
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Ivan Winograd
Helene Winograd

Case Number: 04-01658

Name of the Respondent

PMG Securities Corporation

Hearing Site: Boca Raton, Florida.

Names of Third-Party Respondents

George Anthony Schmidt, Jr.
Denise Marie Fleming
1717 Capital Management Company

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

REPRESENTATION OF PARTIES

For Ivan Winograd and Helene Winograd, hereinafter referred to as "Claimants": Charles E. Scarlett, Esq., and Bradford M. Gucciardo, Esq., Scarlett & Associates, P.A., Boca Raton, Florida.

For Respondent PMG Securities Corporation, hereinafter referred to as "PMG": Michael S. Metta, Esq., Adorno & Yoss, P.A., Boca Raton, Florida.

For Third-Party Respondent George Anthony Schmidt, Jr., hereinafter referred to as "Schmidt": Brian D. Elias, Esq., Fowler White Burnett, P.A., Miami, Florida.

For Third-Party Respondent Denise Marie Fleming, hereinafter referred to as "Fleming": Barry A. Postman, Esq. and Scott A. Bassman, Esq., Cole, Scott & Kissane, P.A., Miami, Florida.

For Third-Party Respondent 1717 Capital Management Company, hereinafter referred to as "1717 Capital": Katherine C. Lake, Esq., Fowler White Boggs Banker, P.A., Tampa, Florida.

CASE INFORMATION

Statement of Claim filed on or about: March 8, 2004.

Claimants signed the Uniform Submission Agreements: February 28, 2004.

Respondent PMG filed an Answer to the Statement of Claim on or about: May 5, 2004.

Respondent PMG signed the Uniform Submission Agreement: May 5, 2004.

Claimants' Reply to Respondent's Affirmative Defenses and Motion to Bar Respondent PMG Securities From Presenting Any Facts or Defenses at the Hearing filed on or about: May 17, 2004.

Respondent PMG Securities' Amended Response to Claimants' Statement of Claim and Incorporated Third-

Party Claim filed on or about: June 21, 2004.

Third-Party Respondent Schmidt's Answer and Affirmative Defenses to PMG's Third-Party Claim filed on or about: August 3, 2004.

Third-Party Respondent Schmidt signed the Uniform Submission Agreement: August 2, 2004.

Third-Party Respondent 1717 Capital's Answer to PMG's Third-Party Claim filed on or about: August 27, 2004.

Third-Party Respondent 1717 Capital signed the Uniform Submission Agreement: September 7, 2004.

Third-Party Respondent Fleming's Response and Affirmative Defenses to PMG's Third-Party Claim filed on or about: October 8, 2004.

Third-Party Respondent Fleming did not file an executed Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: common law fraud and breach of fiduciary duty; fraud under the Securities Exchange Act and rules promulgated thereunder; violation of section 78A-8 of North Carolina Statutes; rescission under Securities Exchange Act; violation of NASD Conduct Rules 2120, 2310, 2510(b), 2110, 2210, and 3010(a); gross negligence; breach of contract; respondeat superior liability; and controlling persons liability. The causes of action relate to Claimants' investments in various mutual funds.

Unless specifically admitted in its Answer, Respondent PMG denied any liability or wrongdoing in connection with the allegations made in the Statement of Claim and asserted various defenses. Further, Respondent PMG asserted a third-party claim against Third-Party Respondents Schmidt, Fleming and 1717 Capital alleging the following claims: indemnification, contribution and equitable subrogation of Claimants' claims against Respondent PMG.

Unless specifically admitted in their Answer, Third-Party Respondents Schmidt, Fleming and 1717 Capital denied the allegations made in the third-party claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested an award of compensatory damages in the approximate amount of \$60,421.00; punitive damages in the amount of \$181,263.00; interest at the legal rate; costs, including filing fees, hearing session fees, expert witness fees, and attorneys' fees; and any such other relief as the undersigned arbitrators (the "Panel") deemed appropriate.

Respondent PMG requested that the arbitration panel make a specific finding that there was no misconduct by Respondent PMG, dismiss all claims and allegations against Respondent PMG, and require Claimants to bear all costs and attorneys' fees incurred by Respondent PMG in defending Claimant's claim. Respondent PMG, alternatively, requested indemnification, contribution and equitable subrogation from Third Party Respondents Schmidt, 1717 Capital Management Company, and Fleming for the claim against Respondent PMG.

