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

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In the Matter of the Arbitration Between:

Names of the Claimants

Lenore Scheiner  
Jacob Scheiner

Case Number: 04-03712

Names of the Respondents

Investacorp, Inc.  
Walter Priebe

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Lenore Scheiner and Jacob Scheiner, hereinafter collectively referred to as "Claimants": Michael Kiner, Esq., Miller, Kagan, Rodriguez & Silver, West Palm Beach, Florida.

For Investacorp, Inc. ("Investacorp") and Walter Priebe ("Priebe"), hereinafter collectively referred to as "Respondents": Alex J. Sabo, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

**CASE INFORMATION**

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

First Amended Statement of Claim filed on or about: June 21, 2004.

Claimants signed the Uniform Submission Agreement on: May 11, 2004.

Motion to Dismiss and Statement of Answer filed on or about: November 5, 2004.

Respondent Investacorp signed the Uniform Submission Agreement on: November 3, 2004.

Respondent Priebe signed the Uniform Submission Agreement on: November 4, 2004.

**CASE SUMMARY**

Claimants alleged the following causes of action: 1) breach of fiduciary duty; 2) violation of the Florida Securities and Investor Protection Act, Chapter 517; and 3) failure to supervise/negligent supervision. The causes of action relate to the recommendation of unsuitable investments for Claimants' retirement funds beginning in 1995 and the failure to take action once equity market conditions changed in April 2000.

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

### **RELIEF REQUESTED**

Claimants requested: 1) compensatory damages in the amount of \$310,000.00; 2) punitive damages in the amount of \$2,165,903.49; 3) pre-judgment interest in the amount of \$230,750.00; 4) costs, including expert witness fees, filing fees and forum fees; 5) attorneys' fees in the amount equal to 40% of Claimants' recovery pursuant to Section 517.211(6), Florida Statutes; and 6) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents requested: 1) dismissal of the Statement of Claim in its entirety; 2) assessment of all fees and costs, including attorneys' fees, against Claimants; and 3) such other relief the Panel deemed just and proper.

Respondent Priebe requested expungement of all reference to the above captioned arbitration from Respondent Priebe's registration records maintained by the NASD Central Registration Depository ("CRD").

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

On or about December 27, 2005, Respondents filed, on behalf of Claimant, an unopposed request to adjourn the evidentiary hearing scheduled for December 28, 2005. On or about December 27, 2005, the Panel: 1) granted the request; 2) adjourned the hearing; and 3) deferred ruling on the allocation of the \$1,200.00 adjournment fee. Following the evidentiary hearing, the Panel assessed: 1) an adjournment fee in the amount of \$1,200.00 jointly and severally to Claimants; and 2) a three-day cancellation fee in the amount of \$300.00 jointly and severally to Claimants.

On or about September 21, 2005, the Panel denied, without prejudice and with leave to renew at the evidentiary hearing, Respondents' motion to dismiss

On or about October 10, 2005, Respondents filed a notice of settlement and intent to submit a Stipulated Award.

On or about December 9, 2005, the parties filed Claimants' Stipulation in Support of Stipulated Award and proposed Stipulated Award.

The Panel considered Respondent Priebe's request for entry of an order requiring NASD to expunge the above-captioned arbitration proceeding from Respondent Priebe's registration records maintained by the NASD CRD. In regard to the request for an order to expunge, the Panel proceeded under NASD Notice to Members 04-16 because Claimants initiated this arbitration after April 12, 2004.

The parties 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, hearing argument of counsel to the parties in connection with Respondents'

