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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Mildred A. Dubinski

Case Number: 04-03718

Name of the Respondent  
National Planning Corporation

Hearing Site: Tampa, FL

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Mildred A. Dubinski, hereinafter referred to as "Claimant": Joel A. Goodman, Esq., Goodman & Nekvasil, P.A., Clearwater, FL.

For National Planning Corporation ("NPC"), hereinafter referred to as "Respondent": Dale T. Golden, Esq., Marshall, Dennehey, Warner, Colema & Goggin, Tampa, FL.

**CASE INFORMATION**

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

Claimant signed the Uniform Submission Agreement: May 12, 2004.

Response to Statement of Claim filed by Respondent on or about: July 19, 2004.

Respondent signed the Uniform Submission Agreement: August 16, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; common law fraud; constructive fraud through breach of fiduciary duty; negligence; and, gross negligence. The causes of action relate to the purchase of a First American Capital Trust Commercial Note in Claimant's account.

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

**RELIEF REQUESTED**

Claimant requested compensatory and statutory damages of \$50,001.00, benefit of the bargain damages, lost opportunity costs, model portfolio damages, prejudgment interest, punitive damages, rescission, costs, attorneys' fees, non-economic damages, and such other relief as is deemed necessary and proper.

Respondent requested dismissal of the Statement of Claim.

**OTHER ISSUES CONSIDERED AND DECIDED**

In their Statement of Answer and on April 20, 2005, at the final hearing in this matter, Respondent requested, during its closing argument, that this case be dismissed based on applicable statutes of limitations as provided for in Florida Statutes, Section 95.11. Claimant objected to said request and asserted the claims were not time barred. The Panel granted Respondent's request.

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 and the testimony and evidence presented at the hearing, the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

All of Claimant's claims are time barred by applicable statutes of limitation as provided for by Florida Statutes, Section 95.11 and, accordingly, all of Claimant's claims are dismissed.

Any and all claims for relief not specifically addressed herein, including Claimant's requests for attorneys' fees and punitive damages, are denied.

**FEES**

Pursuant to the NASD Code of Arbitration Procedure (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

**Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent NPC is a member firm and a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were assessed during these proceedings.

**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:

No three-day cancellation fees were 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.

No injunctive relief fees were 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the Panel @ \$750.00/session	= \$ 750.00
Pre-hearing conference:      October 7, 2004      1 session	
Six (6) Hearing sessions @ \$750.00/session	= \$4,500.00
Hearing Dates:      April 18, 2005      2 sessions	
April 19, 2005      2 sessions	
April 20, 2005      2 sessions	
<hr/> Total Forum Fees	<hr/> = \$5,250.00

The Panel has assessed \$2,625.00 of the forum fees to Claimant.

The Panel has assessed \$2,625.00 of the forum fees to Respondent.

**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.

No administrative costs were incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 2,625.00
Total Fees	= \$ 2,850.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 1,875.00

Respondent is solely liable for:

Member Fees	= \$ 3,550.00
Forum Fees	= \$ 2,625.00

Total Fees	= \$ 6,175.00
<u>Less payments</u>	<u>= \$ 3,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,625.00

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

**ARBITRATION PANEL**

James B. Williams	-	Public Arbitrator, Presiding Chairperson
William H. Fleece, J.D.	-	Public Arbitrator
Augusto V. Perrotta	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
James B. Williams  
Public Arbitrator, Presiding Chairperson

Signature Date

/s/  
William H. Fleece, J.D.  
Public Arbitrator

Signature Date

/s/  
Augusto V. Perrotta  
Non-Public Arbitrator

Signature Date

April 28, 2005  
Date of Service (For NASD Dispute Resolution office use only)

Total Fees	= \$ 6,175.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 2,625.00

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**Concurring Arbitrators' Signatures**

  
James B. Williams

Public Arbitrator, Presiding Chairperson

4-27-05  
Signature Date

\_\_\_\_\_  
William H. Fleece, J.D.  
Public Arbitrator

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

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Augusto V. Perrotta  
Non-Public Arbitrator

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

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Arbitration No. 04-03718  
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Total Fees	= \$ 6,175.00
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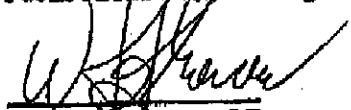
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Concurring Arbitrators' Signatures

James B. Williams  
Public Arbitrator, Presiding Chairperson



William H. Fleece, J.D.  
Public Arbitrator

Signature Date

5/20/05  
Signature Date

Augusto V. Perrotta  
Non-Public Arbitrator

Signature Date

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Award Page 4 of 4

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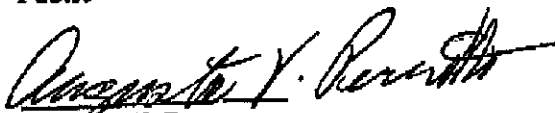
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Public Arbitrator, Presiding Chairperson

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Signature Date

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William H. Flecce, J.D.  
Public Arbitrator

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Signature Date

  
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Augusto V. Perrotta  
Non-Public Arbitrator

4-28-05  
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Signature Date

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