Third-Party Respondents Fleming and Schmidt requested that the Panel make a specific finding that there was no misconduct by Third-Party Respondents Fleming and Schmidt; dismiss all claims and allegations against Third-Party Respondents Fleming and Schmidt; expunge Third-Party Respondents Fleming and Schmidt's Central Registry Depository ("CRD") records and U-4s of any and all issues dealing with the case; and require Claimants and Respondent PMG to bear all costs and attorneys' fees incurred by Respondents Fleming and Schmidt in

defending the claim.

Third-Party Respondent 1717 Capital requested that the Panel make a specific finding that there was no misconduct by Third-Party Respondent 1717 Capital; dismiss all claims and allegations against Third-Party Respondent 1717 Capital; and award costs and attorneys' fees incurred by Third-Party Respondent 1717 Capital in defending the claim.

OTHER ISSUES CONSIDERED AND DECIDED

Third-Party Respondent Fleming did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and is bound by the determination of the Panel on all issues submitted.

On or about December 7, 2004, Claimants notified NASD Dispute Resolution that the parties had settled the matter.

On or about March 1, 2005, Third-Party Respondent Fleming submitted to NASD Dispute Resolution the parties' Agreed Motion Requesting a Stipulated Award and an agreed to, proposed Stipulated Award for review and approval by the Panel.

On or about August 17, 2005, the Panel issued an order granting the Parties' Joint Request for an Expungement of the CRD Records of Third-Party Respondents Fleming and Schmidt.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

AWARD

After considering the pleadings, the Agreed Motion Requesting a Stipulated Award, and the proposed Stipulated Award submitted by the parties, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. All of the Claimants' claims for relief, including claims under North Carolina Statutes section 78A-8, the Securities Exchange Act, NASD rules and regulations and any other claims are dismissed, with prejudice.
2. All of Respondent PMG's claims for relief, including claims for indemnification, contribution and subrogation and any other claims are dismissed, with prejudice.
3. The Panel recommends the expungement of all references to the above captioned arbitration from Third-Party Respondents Schmidt's and Fleming's public and non-public registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Third Party Respondents Schmidt and Fleming must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

4. Any and all claims for relief not specifically addressed herein, including Claimants' and Respondent PMG's requests for punitive damages, attorneys' fees and costs, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

| | |
|------------------------------|--------------|
| Initial claim filing fee | = \$ 300.00 |
| Third-party claim filing fee | = \$1,000.00 |

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, Respondent PMG and Third-Party Respondent 1717 Capital are member firms and parties.

| | |
|-------------------------|--------------|
| Member surcharge | = \$1,700.00 |
| Pre-hearing process fee | = \$ 750.00 |
| Hearing process fee | = \$2,750.00 |
| Total Member Fees | = \$5,200.00 |

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

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:

There were no three-day cancellation fees assessed during these proceedings.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

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:

| | | | |
|--|-------------------|-----------|--------------|
| Three (3) Pre-hearing sessions with the Panel @ \$1,125.00 per session | | | = \$3,375.00 |
| Pre-hearing conferences: | July 15, 2004 | 1 session | |
| | November 22, 2004 | 1 session | |
| | August 17, 2005 | 1 session | |
| <hr/> Total Forum Fees | | | = \$3,375.00 |

The Panel has assessed forum fees as follows:

\$675.00 to Claimants; jointly and severally;
\$675.00 to Respondent PMG;
\$675.00 to Third Party Respondent Schmidt;
\$675.00 to Third Party Respondent 1717 Capital; and
\$675.00 to Third Party Respondent Fleming.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

| | |
|--|---------------------|
| Initial Filing Fee | = \$ 300.00 |
| Retained Hearing Session Deposit pursuant to Rule 10332(f) of the Code | = \$ 450.00 |
| Forum Fees | = \$ 675.00 |
| Total Fees | = \$1,425.00 |
| <u>Less payments</u> | <u>= \$1,425.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

Respondent PMG is solely liable for:

| | |
|--|---------------------|
| Third-Party Claim Filing Fee | = \$1,000.00 |
| Member Fees | = \$5,200.00 |
| Retained Hearing Session Deposit pursuant to Rule 10332(f) of the Code | = \$ 450.00 |
| Forum Fees | = \$ 675.00 |
| Total Fees | = \$7,325.00 |
| <u>Less payments</u> | <u>= \$7,325.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

Third Party Respondent Schmidt is solely liable for:

| | |
|----------------------|------------------|
| Forum Fees | = \$ 675.00 |
| Total Fees | = \$ 675.00 |
| <u>Less payments</u> | <u>= \$ 0.00</u> |

