

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

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In the Matter of the Arbitration Between:

Gastroenterology Associates, P.C., Pension Plan (Claimant) v. Prime Capital Services, Inc. and Gabriel Kramer (Respondents)

Case Number: 04-05454

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant Gastroenterology Associates, P.C., Pension Plan hereinafter referred to as "Claimant": William D. Frumkin, Esq., Sapir & Frumkin, LLP, White Plains, NY.

Respondent Prime Capital Services, Inc. ("PCS") and Gabriel Kramer ("Kramer") hereinafter collectively referred to as "Respondents": Martin J. Burns, Esq., Wilson Elser Moskowitz Edelman & Dicker, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: July 29, 2004.

Claimant signed the Uniform Submission Agreement: July 20, 2004.

Respondents' Response to the Statement of Claim filed on or about: September 22, 2004.

Respondent PCS signed the Uniform Submission Agreement: September 30, 2004.

Respondent Kramer signed the Uniform Submission Agreement: September 30, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, ERISA, 29 U.S.C. §§ 1104(a); common law negligence; common law breach of fiduciary duty; common law breach of contract; violation of §3010 Conduct Rules of the NASD; violation of §20(a) of the Securities Exchange Act; and common law *respondeat superior*.

Claimant's claims involved unspecified securities.

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$485,884.87; pre- and post-award interest, experts' fees, forum fees and costs and disbursements; punitive damages; attorneys' fees on the ERISA count; and such other and further relief as may be deemed just, proper, and equitable under the facts and circumstances presented.

Respondents requested that the Statement of Claim be dismissed in its entirety; that Respondents be awarded attorneys' fees and costs in connection with this proceeding; and that all costs of this proceeding be assessed against Claimant.

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

During the hearings, Respondent Kramer orally requested the additional relief of expungement.

During the hearings, Respondents made a Motion to Dismiss. The Panel deferred decision until the conclusion of the hearing. Because the Panel finds for the Respondents and grants no relief to Claimant, the Motion to Dismiss was not decided.

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. Claimant's claims are denied in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Kramer's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Kramer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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.

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 factually impossible or clearly erroneous; and/or

The claim, allegation, or information is false.

3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **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, Prime Capital Services, Inc. is a party.

Member surcharge = \$ 1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,750.00

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 arbitrators, including a pre-hearing conference with the arbitrators, 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

Six (6) Hearing sessions @ \$1,125.00 per session = \$6,750.00

Hearing Dates: September 13, 2005 2 sessions

September 15, 2005 2 sessions

September 16, 2005 2 sessions

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Total Forum Fees = \$7,875.00

1. The Panel has assessed \$7,875.00 of the forum fees to Claimant.

### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee = \$ 300.00

Forum Fees = \$ 7,875.00

Total Fees = \$ 8,175.00

Less payments = \$ 1,425.00

Balance Due NASD Dispute Resolution = \$ 6,750.00

2. Respondent PCS is solely liable for:

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

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

NASD Dispute Resolution  
Arbitration No. 04-05454  
Award Page 5 of 5

**ARBITRATION PANEL**

Edith M. Novack, Esq.	-	Public Arbitrator, Presiding Chairperson
Robert Youdelman, Esq.	-	Public Arbitrator
Theodor Brown	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.



Edith M. Novack, Esq.  
Public Arbitrator, Presiding Chairperson

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

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Robert Youdelman, Esq.  
Public Arbitrator

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

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Theodor Brown  
Non-Public Arbitrator

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Signature Date

September 22, 2005  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

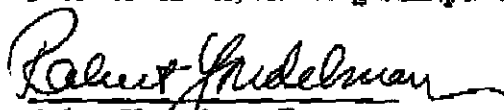
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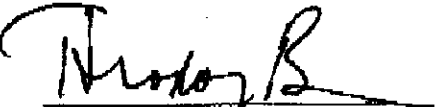
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