

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant

John Edward Krivacs

v.

04-00328  
Denver, Colorado

Respondents

Cascade Investment Group, Inc.,  
Myron T. Bagley, David J. Turner  
and Cascade Financial Management, Inc.

and

Counter-Claimants

Cascade Financial Management, Inc.,  
Myron T. Bagley and David J. Turner

v.

Counter-Respondent

John Edward Krivacs

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Nature of Dispute: Associated Person v. Members and Associated Persons and Member and Associated Persons v. Associated Person

**REPRESENTATION OF PARTIES**

John Edward Krivacs ("**Claimant**") appeared pro se.

Cascade Investment Group, Inc. ("**CIG**"), was represented by Stuart N. Bennett, Esq., of Lindquist & Vennum, P.L.L.P., Denver, Colorado.

Cascade Financial Management, Inc. ("**CFM**"), Myron T. Bagley ("**Bagley**") and David J. Turner ("**Turner**") were represented by Edward T. Lyons, Jr., Esq., of Jones & Keller, PC, Denver, Colorado.

### **CASE INFORMATION**

The Statement of Claim was filed on or about January 17, 2004. The Submission Agreement of Claimant was signed on or about January 17, 2004.

A Statement of Answer was filed by Respondent, Cascade Investment Group, Inc., was filed on or about March 15, 2004. The Submission Agreement of Respondent, Cascade Investment Group, Inc., was signed on or about February 24, 2004.

A Statement of Answer was filed jointly by Respondents, Cascade Financial Management, Inc., Myron T. Bagley and David J. Turner, on or about March 15, 2004. The Submission Agreement of Respondent, David J. Turner, was signed on or about March 25, 2004. The Submission Agreement of Respondent, Myron T. Bagley, was signed on or about March 26, 2004. The Submission Agreement of Respondent, Cascade Financial Management, Inc., was signed on or about March 12, 2004.

Claimant filed an Amended Statement of Claim on or about August 30, 2004.

Respondents, Cascade Financial Management, Inc., Myron T. Bagley and David J. Turner, jointly filed a Statement of Answer to Claimant's Amended Statement of Claim and Counterclaim on or about September 13, 2004.

Respondent, Cascade Investment Group, Inc., filed a Statement of Answer to Claimant's Amended Statement of Claim on or about September 15, 2004.

Claimant filed a Response to Respondents' Counterclaim on or about September 29, 2004.

### **CASE SUMMARY**

Claimant asserted causes of action including the following: misrepresentations, fraud, breach of employment contract and deceit. The causes of action related to Claimant's allegation that he was recruited by CIG, and that CIG made several assurances as part of his employment, including the following: the implementation of individual and portfolio management for his clients; the use of an AXYS portfolio management software system, the use of a shared sales assistant, the ability for partial ownership, and the ability to take his clients with him if he ever left CIG. Claimant asserted that, after he joined CIG, none of these assurances were honored. Claimant further asserted that soon after joining CIG, it split and formed CFM and forced Claimant to transfer all of his customer accounts to another member firm. Claimant alleged that after CFM was formed, a quota system was instituted, which was not agreed upon when he was hired by CIG. Claimant alleged that he was forced to resign from CFM.

Respondent, Cascade Investment Group, Inc., denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimant failed to state a claim upon which relief can be granted; Claimant's claims are barred by the applicable statute of limitation; Claimant's claims are barred, or his damages must be reduced by his own comparative fault; Claimant's damages, if any, were caused by the acts of persons or events over which CIG had no control and there were separate intervening acts so that no act or omission of CIG caused his damages; and CIG acted, at all times, in good faith and without knowledge of any wrongful conduct and did not cause, aid, abet, render substantial assistance to, or encourage or ratify any wrongful conduct.

