

Award
NASD Dispute Resolution

In the Matter of the Consolidated Cases: Consolidated Case Number: 04-00615

Case Number: 04-00615

BPM Insurance Services, LLC and BPM Wealth Management, LLC, Claimants v.
Vladimir Belinsky and Hermitage Advisors, LTD., Respondents

Vladimir Belinsky, Counter-Claimant and Third-Party Claimant v. BPM Wealth Management, LLC (previously known as BPM Goldman Financial Design, LLC) and Henry B. Pilger, Counter-Respondent and Third-Party Respondent, and BPM Insurance Services, LLC, Intervenor and Counter-Respondent

Case Number: 05-01800

Vladimir Belinsky, Claimant v. BPM Wealth Management, LLC (previously known as BPM Goldman Financial Design, LLC), Henry B. Pilger and Intervenor BPM Insurance Services, LLC, Respondents

Hearing Site: San Francisco, California

Nature of the Disputes: Member and Non-Member vs. Associated Person and Non-Member

Associated Person v. Non-Member, Associated Person and Member

Associated Person v. Non-Member, Associated Person and Member

REPRESENTATION OF PARTIES

For BPM Insurance Services, LLC,
BPM Wealth Management and
Henry B. Pilger:

Stephen S. Mayne
Steefel, Levitt & Weiss
San Francisco, California

Dena L. Narbaitz
Curiale, Dellaverson, Hirschfeld &
Kraemer, LLP
San Francisco, California

For Vladimir Belinsky:

Craig A. Horowitz
Wayne D. Clayton
Horowitz and Clayton
Los Angeles, California

CASE INFORMATION

Case Number 04-00615:

Statement of Claim filed: February 2, 2004

Claimants' Uniform Submission Agreement signed: January 23, 2004

BPM Insurance Services, LLC, BPM Wealth Management, LLC and Henry B. Pilger's Answer to Respondent Vladimir Belinsky's First Amended Statement of Claim and Counterclaims filed: June 6, 2005

Statement of Answer, Counterclaim and Third-Party Claim of Respondent Vladimir Belinsky filed: May 18, 2005

Case Number 05-01800:

First Amended Statement of Claim filed: April 5, 2005

Claimant's Uniform Submission Agreement signed: April 4, 2005

Respondent Henry B. Pilger's Uniform Submission Agreement signed: May 4, 2005

CASE SUMMARY

BPM Insurance Services, LLC and BPM Wealth Management, LLC ("BPM") alleged the following claims with respect to Vladimir Belinsky's employment with BPM: 1) Breach of Written Contract against Respondent Belinsky; 2) Misappropriation of Trade Secret against all Respondents; 3) Breach of Fiduciary Duty against Respondent Belinsky; 4) Breach of Duty of Loyalty against Respondent Belinsky; 5) Unfair Competition against all Respondents; 6) Defamation/Trade Disparagement against Respondent Belinsky; 7) Interference with Prospective Economic Advantage against all Respondents; and 8) Conversion against all Respondents.

Vladimir Belinsky denied BPM's allegations of wrongdoing and denied any liability to BPM. Mr. Belinsky also asserted various affirmative defenses.

Mr. Belinsky alleged the following claims with respect to his employment with BPM: 1) Violation of Labor Code § 970 against Respondent BPM Wealth Management, LLC; 2) Violation of Labor Code § 204 against Respondent BPM Wealth Management, LLC; 3) Retaliatory Demotion in Violation of Public Policy against Respondent BPM Wealth Management, LLC; 4) Defamation against Respondents BPM Wealth Management, LLC and Pilger; 5) Tortious Interference with Prospective Business Advantage against Respondent BPM Wealth Management, LLC; and 6) Constructive Wrongful Termination in Violation of Public Policy against Respondent BPM Wealth Management, LLC.

BPM and Henry B. Pilger denied Mr. Belinsky's allegations of wrongdoing and denied any liability to Mr. Belinsky. BPM and Henry B. Pilger also asserted various affirmative defenses.

