

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

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In the Matter of the Arbitration Between:

Dominic E. Rainone, Claimant v. TC Advisors Network f/k/a Gemisys Securities Corp.  
Respondent

Case Number: 04-00470

Hearing Site: Los Angeles, California

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Nature of the Dispute: Customer v. Member

**REPRESENTATION OF PARTIES**

For Claimant:

Kristin M. Cano, Esq.  
Law Offices of Kristin M. Cano  
Newport Beach, California

For Respondent:

Carla B. Minckley, Esq.  
Birge & Minckley, P.C.  
Denver, Colorado

**CASE INFORMATION**

Statement of Claim filed: January 23, 2004

Claimant's Uniform Submission Agreement signed: January 24, 2004

Motion to Dismiss and Alternative Statement of Answer to Claimant's Statement of Claim filed by  
Respondent: March 31, 2004

Respondent's Uniform Submission Agreement signed: February 23, 2004

**CASE SUMMARY**

Claimant alleged breach of contract, breach of fiduciary duty, negligence, misrepresentation, omissions, and violation of California Business Professions Code §17200 concerning Respondent's failure to transfer his ownership of units of a limited partnership.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested the amount of \$17,738.00 in compensatory damages, the amount of \$8,994.00 in punitive treble damages, interest, and costs.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety and costs, including attorney's fees.

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

On September 27, 2005, Claimant filed an opposition to Respondent's Motion to Dismiss. On October 17, 2005, Respondent filed a reply to Claimant's opposition. A telephonic pre-hearing conference was held with the parties and the Arbitrator on October 28, 2005.

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 Arbitrator decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent's Motion to Dismiss is granted. Claimant's claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted, including Claimant's request for punitive treble damages, is denied.

### **FEES**

Pursuant to the *NASD Code of Arbitration Procedure* ("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	= \$ 150.00
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**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, the member firm TC Advisors Network fka Gemisys Securities Corp. is a party and the following fees are assessed:

Member Surcharge	= \$ 600.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 1,000.00
<b>Total Member Fees</b>	<b>= \$ 2,350.00</b>

**Forum Fees and Assessments**

The Arbitrator assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

Two (2) Pre-hearing conference sessions with a single arbitrator @ \$450.00/session	= \$ 900.00
Pre-hearing conferences: August 29, 2005 1 session	
October 28, 2005 1 session	

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<b>Total Forum Fees</b>	<b>= \$ 900.00</b>
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The Arbitrator assessed \$900.00 of the forum fees to Claimant.

**Fee Summary**

1. Claimant Dominic E. Rainone is charged with the following fees and costs:

Initial Filing Fee	= \$ 150.00
<u>Forum Fees</u>	= \$ 900.00
Total Fees	= \$1,050.00
<u>Less payments</u>	= \$ (575.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 475.00</b>

2. Respondent TC Advisors Network fka Gemisys Securities Corp. is charged with the following fees and costs:

Member Fees	= \$ 2,350.00
<u>Less payments</u>	= \$(2,350.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

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

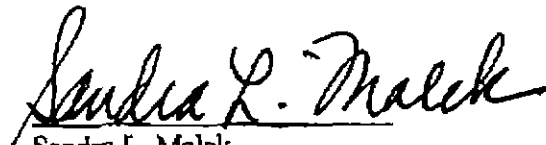
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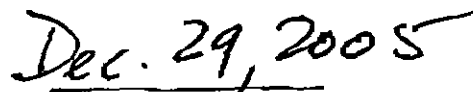
**ARBITRATOR**

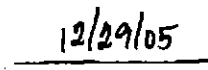
Sandra L. Malek

Public Arbitrator

**Arbitrator's Signature**

  
Sandra L. Malek  
Public Arbitrator

  
Signature Date

  
Date of Service