

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Names of Claimants

Karl and Penelope Kucab

and

Case Number: 04-00922  
Hearing Site: Detroit, Michigan

Names of Respondents

Ogilvie Security Advisors Corp.  
Joseph A. Spoerl  
Joseph A. Spoerl L.L.C. d/b/a Improved  
Funding Techniques-Michigan  
Source Brokerage, Inc., and  
First Trust Corporation d/b/a Retirement  
Accounts, Inc.

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**NATURE OF CASE**

Customers v. Member, Associated Person and Non-Members

**REPRESENTATION OF PARTIES**

Karl and Penelope Kucab ("Claimants") were represented by Edward M. Olson, Esq., Sugameli & Olson, P.L.C., Troy, Michigan.

Ogilvie Security Advisors Corp. ("Ogilvie") was represented by David A. Baugh, Esq., Mora Baugh Waitzman & Unger LLC, Chicago, Illinois.

Joseph A. Spoerl ("Spoerl") and Joseph A. Spoerl L.L.C. d/b/a Improved Funding Techniques-Michigan ("Spoerl L.L.C.") were represented by Eric S. Richards, Esq., Mika Meyers Beckett & Jones PLC, Grand Rapids, Michigan.

Source Brokerage, Inc. ("Source") was represented by Miles D. Hart, Esq., Hertz, Schram & Saretsky, P.C., Bloomfield Hills, Michigan.

First Trust Corporation d/b/a Retirement Accounts, Inc. ("Retirement") was represented by James R. Hoy, Esq., First Trust Corporation, Denver, Colorado.

### **CASE INFORMATION**

The Statement of Claim was filed on or about January 26, 2004. The Submission Agreement of Karl and Penelope Kucab was signed on or about January 27, 2004.

Ogilvie filed a Statement of Answer on or about April 6, 2004. The Submission Agreement of Ogilvie was signed on or about April 5, 2004, by Tonja E. Sepulveda, CFP.

Spoerl and Spoerl L.L.C. jointly filed a Statement of Answer on or about April 7, 2004. The Submission Agreement of Spoerl was signed on or about March 30, 2004. The Submission Agreement of Spoerl L.L.C. was signed on or about August 5, 2004, by Joseph A. Spoerl.

Ogilvie filed a Motion to Amend Answering Statement by Interlineation on or about December 16, 2004. Claimant filed a Brief In Opposition to Ogilvie's Motion on or about January 11, 2005.

Ogilvie filed a Motion to Dismiss on or about December 16, 2004. Claimant filed a Brief In Opposition to Ogilvie's Motion on or about January 11, 2005.

### **CASE SUMMARY**

Claimants asserted the following causes of action: misrepresentations, omissions, failure to supervise, suitability, and breach of fiduciary duty. The causes of action related to Claimants' investment in viaticals, which Claimant alleged was recommended by Joseph Spoerl.

Unless specifically admitted in their Answer, Spoerl and Spoerl, LLC denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants have failed to state a cause of action upon which relief may be granted; Claimants' damages, if any, were caused by or contributed to by their own negligence or fault; the alleged damage claimed by Claimants is not the result of any act or omission on the part of Respondents.

Unless specifically admitted in its Answer, Ogilvie denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants lack standing to bring the asserted claims; Claimants' damages are speculative; Claimants' claims are time-barred; and Ogilvie cannot be held liable for acts Respondent Spoerl committed outside the scope of his employment.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of:

Actual/Compensatory Damages	Unspecified
Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Ogilvie, Spoerl and Spoerl L.L.C requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

Spoerl also requested that an award recommending expungement of all references to the claims, Claimants and this arbitration proceeding from his registration records be entered.

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

Respondent Source is not an NASD Member Firm. Respondent Source did not voluntarily submit to NASD arbitration, nor was a contract to arbitrate disputes with Source presented. Therefore, Source is not compelled by NASD rules to arbitrate disputes in this forum. In the absence of Source's voluntary submission, NASD does not have jurisdiction over this party.

Respondent Retirement is not an NASD Member Firm. Respondent Retirement did not voluntarily submit to NASD arbitration, nor was a contract to arbitrate disputes with Retirement presented. Therefore, Retirement is not compelled by NASD rules to arbitrate disputes in this forum. In the absence of Retirement's voluntary submission, NASD does not have jurisdiction over this party.

The arbitrators granted Ogilvie's Motion to Amend Answering Statement by Interlineation in its order entered on or about January 14, 2005.

In accordance with Rule 10308 of the NASD Code of Arbitration Procedure (the "Code"), the parties stipulated and agreed that this matter would be heard and determined by a single arbitrator, the Panel Chairperson.

