

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 04-04239

Bernard Baker, Jr.

Names of the Respondents

Hearing Site: Pittsburgh, Pennsylvania

Financial Investment Analysts, Inc.

Scott E. Shoup

Theodore F. Staats

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

**REPRESENTATION OF PARTIES**

Claimant, Bernard Baker, Jr., hereinafter referred to as "Claimant", was represented by Arnold Y. Steinberg, Esq., Attorney at Law, Pittsburgh, Pennsylvania.

Respondent, Scott E. Shoup, hereinafter referred to as "Respondent Shoup", was represented by Marc J. Ross, Esq., Sichenzia Ross Friedman Ference LLP, New York, New York.

Respondent, Financial Investment Analysts, Inc., hereinafter referred to as "Respondent Financial", was represented by Adele D. Staats, Financial Investment Analysts, Inc., Pittsburgh, Pennsylvania.

Respondent, Theodore F. Staats, hereinafter referred to as "Respondent Staats", was not represented by counsel.

**CASE INFORMATION**

Statement of Claim filed on June 7, 2004.

Amended Statement of Claim filed on April 13, 2005.

Claimant signed the Uniform Submission Agreement on November 20, 2003.

Claimant signed the Uniform Submission Agreement on April 6, 2006.

Statement of Answer and Motion to Dismiss filed by Respondent Shoup on October 14, 2004.

Respondent Shoup signed the Uniform Submission Agreement on October 14, 2004.

Claimant's Opposition to Respondent Shoup's Motion to Dismiss was filed on October 28, 2004.

Respondent Staats' Statement of Answer and Motion to Dismiss filed on or about August 15, 2005.

Claimant's Opposition to Respondent Staats' Motion to Dismiss was filed on August 24, 2005.

Respondent Financial did not file a Statement of Answer.

Respondents Financial and Staats did not file Uniform Submission Agreements.

### CASE SUMMARY

Claimant asserted the following causes of action, among others: fraud, violation of Securities Exchange Act of 1934, breach of fiduciary duty, negligent supervision, and violation of the Pennsylvania Unfair Trade Practice/Consumer Protection Law. The causes of action relate to the purchase and sale of various securities.

Unless specifically admitted in his Answer, Respondent Shoup denied the allegations made in the Statement of Claim and asserted the following defenses, among others: assumption of risk, Claimant authorized all transactions, ratification, waiver, release, estoppel, statute of limitations, any losses were the result of market forces, failure to state a claim upon which relief may be granted, and failure to mitigate.

Unless specifically admitted in his Answer, Respondent Staats denied the allegations made in the Statement of Claim

### RELIEF REQUESTED

Claimant in his Amended Statement of Claim requested:

Compensatory Damages	\$200,000.00
Punitive Damages	amount unspecified
Interest	amount unspecified
Other Costs	amount unspecified

Respondent Shoup in his Statement of Answer requested that the Statement of Claim be dismissed and all other relief the Panel deems proper.

Respondent Staats in his Statement of Answer requested that the Statement of Claim be dismissed.

### OTHER ISSUES CONSIDERED AND DECIDED

By Order dated November 9, 2005, the Panel denied Respondent Shoup's Motion to Dismiss.

By Order dated September 13, 2005, the Panel denied Respondent Staats Motion to Dismiss.

On March 15, 2006, Claimant withdrew his claims against Respondent Shoup with prejudice.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned Panel determined that Respondents Financial and Staats have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents Financial and Staats did not file with NASD Dispute Resolution, properly executed

submission to arbitration but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

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 Financial and Staats are jointly and severally liable to and shall pay to Claimant compensatory damages in the amount of \$154,200.00 plus simple interest at a rate of 6% per annum from March 28, 2006 until the date of payment in full;
2. Respondents Financial and Staats are jointly and severally liable to and shall pay to Claimant reimbursement of the filing fee in the amount of \$300.00;
3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

#### 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
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##### Member Fees

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

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), 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: April 11, 2005 1 session  
July 25, 2005 1 session  
November 9, 2005 1 session

One (1) Hearing session @ \$1,125.000 = \$1,125.00

Hearing Date: March 28, 2006 1 session

Total Forum Fees = \$4,500.00

1. The Panel has assessed \$4,500.00 of the forum fees jointly and severally to Respondents Financial and Staats.

#### FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$1,425.00
Refund Owed Claimant	= \$1,125.00

2. Respondent Financial is assessed and shall pay the following fees:

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

3. Respondents Financial and Staats are jointly and severally assessed and shall pay the following fees:

Forum Fees	= \$4,500.00
Total Fees	= \$4,500.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$4,500.00

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

#### ARBITRATION PANEL

Michael R. Stabile, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
James J. Puhala, Esq.	-	Public Arbitrator, Panelist
Ralph L. Corton, Jr., CFA	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Michael R. Stabile, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

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James J. Puhala, Esq.  
Public Arbitrator, Panelist

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

\_\_\_\_\_  
Ralph L. Corton, Jr., CFA  
Non-Public Arbitrator, Panelist

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

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

Concurring Arbitrators' Signatures

*Michael R. Stabile Jr.*

Michael R. Stabile, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

4-12-06

Signature Date

James J. Puhala, Esq.  
Public Arbitrator, Panelist

Signature Date

Ralph L. Corton, Jr., CFA  
Non-Public Arbitrator, Panelist

Signature Date

April 13 2006  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Michael R. Stabile, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

  
James J. Puhala, Esq.  
Public Arbitrator, Panelist

4/13/2006  
Signature Date

Ralph L. Corton, Jr., CFA  
Non-Public Arbitrator, Panelist

Signature Date

April 25, 2006  
Date of Service (For NASD Dispute Resolution office use only)

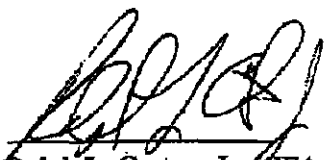
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Michael R. Stabile, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

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Public Arbitrator, Panelist

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Signature Date

  
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Ralph L. Corton, Jr., CFA  
Non-Public Arbitrator, Panelist

4/12/06  
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Signature Date

April 25, 2006  
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Date of Service (For NASD Dispute Resolution office use only)