RELIEF REQUESTED

BPM requested that:

1. A Panel be convened to hear this dispute;
2. The Panel award damages to BPM in an amount sufficient to compensate BPM for Respondents' unlawful conduct;
3. The Panel issue a permanent mandatory injunction to compel Respondents, employees and their agents, and all those acting in concert or participating with them to return any and all information, whether in electronic or hard copy form, taken from BPM by Respondents together with all copies thereof and all documents based upon or created with the benefit of such information following Belinsky's resignation from BPM on or about June 6, 2003;
4. The Panel issue a permanent injunction to prohibit Respondents, their employees and agents, and all those acting in concert or participating with them: (i) from further misappropriations or threatened misappropriations of BPM information; (ii) from using any and all information taken from BPM by Respondents; and (iii) from making any further disparaging remarks about BPM;
5. The Panel award exemplary damages to BPM in an amount sufficient to deter Respondents' wrongful conduct and willful and wanton disregard to BPM's rights;
6. The Panel grant BPM such other and further relief as it deems just and proper, including attorneys' fees pursuant to UTSA § 3426.4, and BPM's costs and expenses; and
7. This matter be heard in San Francisco, California or some other reasonable location available to the parties.

Mr. Belinsky requested:

1. That an award be issued in Belinsky's favor and Claimants take nothing on BPM's Statement of Claim, and that an award be issued in Belinsky's favor on his claims;
2. Compensatory and emotional distress damage according to proof;
3. Lost salary, both front and back pay and bonuses, according to proof;
4. Double damages pursuant to Labor Code § 972 on the First Claim;
5. Punitive and exemplary damages against Respondents in an amount sufficient to punish and make an example of Respondents on Belinsky's First through Sixth Claims;
6. Presumed and actual damages for loss of reputation on Belinsky's Fourth Claim;
7. Prejudgment interest;
8. Waiting time penalties on the Second Claim pursuant to California Labor Code § 203;
9. Attorneys fees pursuant to California Labor Code § 218.5;
10. Costs; and
11. Such other and further relief as the Panel may deem equitable and just.

BPM and Henry B. Pilger requested that:

1. Belinsky take nothing by virtue of his Statement of Claim or Counterclaims and that his claims be denied;
2. The Panel award all the relief requested in BPM's Statement of Claim;
3. The Panel award to BPM and Henry B. Pilger all costs and expenses, including NASD forum fees; and
4. Such other relief as the Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

On or about March 24, 2005, the San Francisco Superior Court vacated the stay with respect to the above-captioned matter and permitted the above-captioned dispute to proceed to arbitration before NASD Dispute Resolution.

Hermitage Advisors, LTD. did not sign an agreement to arbitrate and did not voluntarily submit to arbitration in this matter.

On or about April 15, 2005, the above-captioned matters were consolidated for hearing purposes pursuant to the parties' agreement.

On June 28, 2005, BPM Wealth Management, LLC, BPM Insurance Services, LLC and Henry B. Pilger 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.

On June 22, 2005, Vladimir Belinsky 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.

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

- 1) Vladimir Belinsky is liable for and shall pay to BPM Insurance Services, LLC and BPM Wealth Management, LLC the sum of \$550,000.00 in satisfaction of BPM Insurance Services, LLC and BPM Wealth Management, LLC's claims.
- 2) BPM Insurance Services, LLC and BPM Wealth Management, LLC are jointly and severally liable for and shall pay to Vladimir Belinsky the sum of \$225,000.00 in satisfaction of Mr. Belinsky's claims.
- 3) BPM Insurance Services, LLC and BPM Wealth Management, LLC's claims for exemplary damages are denied.
- 4) All claims by Vladimir Belinsky against Henry B. Pilger are denied.
- 5) Vladimir Belinsky's claims for punitive and exemplary damages are denied.
- 6) The parties shall bear their respective costs, including attorney's fees.
- 7) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Case Number 05-01800 (prior to consolidation)

Filing Fees

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

Initial claim filing fee	= \$ 250.00
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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 BPM Insurance Services, LLC is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Total Member Fees	= \$ 1,500.00

Fee Summary

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

Initial Filing Fee pursuant to <i>Armendariz v. Foundation Health Psychcare Services, Inc.</i> 24 Cal.4 th 83	= \$ 200.00
<u>Less Payments</u>	<u>= \$(200.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent BPM Insurance Services, LLC is charged with the following fees and costs:

Initial Filing Fee pursuant to <i>Armendariz</i>	= \$ 50.00
<u>Member Fees</u>	<u>= \$ 1,500.00</u>
Total Fees	= \$ 1,550.00
<u>Less Payments</u>	<u>= \$(1,550.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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.