Respondents, Cascade Financial Management, Inc., Myron T. Bagley and David J. Turner, denied the allegations set forth in the Statement of Claim and asserted defenses including the following: the relief sought by Claimant is barred, in whole or in part, by the doctrines of laches, waiver, and estoppel; the relief sought by Claimant is barred, in whole or in part, by the applicable statute of limitations; the relief sought by Claimant is barred, in whole or in part, by the Claimant's failure to mitigate his damages, if any; and Claimant's claims are barred or his damages, if any, must be reduced by his own comparative fault.

In their Counterclaim, Cascade Financial Management, Inc., Myron T. Bagley and David J. Turner, asserted that Claimant's Amended Statement of Claim lacks substantial justification and is substantially frivolous, substantially groundless and substantially vexatious and as a result Counterclaims are entitled to an award of attorney's fees pursuant to C.R.S. § 13-17-102.

Claimant denied the allegations set forth in the Counterclaim.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$94,150 in compensatory damages, plus costs, punitive damages and any other relief the panel deemed just and equitable.

Respondent, Cascade Investment Group, Inc., requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorney's fees.

Respondents, Cascade Financial Management, Inc., Myron T. Bagley and David J. Turner, requested that the claims asserted against them be denied in their entirety. In their counterclaim, Cascade Financial Management, Inc., Myron T. Bagley and David J. Turner, requested an award of no less than \$50,000 in damages for costs and attorney's fees in this proceeding. In addition, Respondents, Myron T. Bagley and David J. Turner, requested that the panel order that any reference to the Statement of Claim or Amended Statement of Claim be expunged from their permanent registration records maintained by the Central Registration Depository.

### **OTHER ISSUES CONSIDERED & DECIDED**

In the initial pre-hearing conference scheduling order the panel granted Claimant's request to file an Amended Statement of Claim and ordered that any amendment to the Statement of Claim be filed on or before August 30, 2004.

Claimant and Respondent, Cascade Investment Group, jointly submitted a Motion to Dismiss all claims against CIG on or about November 11, 2004. The panel granted the Stipulated Motion to Dismiss all claims against CIG with prejudice on or about December 6, 2004.

At the arbitration hearing, the panel accepted and considered Cascade Financial Management, Inc.'s, Myron T. Bagley's and David J. Turner's Counterclaim.

At the conclusion of Claimant's case-in-chief, Respondents, Cascade Financial Management, Inc., Myron T. Bagley and David J. Turner, made an oral Motion to Dismiss Claimant's claims. After deliberation, the panel denied Respondents' Motion to Dismiss.

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. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims, each and all, are hereby denied and dismissed with prejudice in their entirety;
2. Respondents, Cascade Financial Management, Inc.'s, Myron T. Bagley's and David J. Turner's Counterclaims, each and all, are hereby denied and dismissed with prejudice in their entirety;
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Myron T. Bagley's and David J. Turner'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, Respondents, Myron T. Bagley and David J. Turner, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;



4. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages, are denied with prejudice; and
5. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee	= \$ 225
Counterclaim filing fee	= \$ 1,000

#### **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 firms are Cascade Investment Group, Inc., and Cascade Financial Management, Inc.

Member surcharge	= \$ 1,100
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 1,700

#### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

One (1) Pre-hearing session with Chairperson x \$ 450	= \$ 450
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Pre-hearing conference:	08/09/2004	1 session
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One (1) Pre-hearing session with Panel x \$ 750	= \$ 750
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Pre-hearing conference:	09/30/2004	1 session	
Six (6) Hearing sessions with Panel x \$ 750			= \$ 4,500
Hearing Dates:	12/06/2004	2 sessions	
	12/07/2004	2 sessions	
	12/08/2004	2 sessions	
Total Forum Fees			= \$ 5,700

The Arbitration Panel has assessed \$ 1,425 of the forum fees to John Edward Krivacs.

The Arbitration Panel has assessed \$ 4,275 of the forum fees jointly and severally to Myron T. Bagley, David J. Turner and Cascade Financial Management, Inc.