Motion to Dismiss, taking sworn testimony from Claimant Jacob Scheiner that the claims were in fact false, reviewing the proofs submitted by Respondents in support of the request for entry of an order to expunge and learning of the parties' amicable resolution of this matter and their joint request that the Panel enter this Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Amended Statement of Claim is dismissed in its entirety without any finding of fault or liability on the part of Respondents Investacorp or Priebe.
2. As discussed more fully below, the Panel determines that Respondent Priebe has not engaged in any wrongful conduct and that this proceeding and all claims in this proceeding should be expunged from the registration records maintained by the CRD for Respondent Priebe.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Priebe's registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Priebe must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.
5. Pursuant to Rule 2130 of the NASD Code of Arbitration Procedure (the "Code"), the Panel has made the following affirmative findings of fact and has reached the following conclusions of law:
  - a. Claimants established accounts with Respondent Investacorp during 1995. Respondent Priebe, a General Securities Representative with Investacorp, serviced those accounts throughout Claimants' relationship with Respondent Investacorp.
  - b. Respondent Priebe first became licensed to sell securities in 1989. His registration with Respondent Investacorp became effective on March 8, 1989. As demonstrated by his current NASD BrokerCheck Report, Respondent Priebe does not have any other reportable customer complaints or arbitrations since his registration as General Securities Representative became effective.
  - c. In connection with the establishment of their relationship with Respondent Investacorp, Claimants executed a document known as a New Account Form, Customer Agreement and Disclosure Statement ("the New Account Agreement"). Claimants represented to Respondents Investacorp and Priebe that their risk tolerance level fell within a "higher" level of risk. The New Account Agreement included risk tolerance levels of lower, moderate, higher and highest.
  - d. All of the investments, which Claimants made through Respondent Investacorp, consisted of mutual funds and variable annuities, and fell within a moderate level of risk as described on the New Account Agreement. Thus, all of the investments at issue fell within a risk level lower than the level of risk that Claimants indicated a willingness to accept when they established accounts

with Respondent Investacorp.

- e. In connection with their investments through Respondent Investacorp, Claimants received copies of relevant prospectuses and disclosure documents. Throughout their relationship with Respondent Investacorp, Respondent Priebe corresponded in writing with Claimants and confirmed their instructions regarding investments, including liquidations and withdrawals.
- f. As established by the Declaration submitted by one of Respondents' experts, Claimants did not suffer any out-of-pocket losses from the investments at issue. In addition, as established by the same Declaration, Claimants had no basis to recover damages under Section 517.211 of the Florida Statutes because the actual performance of their investments through Respondent Investacorp exceeded any damage calculations made under this provision.
- g. Based on its review of the First Amended Statement of Claim, Motion to Dismiss and Statement of Answer submitted by Respondents, the Declaration submitted by one of Respondents' experts, and the stipulation filed by Claimants' counsel, with Claimants' consent, indicating that Respondents Investacorp and Priebe would offer evidence at the hearing in this case substantiating the finding of facts and conclusion of law reached by the Panel, the Panel concluded that all of the investments at issue fell within Claimants' investment objectives and risk tolerance, the Claimants did not suffer any compensable loss as a result of their investments at issue and that Claimants merely are upset with the performance of suitable investments.
- h. Based on these conclusions, the Panel also has concluded that Claimants would not have prevailed if this case had proceeded to hearing on its merits, that Respondent Priebe did not engage in any conduct in violation of any rule or regulation promulgated by NASD, that neither Respondent Priebe nor Respondent Investacorp is liable for Claimants' causes of action in the First Amended Statement of Claim (breach of fiduciary duty, violation of Chapter 517 of the Florida Statutes and failure to supervise), and that Respondent Priebe, as a registered person of Respondent Investacorp, was not involved in any investment-related practice violation, including the specific allegations made by Claimants in this case.
- i. Pursuant to Rule 2130 of the NASD Code of Arbitration Procedure, the arbitration panel has made the following affirmative findings of fact:

The claim, allegation, or information is false.

- 6. Each party shall bear its respective costs, including attorneys' fees.
- 7. Any and all claims for relief not specifically addressed herein are denied with prejudice.

#### **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 = \$ 500.00

**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 Investacorp is a member firm and a party.

Member surcharge = \$2,800.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$5,000.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

The Panel assessed an adjournment fee in the amount of \$1,200.00 jointly and severally to Claimants.

**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:

The Panel assessed a three-day cancellation fee in the amount of \$300.00 jointly and severally to Claimants.

