

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

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In the Matter of the Arbitration Between:

Fred Levanger, Claimant v. Brookstreet Securities Corporation, Richard L. Brown and Anthony Costanzo, Respondents

Case Number: 04-01925

Hearing Site: Portland, Oregon

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

**REPRESENTATION OF PARTIES**

For Claimant:

Stephen M. Hansen, Esq.  
Lowenberg, Lopez, & Hanson, P.S.  
Tacoma, Washington

Celeste Chiamonte, Esq.  
Woska & Hayes  
Kingwood, Texas

For Respondent Brookstreet Securities Corporation  
and Anthony Costanzo:

H. Thomas Fehn, Esq.  
Fields, Fehn, & Sherwin  
Los Angeles, California

For Respondent Richard L. Brown:

Mitchell Sternbach, Esq.  
Mintz, Stein & Sternbach  
Rockville Centre, New York

**CASE INFORMATION**

Statement of Claim filed: March 19, 2004

Claimant's Uniform Submission Agreement signed: March 12, 2004

Joint Statement of Answer filed by Respondents Brookstreet Securities Corporation and Anthony Costanzo received on June 4, 2004

Respondent Brookstreet Securities Corporation's Uniform Submission Agreement signed:  
April 20, 2004

Respondent Anthony Costanzo's Uniform Submission Agreement signed: April 21, 2004

Statement of Answer filed by Respondent Richard L. Brown: June 29, 2004

Respondent Richard L. Brown's Uniform Submission Agreement: None submitted

### **CASE SUMMARY**

In his Statement of Claim, Claimant alleged breach of fiduciary duty, breach of contract, violations of the Know Your Customer rule, unsuitability, failure to supervise, failure to hedge, and violations of federal and state securities laws with respect to the purchase and sale of unspecified common stock and covered calls.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested in excess of \$30,000.00 in compensatory damages, unspecified punitive damages, pre- and post-judgment interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, and costs, including attorney's fees.

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

Respondent Richard L. Brown moved the Arbitrator for permission to appear at the hearing via telephone. On or about January 13, 2005, a telephonic pre-hearing conference was held between the Arbitrator and the Parties concerning this motion. The Parties advised the Arbitrator that they had no objection to Respondent Richard L. Brown appearing at the hearing by telephone. The Arbitrator granted the motion.

Respondent Richard L. Brown did not file with NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing is bound by the determination of the Arbitrator on all issues submitted.

The parties agreed that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, testimony, evidence presented at the hearing, and the post-hearing submissions, the Arbitrator decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents Brookstreet Securities Corporation and Anthony Costanzo are jointly and severally liable to and shall pay Claimant the sum of \$24,578.03 in compensatory damages for making unsuitable recommendations with respect to the purchase and sale of certain common stocks.
- 2) Respondents Brookstreet Securities Corporation and Anthony Costanzo are jointly and severally liable to and shall pay to Claimant pre-judgment interest in the sum of \$4,239.64.
- 3) Respondents Brookstreet Securities Corporation and Anthony Costanzo are jointly and severally liable and shall pay Claimant interest on the sum of \$28,817.67 at a rate of 9% per annum from the date of the service of this award until the award is paid in full.
- 4) Respondents Brookstreet Securities Corporation and Anthony Costanzo are jointly and severally liable and shall pay to Claimant the sum of \$1,750.00 as reimbursement for costs, including expert witness fees.
- 5) Claimant's request for attorneys' fees is denied.
- 6) Claimant's claims against Respondent Richard L. Brown are denied in their entirety and dismissed with prejudice.
- 7) Except as noted above, the parties shall bear their respective costs, including attorney's fees.
- 8) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 150.00
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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 Brookstreet Securities Corporation is a party and the following fees are assessed:

Member Surcharge	= \$ 600.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$1,000.00
<b>Total Member Fees</b>	<b>= \$2,350.00</b>

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

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair. The following fees are assessed:

(2) Pre-hearing conference sessions with a single arbitrator @ \$ 450.00/session	= \$ 900.00
Pre-hearing conferences: July 19, 2004	1 session
January 13, 2005	1 session

(2) Hearing sessions @ \$450.00/session	= \$ 900.00
Hearing: January 17, 2005	2 sessions

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<b>Total Forum Fees</b>	<b>= \$1,800.00</b>
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1. The Panel assessed \$ 450.00 of the forum fees to Claimant.
2. The Panel assessed \$1,350.00 of the forum fees jointly and severally to Respondents Brookstreet Securities Corporation and Anthony Costanzo.

**Fee Summary**

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

Initial Filing Fee	= \$ 150.00
Forum Fees	= \$ 450.00
Total Fees	= \$ 600.00
Less payments	= \$( 625.00)
<b>Refund Due to Claimant</b>	<b>= \$ (25.00)</b>

2. Respondent Brookstreet Securities Corporation is charged with the following fees and costs:

Member Fees	= \$ 2,350.00
Less Payments	= \$ 2,350.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents Brookstreet Securities Corporation and Anthony Costanzo are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 1,350.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,350.00</b>

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.

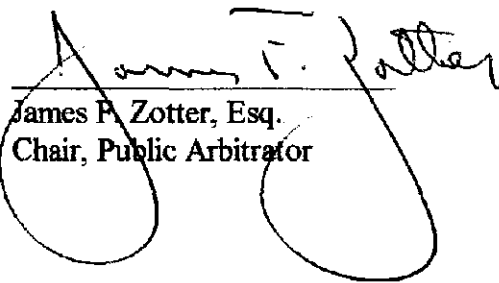
**ARBITRATOR**

**James F. Zotter, Esq.**

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**Public Arbitrator, Presiding Chair**

**Arbitrator's Signature**

  
James F. Zotter, Esq.  
Chair, Public Arbitrator

1/21/05  
Signature Date

1/28/05  
Date of Service