**Fee Summary**

Claimant, John Edward Krivacs, is liable for:

Initial Filing Fee	= \$ 225
<u>Forum Fees</u>	= \$ 1,425
Total Fees	= \$ 1,650
<u>Less payments</u>	= \$ 975
Balance Due NASD Dispute Resolution	= \$ 675

Respondent, Cascade Investment Group, Inc., is liable for:

<u>Member Fees</u>	= \$ 3,550
Total Fees	= \$ 3,550
<u>Less payments</u>	= \$ 3,550
Balance Due NASD Dispute Resolution	= \$ 0

Respondent, Cascade Financial Management, Inc., is liable for:

<u>Member Fees</u>	= \$ 3,550
Total Fees	= \$ 3,550
<u>Less payments</u>	= \$ 3,550
Balance Due NASD Dispute Resolution	= \$ 0

Respondents, Myron T. Bagley, David J. Turner and Cascade Financial Management, Inc., are jointly and severally liable for:

Counterclaim Filing Fee	= \$ 1,000
Forum Fees	= \$ 4,275
Total Fees	= \$ 5,275
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 5,275

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

**ARBITRATION PANEL**

Gerald Raskin, Esq. - Public Arbitrator, Presiding Chair  
Michelle D. Conklin, Esq. - Public Arbitrator  
Devra Perch- Non-Public Arbitrator

Concurring Arbitrators:

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Gerald Raskin, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Michelle D. Conklin, Esq.  
Public Arbitrator

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Signature Date

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Devra Perch  
Non-Public Arbitrator

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Signature Date

12/22/04  
Date of Service (NASD use only)

Respondents, Myron T. Bagley, David J. Turner and Cascade Financial Management, Inc., are jointly and severally liable for:

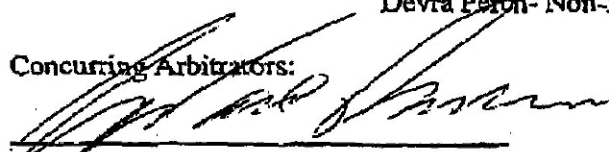
Counterclaim Filing Fee	= \$ 1,000
Forum Fees	= \$ 4,275
Total Fees	= \$ 5,275
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 5,275

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Michelle D. Conklin, Esq. - Public Arbitrator  
Devra Perch - Non-Public Arbitrator

Concurring Arbitrators:

  
Gerald Raskin, Esq.  
Public Arbitrator, Presiding Chair

12/21/04  
Signature Date

Michelle D. Conklin, Esq.  
Public Arbitrator

Signature Date

Devra Perch  
Non-Public Arbitrator

Signature Date

12/25/04  
Date of Service (NASD use only)

Respondents, Myron T. Bagley, David J. Turner and Cascade Financial Management, Inc., are jointly and severally liable for:

Counterclaim Filing Fee	= \$ 1,000
<u>Forum Fees</u>	<u>= \$ 4,275</u>
Total Fees	= \$ 5,275
<u>Less payments</u>	<u>= \$ 0</u>
Balance Due NASD Dispute Resolution	= \$ 5,275

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Gerald Raskin, Esq.  
Public Arbitrator, Presiding Chair

  
Michelle D. Conklin, Esq.  
Public Arbitrator

Signature Date

12/22/04  
Signature Date

Devra Perch  
Non-Public Arbitrator

Signature Date

12/22/04  
Date of Service (NASD use only)

NASD Dispute Resolution  
Arbitration No. 04-00328  
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Respondents, Myron T. Bagley, David J. Turner and Cascade Financial Management, Inc., are jointly and severally liable for:

Counterclaim Filing Fee	= \$ 1,000
Forum Fees	= \$ 4,275
Total Fees	= \$ 5,275
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 5,275

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Concurring Arbitrators:

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Gerald Raskin, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Michelle D. Conklin, Esq.  
Public Arbitrator

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Signature Date

  
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Devra Perch  
Non-Public Arbitrator

12/21/04  
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Signature Date

12/23/04  
\_\_\_\_\_  
Date of Service (NASD use only)