Balance Due NASD Dispute Resolution = \$ 675.00

Third Party Respondent 1717 Capital is solely liable for:

| | |
|-------------------------------------|--------------|
| Forum Fees | = \$ 675.00 |
| Member Fees | = \$5,200.00 |
| Total Fees | = \$5,875.00 |
| Less payments | = \$4,250.00 |
| Balance Due NASD Dispute Resolution | = \$1,625.00 |

Third Party Respondent Fleming solely liable for:

| | |
|-------------------------------------|-------------|
| Forum Fees | = \$ 675.00 |
| Total Fees | = \$ 675.00 |
| Less payments | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$ 675.00 |

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

ARBITRATION PANEL

| | | |
|--------------------------------|---|---|
| <i>Steven E. Eisenberg</i> | - | <i>Public Arbitrator, Presiding Chairperson</i> |
| <i>Marianne Madsen</i> | - | <i>Public Arbitrator</i> |
| <i>Jeffrey Lawrence Sarkin</i> | - | <i>Non-Public Arbitrator</i> |

Concurring Arbitrators' Signatures

/s/
Steven E. Eisenberg
Public Arbitrator, Presiding Chairperson

August 22, 2005
Signature Date

/s/
Marianne Madsen
Public Arbitrator

August 22, 2005
Signature Date

/s/
Jeffrey Lawrence Sarkin
Non-Public Arbitrator

August 22, 2005
Signature Date

August 22, 2005
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
Arbitration No. 04-01658
Stipulated Award Page 6

Balance Due NASD Dispute Resolution = \$ 675.00

Third Party Respondent 1717 Capital is solely liable for:

| | |
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| Forum Fees | = \$ 675.00 |
| Member Fees | = \$5,200.00 |
| Total Fees | = \$5,875.00 |
| Less payments | = \$4,250.00 |
| Balance Due NASD Dispute Resolution | = \$1,625.00 |

Third Party Respondent Fleming solely liable for:

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| Forum Fees | = \$ 675.00 |
| Total Fees | = \$ 675.00 |
| Less payments | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$ 675.00 |

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

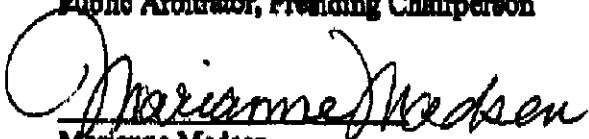
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| Jeffrey Lawrence Sarkin | - | Public Arbitrator, Presiding Chairperson |
| Marianne Madsen | - | Public Arbitrator |
| Steven E. Eisenberg | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

Steven E. Eisenberg
Public Arbitrator, Presiding Chairperson

Signature Date


Marianne Madsen
Public Arbitrator

8/22/25
Signature Date

Jeffrey Lawrence Sarkin
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
Arbitration No. 04-01658
Stipulated Award Page 6

Balance Due NASD Dispute Resolution = \$ 675.00

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ARBITRATION PANEL

Jeffrey Lawrence Sarkin

-

Public Arbitrator, Presiding Chairperson

Marianne Madsen

-

Public Arbitrator

Steven E. Eisenberg

-

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Steven E. Eisenberg

Public Arbitrator, Presiding Chairperson

Signature Date

Marianne Madsen

Public Arbitrator

Signature Date

Jeffrey Lawrence Sarkin

Non-Public Arbitrator

8/22/05
Signature Date

Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
Arbitration No. 04-01658
Stipulated Award Page 6

Balance Due NASD Dispute Resolution = \$ 675.00

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| Total Fees | = \$5,875.00 |
| <u>Less payments</u> | <u>= \$4,250.00</u> |
| Balance Due NASD Dispute Resolution | = \$1,625.00 |

Third Party Respondent Fleming solely liable for:

| | |
|-------------------------------------|--------------------|
| <u>Forum Fees</u> | <u>= \$ 675.00</u> |
| Total Fees | = \$ 675.00 |
| <u>Less payments</u> | <u>= \$ 0.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 675.00 |

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10930(g) of the Code.

ARBITRATION PANEL

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Marianne Madsen

Steven E. Eisenberg

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-

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures


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Public Arbitrator, Presiding Chairperson


Signature Date

Marianne Madsen
Public Arbitrator

Signature Date

Jeffrey Lawrence Sarkin
Non-Public Arbitrator

Signature Date

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