

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

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In the Matter of the Arbitration Between:

Names of the Claimants

Michael L. Rasche  
Jacqueline B. Rasche

Case Number: 04-04245

Names of the Respondents

H.D. Investment Securities, Inc.  
Richard E. Whitley

Hearing Site: Raleigh, North Carolina

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

**REPRESENTATION OF PARTIES**

Claimants, Michael L. Rasche and Jacqueline B. Rasche, hereinafter collectively referred to as "Claimants", were represented by Mathew E. Bates, Esq., Mathew E. Bates, P.A., Greensboro, North Carolina.

Respondents, H.D. Investment Securities, Inc. ("H.D. Investment") and Richard E. Whitley ("Whitley"), hereinafter collectively referred to as "Respondents", were represented by Gary S. Kessler, Esq., Kessler & Collins, P.C., Dallas, Texas.

**CASE INFORMATION**

Statement of Claim filed on June 16, 2004.

Claimants signed the Uniform Submission Agreement on May 25, 2004.

Statement of Answer filed by Respondents on September 1, 2004.

A representative of Respondent H.D. Investment executed the Uniform Submission Agreement on September 1, 2004.

Respondent Whitley signed the Uniform Submission Agreement on August 31, 2004.

**CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action, among others: misrepresentation, breach of fiduciary duty, non-disclosure, *respondeat superior*, violation of Section 20 of the Securities Exchange Act of 1934, and failure to supervise. The causes of action relate to the purchase and sale of various mutual funds, including but not limited to, PCM Voyager, PCM Growth-Income, PCM Global Growth, and PCM New Opportunity.

Unless specifically admitted in their Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: ratification; Claimants' claims are barred by the doctrines of unclean hands, waiver and estoppel; failure to exercise reasonable care and due diligence; Claimants' claims are barred by the statute of

limitations; assumption of the risk; and failure to state a cause of action.

### **RELIEF REQUESTED**

Claimants in the Statement of Claim requested:

Compensatory Damages	\$ 159,108.00
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents requested that Claimants' Statement of Claim be dismissed with prejudice and that they be awarded costs.

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

At the hearing on the merits, Respondents made an oral motion to dismiss Claimants' claims as being barred by the applicable statutes of limitations. The Arbitration Panel (the "Panel") denied the motion.

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, 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 are jointly and severally liable to and shall pay to Claimants the sum of \$37,000.00 in compensatory damages, plus simple interest at a rate of 8% per annum accruing from July 31, 2003 until the award is paid in full;
2. Respondents are jointly and severally liable to and shall pay to Claimants the sum of \$5,000.00 in attorneys' fees, pursuant to G.S. 78A-56 of North Carolina Securities Act;
3. The parties shall bear their respective costs, except as Fees are specifically addressed below; and
3. Any and all relief not specifically addressed herein 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

**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 H.D. Investment is a party.

Member surcharge = \$ 1,700.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 2,750.00

**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:

One (1) Pre-hearing session with Panel @ \$ 1,125.00 = \$ 1,125.00  
Pre-hearing conference: December 7, 2004 1 session

Three (3) Hearing sessions @ \$ 1,125.00 = \$ 3,375.00  
Hearing Dates: July 12, 2005 2 sessions  
July 13, 2005 1 session

Total Forum Fees = \$ 4,500.00

1. The Panel has assessed \$ 2,250.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$ 2,250.00 of the forum fees to jointly and severally Respondents.

**Fee Summary**

1. Claimants are jointly and severally assessed and shall pay:

Initial Filing Fee = \$ 300.00  
Forum Fees = \$ 2,250.00  
Total Fees = \$ 2,550.00  
Less payments = \$ 1,425.00  
Balance Due NASD Dispute Resolution = \$ 1,125.00

2. Respondent H.D. Investment is assessed and shall pay:

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

3. Respondents are jointly and severally assessed and shall pay:

Forum Fees = \$ 2,250.00  
Total Fees = \$ 2,250.00

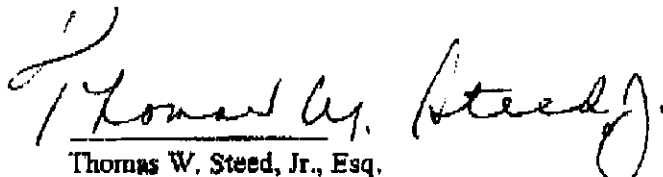
Less payments	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	2,250.00

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

**ARBITRATION PANEL**

Thomas W. Steed, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Roy J. Baroff, Esq.	-	Public Arbitrator, Panelist
Charles K. ReCorr	-	Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**



Thomas W. Steed, Jr., Esq.  
Public Arbitrator, Presiding Chairperson



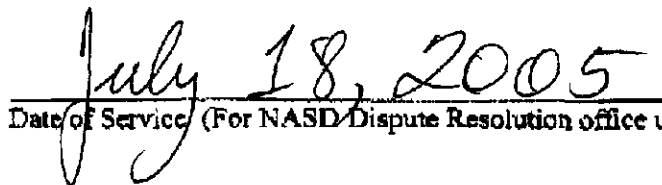
Signature Date

Roy J. Baroff, Esq.  
Public Arbitrator, Panelist

Signature Date

Charles K. ReCorr  
Non-Public Arbitrator, Panelist


Signature Date

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

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Thomas W. Steed, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
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Roy J. Baroff, Esq.  
Public Arbitrator, Panelist

7/15/05  
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Signature Date

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Charles K. ReCorr  
Non-Public Arbitrator, Panelist

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

July 18, 2005  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Thomas W. Steed, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

Roy J. Baroff, Esq.  
Public Arbitrator, Panelist

Signature Date



Charles K. ReCorr  
Non-Public Arbitrator, Panelist

7-15-05

Signature Date

July 18, 2005  
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