Claimants, having had an opportunity to review the records and documents produced in prehearing discovery and discuss the contents thereof with their counsel, stipulated and agreed with Respondents to the expungement of all reference to the above-captioned arbitration from all registration records of Respondent Joseph Spoerl. Claimants also informed NASD that all claims had been fully settled, resolved and compromised.

The parties have agreed to receive conformed copies of the award while the original remains on file with NASD Dispute Resolution ( "NASD").

### **AWARD**

After considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

- 1.) Claimants' claims, having been withdrawn, are dismissed with prejudice;
- 2.) Other than Forum Fees, which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Joseph A. Spoerl's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Joseph A. Spoerl must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby dismissed with prejudice.

### **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	= \$ 250.00
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#### **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. In this matter, the member firm is Ogilvie Security Advisors Corp.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,200.00

#### **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 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 Panel x \$1000.00	= \$1,000.00
Pre-hearing conference: August 2, 2004 1 session	
One (1) Hearing session x \$1000.00	= \$1,000.00
Hearing Date: January 18, 2005 1 session	
<u>Total Forum Fees</u>	<u>= \$2,000.00</u>

The Arbitration Panel has assessed \$800.00 of the forum fees to Karl and Penelope Kucab, jointly and severally.

The Arbitration Panel has assessed \$400.00 of the forum fees to Ogilvie Security Advisors Corp.

The Arbitration Panel has assessed \$400.00 of the forum fees to Joseph A. Spoerl.

The Arbitration Panel has assessed \$400.00 of the forum fees to Joseph A. Spoerl L.L.C. d/b/a Improved Funding Technique-Michigan.

#### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Spoerl and Spoerl L.L.C. are jointly and severally liable for copying costs = \$ 3.75

#### **FEE SUMMARY**

Claimants, Karl and Penelope Kucab, are jointly and severally liable for:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$ 800.00
<u>Total Fees</u>	<u>= \$1,050.00</u>
<u>Less payments</u>	<u>= \$2,125.00</u>
Refund Due from NASD Dispute Resolution	= \$1,075.00

Respondent, Ogilvie Security Advisors Corp., is liable for:

Member Fees	= \$4,450.00
Forum Fees	= \$ 400.00
Total Fees	= \$4,850.00
Less payments	= \$4,450.00
Balance Due NASD Dispute Resolution	= \$ 400.00

Respondent, Joseph A. Spoerl, is liable for:

Forum Fees	= \$ 400.00
Total Fees	= \$ 400.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 400.00

Respondent, Joseph A. Spoerl L.L.C d/b/a Improved Funding Techniques-Michigan, is liable for:

Forum Fees	= \$ 400.00
Total Fees	= \$ 400.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 400.00

Respondents, Joseph A. Spoerl and Joseph A. Spoerl L.L.C. d/b/a Improved Funding Techniques-Michigan are jointly and severally liable for:

Administrative Costs	= \$ 3.75
Total Costs	= \$ 3.75
Less payments	= \$ 0.00
Balance Due NASD Resolution	= \$ 3.75

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

**ARBITRATOR**

Robert G. Falbisaner- Public Arbitrator, Presiding Chair

Arbitrator's Signature:

/s/ Robert G. Falbisaner  
Robert G. Falbisaner  
Public Arbitrator, Presiding Chair

07/07/05  
Signature Date

07/11/05  
Date of Service (For NASD office use only)

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Respondent, Ogilvie Security Advisors Corp., is liable for:

Member Fees	= \$4,450.00
Forum Fees	= \$ 400.00
Total Fees	= \$4,850.00
Less payments	= \$4,450.00
Balance Due NASD Dispute Resolution	= \$ 400.00

Respondent, Joseph A. Spoerl, is liable for:

Forum Fees	= \$ 400.00
Total Fees	= \$ 400.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 400.00

Respondent, Joseph A. Spoerl L.L.C. d/b/a Improved Funding Techniques-Michigan, is liable for:

Forum Fees	= \$ 400.00
Total Fees	= \$ 400.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 400.00

Respondents, Joseph A. Spoerl and Joseph A. Spoerl L.L.C. d/b/a Improved Funding Techniques-Michigan are jointly and severally liable for:

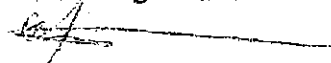
Administrative Costs	= \$ 3.75
Total Costs	= \$ 3.75
Less payments	= \$ 0.00
Balance Due NASD Resolution	= \$ 3.75

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

### ARBITRATOR

Robert G. Falbisaner- Public Arbitrator, Presiding Chair

Arbitrator's Signature:

  
 Robert G. Falbisaner  
 Public Arbitrator, Presiding Chair

July 7, 2005  
 Signature Date

Date of Service (For NASD office use only)