Case Number 04-00615 (consolidated master case)

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, the member firm BPM Insurance Services, LLC is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,200.00
Total Member Fees	= \$ 4,450.00

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session.

Cancellation of the July 21, 2006 hearing date: = \$ 300.00

The Panel waived the \$300.00 cancellation fee.

Adjournment Fees

The following adjournment fees are assessed:

The Panel granted Respondent Vladimir Belinsky's request to postpone the February 6-10, 2006, hearing dates and waived the \$1,000.00 postponement fee.

The Panel granted Respondent Vladimir Belinsky's request to postpone the July 21, 2006, hearing date 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:

2 Pre-hearing conference sessions with one arbitrator @ \$450.00/session	= \$900.00
Pre-hearing conferences: January 4, 2006	1 session
February 1, 2006	1 session

4 Pre-hearing conference sessions with the Panel @ \$1,000.00/session = \$4,000.00

Pre-hearing conferences: August 29, 2005 1 session
November 18, 2005 1 session
February 3, 2006 1 session
May 24, 2006 1 session

22 Hearing sessions @ \$1,000.00/session = \$22,000.00

Hearings: May 31, 2006 2 sessions
June 1, 2006 2 sessions
June 2, 2006 1 session
June 5, 2006 2 sessions
June 6, 2006 2 sessions
June 7, 2006 2 sessions
June 8, 2006 2 sessions
June 29, 2006 2 sessions
June 30, 2006 2 sessions
July 3, 2006 2 sessions
August 16, 2006 2 sessions
August 17, 2006 1 session

Total Forum Fees = \$26,900.00

The Panel assessed the \$26,900.00 in forum fees jointly and severally to BPM Insurance Services, LLC and BPM Wealth Management, LLC.

Fee Summary

1. Claimants BPM Insurance Services, LLC and BPM Wealth Management, LLC are jointly and severally charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 26,900.00
Total Fees	= \$ 27,400.00
Less Payments by BPM Insurance Services, LLC	= \$(1,500.00)
Balance Due NASD Dispute Resolution	= \$ 25,900.00

2. Respondent BPM Insurance Services, LLC is charged with the following fees and costs:

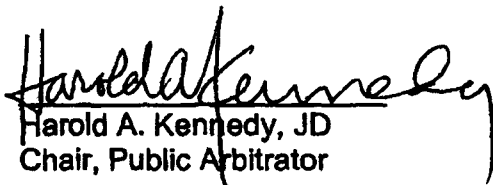
Member Fees	= \$ 4,450.00
Less Payments	= \$(4,450.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

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.

ARBITRATION PANEL:

Harold A. Kennedy, JD	-	Public Arbitrator, Presiding Chair
Sterling N. Frost	-	Public Arbitrator
Jerold R. Babin	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Harold A. Kennedy, JD
Chair, Public Arbitrator

August 22, 2006
Signature Date

Sterling N. Frost
Public Arbitrator

Signature Date

Jerold R. Babin
Non-Public Arbitrator

Signature Date

8/22/06
Date of Service

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.

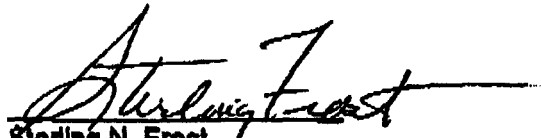
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Harold A. Kennedy, JD	-	Public Arbitrator, Presiding Chair
Sterling N. Frost	-	Public Arbitrator
Jerold R. Babin	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Harold A. Kennedy, JD
Chair, Public Arbitrator

Signature Date


Sterling N. Frost
Public Arbitrator

8/21/06
Signature Date

Jerold R. Babin
Non-Public Arbitrator

Signature Date

8/22/06
Date of Service

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ARBITRATION PANEL

Harold A. Kennedy, JD	-	Public Arbitrator, Presiding Chair
Sterling N. Frost	-	Public Arbitrator
Jerold R. Babin	-	Non-Public Arbitrator


Concurring Arbitrators' Signatures

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Chair, Public Arbitrator

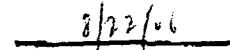
Signature Date

Sterling N. Frost
Public Arbitrator

Signature Date


Jerold R. Babin
Non-Public Arbitrator


Signature Date


Date of Service