

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

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In the Matter of the Arbitration Between:

Mark Wenzel and Beverly J. Wenzel and Robert Horton and Franca Gioia (Claimants) v. STG Secure Trading Group, Millennium Brokerage, LLC, Richard Dalberth, Andrew Schneider, and Marnie Koroluk (Respondents)

Case Number: 04-01787

Hearing Site: Cleveland, Ohio

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Nature of the Dispute: Customers v. Members and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimants, Mark Wenzel and Beverly J. Wenzel ("Wenzels") and Robert Horton and Franca Gioia ("Horton & Gioia"), hereinafter collectively referred to as "Claimants": Thomas C. Wagner, Esq., Van Deusen & Wagner, LLC, Cleveland, OH.

Respondent, STG Secure Trading Group ("STG"): Justin Pearson, Esq., Feingold & Kam, LLC, Palm Beach Gardens, FL.

Respondent, Millennium Brokerage, LLC ("Millennium"): Franklin I. Ogele, Esq., Millennium Brokerage, LCC, Woodcliff Lake, NJ.

Respondent, Richard Dalberth ("Dalberth"): appeared *pro se*.

Respondent, Andrew Schneider ("Schneider"): Brian H. Reis, Esq., New York, NY.

Respondent, Marnie Koroluk ("Koroluk"): Alexander W. Booth, Esq., Brownstein Booth & Associates, P.C., Union City, NJ.

**CASE INFORMATION**

Statement of Claim filed on or about: March 15, 2004.

Claimant Wenzels signed the Uniform Submission Agreement: March 3, 2004.

Claimant Horton & Gioia signed the Uniform Submission Agreement: March 4, 2004.

Statement of Answer, Affirmative Defenses and Motion to Dismiss filed by Respondent Millennium on or about: May 24, 2004.

Statement of Answer and Motion to Sever filed by Respondent Schneider on or about: July 8, 2004.

Motion to Dismiss, Motion for More Definite Statement, Answer and Affirmative Defenses filed by Respondent STG on or about: May 10, 2004.

Statement of Answer and Affirmative Defenses filed by Respondent Koroluk on or about: June 4, 2004.

Respondent STG signed the Uniform Submission Agreement: May 24, 2004.

Respondent Millennium signed the Uniform Submission Agreement: May 24, 2004.

Respondent Koroluk signed the Uniform Submission Agreement: April 30, 2004.

Respondent Schneider did not sign the Uniform Submission Agreement.

Statement of Answer filed by Respondent Dalberth on or about July 27, 2005.

Respondent Dalberth did not sign the Uniform Submission Agreement.

### **CASE SUMMARY**

Claimants asserted the following causes of action: several violations of "blue sky" law; fraud; negligent misrepresentation; breach of fiduciary duty; breach of contract; *respondeat superior* and negligence. The causes of action relate to limited partnership interests in a hedge fund known as Runnymede Capital Partners, LP.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants Wenzels requested compensatory damages in the amount of \$220,000.00 and Claimants Horton & Gioia requested compensatory damages in the amount of \$110,000.00; punitive damages in such amount as the arbitrators in their wisdom and discretion deem just, for attorneys' fees, experts' fees and the costs of this arbitration.

Respondent Millennium requested that the Panel dismiss Claimants' Statement of Claim in its entirety.

Respondent STG requested that the Panel dismiss all claims against STG and requests that it be awarded its attorneys' fees and costs incurred in defending this claim.

Respondent Schneider requested that the Panel deny all requests for relief including punitive damages, "well managed portfolio" and costs as being inappropriate given the facts of this case and applicable law.

Respondent Koroluk requested that the Panel dismiss all claims against her.

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

Respondents Schneider and Dalberth did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

Respondent STG failed to appear at the July 11, 2005 hearing. After telephonic discussion among counsel for STG, Claimants' counsel, NASD staff on the record, the Panel Ordered Counsel for STG to appear at the hearing on July 13, 2005 and cross-examine Claimants.

