

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

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In the Matter of the Arbitration Between:

Yossef Kahlon (Claimant) v. VFinance Investments, Inc. and Marc Siegel (Respondents)

Case Number: 04-01266

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant Yossef Kahlon ("Kahlon") hereinafter referred to as "Claimant": Benjamin Lapin, Stock Market Recovery Consultants, Inc., Brooklyn, NY.

Respondent VFinance Investments, Inc. ("VFinance"): Adam H. Smith, Esq., Adam H. Smith, P.A., Boca Raton, FL.

Respondent Marc Siegel ("Siegel"): Carl F. Schoeppl, Esq., Schoeppl & Burke, P.A., Boca Raton, FL.

VFinance and Siegel are hereinafter collectively referred to as "Respondents".

**CASE INFORMATION**

Statement of Claim filed on or about: February 24, 2004.

Answer to Respondents' Motion to Dismiss and Motion to Set Venue in Boca Raton, Florida filed by Claimant on or about: April 28, 2004.

Claimant signed the Uniform Submission Agreement: February 10, 2004.

Motion to Dismiss Statement of Claim, Motion to Set Venue in Boca Raton, Florida, and Statement of Answer filed by Respondent VFinance on or about: April 22, 2004.

Respondent VFinance signed the Uniform Submission Agreement: April 21, 2004.

Motion to Dismiss and Statement of Answer filed by Respondent Siegel on or about: April 15, 2004.

Respondent Siegel signed the Uniform Submission Agreement: April 14, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; unsuitability; misrepresentation; omission of facts; failure to follow instructions; failure to supervise;

violation of industry rules; and respondeat superior. Claimant's claim involved a ponzi scheme involving Arfitel.

Unless specifically admitted in its Answer, Respondent VFinance denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in its Answer, Respondent Siegel denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$100,000.00; a refund of commission charges; interest; fees; costs; punitive damages; and any other relief deemed appropriate by the Panel.

Respondent VFinance requested that the Motion to Dismiss the Statement of Claim in its entirety with prejudice be granted; that the Motion to Set Venue is granted; that all claims be dismissed in their entirety with prejudice against VFinance; reasonable attorneys' fees; costs in defending this proceeding; and that all costs and NASD surcharges be assessed against the Claimant, together with such other and further relief as the Panel deems appropriate.

Respondent Siegel requested that the Panel dismiss the Statement of Claim with prejudice on the grounds that it is ineligible for arbitration pursuant to Rule 10304 of the NASD Code; that the Panel dismiss the Statement of Claim with prejudice as barred by all applicable statutes of limitations; dismiss the Statement of Claim for failure to state a legally cognizable claim; expungement of any and all references to this case from his CRD record; costs and expenses, including, but not limited to, attorneys' fees; and such other and further relief as the Panel deems just and proper.

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

Motions to Dismiss were filed by both Respondents. At the initial pre-hearing conference held on July 14, 2004, the parties confirmed that the motions and the response were fully briefed and confirmed that the Panel could proceed with a decision on the motions. The Panel considered all submissions and decided to dismiss Claimant's claim pursuant to NASD Rule 10304.

By letter dated July 14, 2004, counsel for Claimant expressed his concern that during the pre-hearing conference, the Panel heard Respondents' arguments on the motion to dismiss before scheduling hearing dates or establishing a discovery schedule. The Panel considered the letter dated July 14, 2004 and confirmed the Panel's decision to grant the motion to dismiss Claimant's claim. The Panel also indicated that during the pre-hearing conference on July 14, 2004, Claimant's representative was given the opportunity to

submit a further response to Respondents' motion within 30 days, but he refused. The Panel further stated "it is clear from the Statement of Claim that the time limitation has been breached - the Claim was filed more than six years after the event. Discovery will not cure that fact."

### **AWARD**

After considering the pleadings, oral arguments during the initial pre-hearing conference, Respondents' motion to dismiss and Claimant's responses, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their entirety.
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **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	= \$225.00
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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. Accordingly, VFinance Investments, Inc. is a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00

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

The Panel has assessed forum fees for each session conducted. A 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 @ \$750.00	= \$750.00
Pre-hearing conference: July 14, 2004 1 session	
Total Forum Fees	= \$750.00

1. The Panel has assessed \$250.00 of the forum fees against Claimant.
2. The Panel has assessed \$250.00 of the forum fees against Respondent VFinance.
3. The Panel has assessed \$250.00 of the forum fees against Respondent Siegel.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$ 250.00</u>
Total Fees	= \$ 475.00
<u>Less payments</u>	<u>= \$ 975.00</u>
Refund Due Claimant	= \$ 500.00

2. Respondent VFinance is solely liable for:

Member Fees	= \$1,850.00
<u>Forum Fees</u>	<u>= \$ 250.00</u>
Total Fees	= \$2,100.00
<u>Less payments</u>	<u>= \$1,850.00</u>
Balance Due NASD Dispute Resolution	= \$ 250.00

3. Respondent Siegel is solely liable for:

<u>Forum Fees</u>	<u>= \$ 250.00</u>
Total Fees	= \$ 250.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 250.00

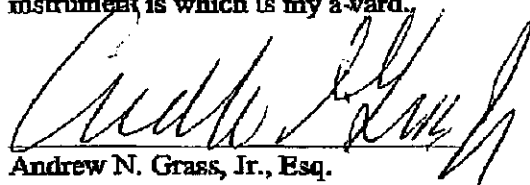
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.
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**ARBITRATION PANEL**

Andrew N. Grass, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
David B. O'Connor, Esq.	-	Public Arbitrator
Brian A. Carlis, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.

  
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Andrew N. Grass, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

8/2/04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
David B. O'Connor, Esq.  
Public Arbitrator

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Signature Date

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Non-Public Arbitrator

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Signature Date

August 12, 2004

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Date of Service (For NASD Dispute Resolution use only)

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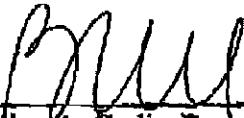
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