	= \$ 8,550.00
<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$11,250.00
<u>Total Fees</u>	= \$11,250.00
<u>Less payments</u>	= \$ 1,000.00
Balance Due NASD Dispute Resolution	= \$10,250.00


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

ARBITRATION PANEL

Jeffrey G. Sommers	-	Public Arbitrator, Presiding Chairperson
Victor K. Tyras	-	Public Arbitrator
Fred L. Simon	-	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.



Jeffrey G. Sommers
Public Arbitrator, Presiding Chairperson

27th Dec 2004
Signature Date

Victor K. Tyras
Public Arbitrator

Signature Date

Fred L. Simon
Non-Public Arbitrator

Signature Date

January 20, 2005
Date of Service (For NASD Dispute Resolution use only)

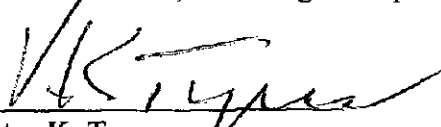
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Jeffrey G. Sommers
Public Arbitrator, Presiding Chairperson



Victor K. Tyras
Public Arbitrator

Signature Date



Signature Date

Fred L. Simon
Non-Public Arbitrator

Signature Date

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Jeffrey G. Sommers
Public Arbitrator, Presiding Chairperson

Signature Date

Victor K. Tyras
Public Arbitrator

Signature Date



Fred L. Simon
Non-Public Arbitrator

12-24-2004
Signature Date

January 20, 2005
Date of Service (For NASD Dispute Resolution use only)