Respondents Millennium and Dalberth did not appear at the hearing.

At the commencement of the hearing, Claimants notified the Panel that they entered into a settlement with Respondents Koroluk and Schneider.

The parties have 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, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Dalberth and STG are jointly and severally liable for and shall pay to Claimants, jointly and severally, \$200,000.00 in compensatory damages.
2. Respondents Dalberth and STG are jointly and severally liable for and shall pay to Claimants, jointly and severally, \$100,000.00 in punitive damages per *Preston v. Murty*, 32 Ohio St. 3d 334 (1987) and *Maurier v. Shearson/American Express, Inc.*, 567 F. Supp. 1231 (S.D.N.Y. 1983).
3. Respondents Dalberth and STG are jointly and severally liable for and shall pay to Claimants Wenzels interest in the amount of five percent (5%) from November 1, 2003 until the award is paid.
4. Respondents Dalberth and STG are jointly and severally liable for and shall pay to Claimants Horton & Gioia interest in the amount of nine percent (9%) from November 1, 2003 until the award is paid.
5. Respondents Dalberth and STG are jointly and severally liable for and shall pay to Claimants jointly and severally \$50,000.00 in attorneys' fees per *Preston v. Murty*, 32 Ohio St. 3d 334 (1987) and *Maurier v. Shearson/American Express, Inc.*, 567 F. Supp. 1231 (S.D.N.Y. 1983).
6. Respondents Dalberth and STG are jointly and severally liable for and shall pay to Claimants Wenzels costs in the amount of \$5,127.00.
7. Respondents Dalberth and STG are jointly and severally liable for and shall pay to Claimants Horton & Gioia costs in the amount of \$2,563.00.
8. Any and all relief not specifically addressed herein, 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 = \$ 300.00

#### **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 persons at the time of the events giving rise to the dispute. Accordingly, STG Secure Trading Group and Millennium Brokerage, LLC are parties.

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

#### **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:

Three (3) Pre-hearing sessions with Panel @ \$1,125.00 = \$ 3,375.00

Pre-hearing conferences:	August 31, 2004	1 session
	November 30, 2004	1 session
	May 25, 2005	1 session

Six (6) Hearing sessions @ \$1,125.00 = \$ 6,750.00

Hearing Dates:	July 11, 2005	2 sessions
	July 13, 2005	2 sessions
	July 14, 2005	2 sessions

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Total Forum Fees = \$10,125.00

1. The Panel has assessed \$10,125.00 of the forum fees jointly and severally against Respondents STG and Dalberth.

### **Fee Summary**

1. Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	<u>= \$ 300.00</u>
Total Fees	= \$ 300.00

<u>Less payments</u>	= \$ 1,425.00
Refund Due Claimants	= \$ 1,125.00

2. Respondent STG is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
Total Fees	= \$ 5,200.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondent Millennium is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
Total Fees	= \$ 5,200.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondents Dalberth and STG are jointly and severally liable for:

<u>Forum Fees</u>	= \$10,125.00
Balance Due NASD Dispute Resolution	= \$10,125.00

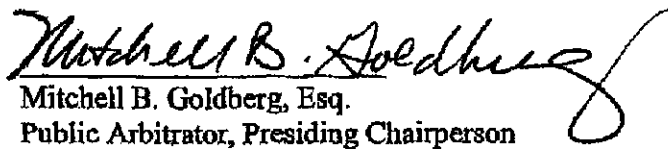
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Mitchell B. Goldberg, Esq.	-	Public Arbitrator, Presiding Chairperson
Thomas R. Skulina, Esq.	-	Public Arbitrator
Gary R. Miles	-	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, which is my award.

  
\_\_\_\_\_  
Mitchell B. Goldberg, Esq.  
Public Arbitrator, Presiding Chairperson

July 20, 2005  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Thomas R. Skulina, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Gary R. Miles  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

July 21, 2005  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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7-20-05  
Signature | Date

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