**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:

Two (2) Pre-hearing sessions with Panel @ \$1,200.00 per session = \$2,400.00

Pre-hearing conferences: February 2, 2005 1 session  
September 21, 2005 1 session

Two (2) Hearing sessions @ \$1,200.00 per session = \$2,400.00

Hearing Dates: January 24, 2006 1 session  
February 13, 2006 1 session

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Total Forum Fees = \$4,800.00

The Panel has assessed forum fees in the amount of \$1,800.00 jointly and severally to Claimants that represents one-half of the forum fees for the pre-hearing conference of February 2, 2005 (\$600.00), the evidentiary hearing session of February 24, 2006 (\$600.00) and the evidentiary hearing session of February 13, 2006 (\$600.00).

The Panel has assessed forum fees in the amount of \$3,000.00 jointly and severally to Respondents that represents one-half of the forum fees for the pre-hearing conference of February 2, 2005 (\$600.00), the evidentiary hearing session of February 24, 2006 (\$600.00) and the evidentiary hearing session of February 13, 2006 (\$600.00), plus the forum fees for the pre-hearing conference of September 21, 2005 (\$1,200.00).

#### **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	= \$ 500.00
Adjournment Fee	= \$1,200.00
Three-Day Cancellation Fee	= \$ 300.00
Forum Fees	= \$1,800.00
Total Fees	= \$3,800.00
Less payments	= \$1,850.00
Balance Due NASD Dispute Resolution	= \$1,950.00

Respondent Investacorp is solely liable for:

Member Fees	= \$8,550.00
Total Fees	= \$8,550.00
Less payments	= \$8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Forum Fees	= \$3,000.00
Total Fees	= \$3,000.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,000.00

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

**ARBITRATION PANEL**

<i>Alan B. Goldstein, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Peter A. Cartwright, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Susan M. Dunning</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Alan B. Goldstein, Esq.  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
March 2, 2006  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Peter A. Cartwright, Esq.  
Public Arbitrator

\_\_\_\_\_  
March 2, 2006  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Susan M. Dunning  
Non-Public Arbitrator

\_\_\_\_\_  
March 3, 2006  
Signature Date

\_\_\_\_\_  
March 7, 2006  
Date of Service (For NASD Dispute Resolution office use only)

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**ARBITRATION PANEL**

*Alan B. Goldstein, Esq.*

*Peter A. Cartwright, Esq.*

*Susan M. Dunning*

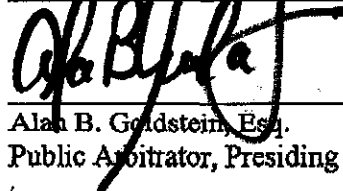
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*Public Arbitrator, Presiding Chairperson*

*Public Arbitrator*

*Non-Public Arbitrator*

**Concurring Arbitrators' Signatures**



*Alan B. Goldstein, Esq.*

*Public Arbitrator, Presiding Chairperson*

**3.2.06**

Signature Date

Peter A. Cartwright, Esq.

*Public Arbitrator*

Signature Date

Susan M. Dunning

*Non-Public Arbitrator*

Signature Date

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



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*Peter A. Cartwright, Esq.*

*Susan M. Dunning*

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*Public Arbitrator, Presiding Chairperson*

*Public Arbitrator*

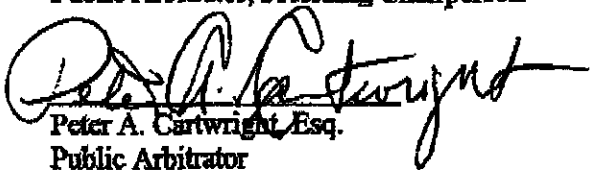
*Non-Public Arbitrator*

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Alan B. Goldstein, Esq.

Public Arbitrator, Presiding Chairperson

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Signature Date

  
Peter A. Cartwright, Esq.  
Public Arbitrator

*March 2, 2006*  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Susan M. Dunning

Non-Public Arbitrator

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Stipulated Award Page 7

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*Peter A. Cartwright, Esq.*  
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- *Public Arbitrator, Presiding Chairperson*  
- *Public Arbitrator*  
- *Non-Public Arbitrator*

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Public Arbitrator, Presiding Chairperson

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Signature Date

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Peter A. Cartwright, Esq.  
Public Arbitrator

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

*Susan M. Dunning*  
\_\_\_\_\_  
Susan M. Dunning  
Non-Public Arbitrator

*3/3/2006*  
\_\_\_\_\_  
Signature Date

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