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**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:  
Mark Alloy, Claimant v. McLaughlin, Piven, Vogel Securities, Inc. and Kevin Anders,  
Respondents

Case Number: 04-00323

Hearing Site: San Francisco, California

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

**REPRESENTATION OF PARTIES**

For Claimant:

Brian M. Kandel, Esq.  
Book & Book, LLP  
Santa Cruz, California

For Respondents:

Joseph D'Elia, Esq.  
Law Offices of Joseph D'Elia  
Huntington, New York

**CASE INFORMATION**

Statement of Claim filed: January 17, 2004

Claimant's Brief Regarding Respondents' Liability for Failure to Recommend Hedging  
Strategies filed: June 12, 2006

Claimant's Uniform Submission Agreement signed: January 14, 2004

Joint Statement of Answer of Respondents McLaughlin, Piven, Vogel Securities, Inc.  
("MPV") and Kevin Anders filed: April 29, 2004

Respondents' Reply Brief filed: August 7, 2006

Respondent MPV's Uniform Submission Agreement signed: March 15, 2004

Respondent Kevin Anders' Uniform Submission Agreement signed: April 21, 2004

### **CASE SUMMARY**

Claimant alleged the following claims with respect to the handling of his account: 1) Violation of § 12(2) of the 1933 Securities Act: Misrepresentations in the Offer and Sale of a Security; 2) Violation of Section 10b of the 1934 Act and Rule 10b-5(1): Employment of Devices, Schemes, or Artifices to Defraud; 3) Violation of Section 10b of the 1934 Act and Rule 10b-5(2): Untrue Statements and Omissions to State Material Facts; 4) Violation of Section 10b of the 1934 Act and Rule 10b-5(3): Engaging in an Act, Practice or Course of Business Operating as a Fraud or Deceit; 5) Violations of §§ 25400(d) and 25401 of the California Corporations Code - Material Misrepresentation in Securities Transaction; 6) Fraud and Misrepresentation; 7) Negligent Misrepresentation; 8) Breach of Fiduciary Duty; and 9) Failure to Supervise. Claimant's dispute involved investments in the Munder NetNet Fund, the Munder International NetNet Fund, Class A, the Franklin Biotechnology Discovery Fund, Class A, and the Pilgrim Small Cap Opportunities Fund.

Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents also asserted affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested:

1. General damages in the amount of \$1,500,000.00 or according to proof;
2. On the Fifth Cause of Action, for rescission of each purchase of the solicited securities, and restitution of the consideration paid by Claimant for each purchase of the solicited securities less any sums received by Claimant upon the disposal of the solicited shares, if any;
3. Punitive damages on the Sixth and Eighth Causes of Action in the amount of \$500,000.00 ;
4. Interest in the amount of \$500,000.00;
5. Costs; and
6. Such other and further relief as the Panel may deem just and proper.

Respondents requested that the Panel find in favor of Respondents and dismiss the claims in their entirety, and that Claimant be required to pay all applicable fees. Respondents requested an order expunging this matter from Respondent Kevin Anders' NASD Central Registration Depository records.

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

On September 3, 2004, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100 the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On August 22, 2005, the Panel reviewed and considered the positions of the parties relative to Respondents' Motion to Dismiss of August 3, 2005, for Claimant's failure to produce documents. The Panel denied Respondents' Motion to Dismiss. The Panel determined that Claimant shall pay Respondents sanctions in the amount of \$500.00 for failure to comply with prior discovery orders of the Panel.

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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. All claims by Claimant, including the claims for punitive damages, are dismissed.
2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Kevin Anders' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Kevin Anders must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Claimant continues to be obligated to Respondents MPV and Kevin Anders in the amount of \$500.00 for sanctions in connection with the Panel's August 22, 2005 Order regarding discovery compliance.
4. Each party shall bear its own costs, including attorneys' fees.
5. All other relief not expressly granted is denied.

#### **FEES**

Pursuant to the Code, the following fees are assessed:

### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$500.00

### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, MPV is a party and the following fees are assessed:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 5,000.00
<b>Total Member Fees</b>	<b>= \$ 8,550.00</b>

### **Adjournment Fees**

The following adjournment fees are assessed:

The Panel granted Respondents' request to postpone the August 24-26, 2005, hearing dates and assessed Claimant the \$1,200.00 postponement fee.

The Panel granted Respondents' request to postpone the February 22-24, 2006, hearing dates and waived the \$1,500.00 postponement fee.

### **Forum Fees and Assessments**

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

(6) Pre-hearing conference sessions with the Panel  
@ \$1,200.00/session = \$7,200.00

Pre-hearing conferences:	November 23, 2004	1 session
	March 7, 2005	1 session
	July 19, 2005	1 session
	August 22, 2005	1 session
	January 9, 2006	1 session
	August 16, 2006	1 session

(10) Hearing sessions @ \$1,200.00/session = \$12,000.00

Hearing Dates:	April 5, 2006	2 sessions
	April 6, 2006	2 sessions
	April 7, 2006	2 sessions

September 6, 2006	2 sessions
September 7, 2006	2 sessions

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<b>Total Forum Fees</b>	<b>= \$19,200.00</b>
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The Panel assessed \$1,200.00 of the forum fees to Claimant.

The Panel assessed \$18,000.00 of the forum fees jointly and severally to Respondents MPV and Kevin Anders.

### **Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

Claimant requested additional copies of audio transcripts: = \$ 150.00

### **Fee Summary**

1. Claimant Mark Alloy is charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Adjournment Fees	= \$ 1,200.00
Forum Fees	= \$ 1,200.00
Administrative Costs	= \$ 150.00
<b>Total Fees</b>	<b>= \$ 3,050.00</b>
<b>Less Payments</b>	<b>= \$( 1,850.00)</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,200.00</b>

2. Respondent MPV is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
<b>Less Payments</b>	<b>= \$( 8,550.00)</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents MPV and Kevin Anders are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 18,000.00
<b>Less Payments</b>	<b>= \$( 0.00)</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 18,000.00</b>

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

**ARBITRATION PANEL**

William Michael Samsel	-	Public Arbitrator, Presiding Chair
Edwin C. Shiver, Esq.	-	Public Arbitrator
Peter R. Boutin, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



William Michael Samsel  
Chair, Public Arbitrator

9/13/06

Signature Date

Edwin C. Shiver, Esq.  
Public Arbitrator

Signature Date

Peter R. Boutin, Esq.  
Non-Public Arbitrator

Signature Date

9/14/06

Date of Service

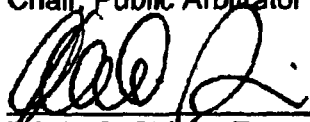
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