

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

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In the Matter of the Arbitration Between:

Gregory Marshall, Valerie Marshall and Nickel City Sales, Inc. (Claimants) v. Signator Investment Company, Joseph S. Porto, John Hancock Financial Services and Goodwin Insurance Agency (Respondents)

Case Number: 04-07109

Hearing Site: Buffalo, New York

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Nature of the Dispute: Customers v. Member, Associated Person and Non-Member

**REPRESENTATION OF PARTIES**

Claimants Gregory Marshall, Valerie Marshall and Nickel City Sales, Inc. ("Claimants"): Robert H. Gurbacki, Esq., Hall, Ricketts, Marky and Gurbacki, East Aurora, NY.

Respondents Signator Investment Company ("Signator Investment") and John Hancock Financial Services ("John Hancock"): Richard A. McGuirk, Esq., Nixon Peabody, LLP, Rochester, NY.

Respondents Joseph S. Porto ("Porto") and Goodwin Insurance Agency ("Goodwin Insurance"): James A. Miuccio, Esq. and Matthew Tracey, Esq., Winget, Spadafora & Swartzberg, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: October 6, 2006.

Gregory Marshall signed the Uniform Submission Agreement: August 19, 2004.

Valerie Marshall signed the Uniform Submission Agreement: August 19, 2004.

Nickel City Sales, Inc. signed the Uniform Submission Agreement: August 19, 2004.

Statement of Answer filed by Respondent Porto on or about: December 6, 2004.

Porto did not sign the Uniform Submission Agreement.

Statement of Answer filed by Respondent Signator Investment on or about: December 6, 2004.

Signator Investment signed the Uniform Submission Agreement: November 23, 2004.

Joint Amended Answer filed by Porto and Goodwin Insurance on or about: January 14, 2005.

Goodwin Insurance did not sign the Uniform Submission Agreement.

Respondent John Hancock did not file a Statement of Answer.

John Hancock did not sign the Uniform Submission Agreement.

### **CASE SUMMARY**

Claimants asserted the following causes of action: negligence due to the mismanagement of their SAR-SEP plan; breach of contract; errors; charges; failure to supervise; breach of fiduciary duty; misrepresentation, and non-disclosures. The causes of action relate to the SARSEP plan.

Unless specifically admitted in its Answer, Respondent Signator Investment denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Respondent Porto denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in their Amended Answer, Respondents Porto and Goodwin Insurance denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$24,512.25; attorney's fees; interest; costs, and such other relief that is just, fair, and equitable.

Respondent Signator Investment requested dismissal of the Statement of Claim in its entirety plus attorney's fees; costs of defending this matter and such other relief that is just, fair and equitable.

Respondent Porto requested dismissal of the Statement of Claim in its entirety plus attorney's fees; costs of defending this matter and such other relief that is just, fair and equitable.

Respondents Goodwin Insurance requested dismissal of the Statement of Claim in its entirety plus attorney's fees; costs of defending this matter and such other relief that is just, fair and equitable.

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

Respondent Porto did not file with NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, is bound by the determination of the Arbitrator on all issues submitted.

Respondent Goodwin Insurance did not file with NASD Dispute Resolution a properly executed submission agreement but having answered the claim, is bound by the determination of the Arbitrator on all issues submitted.

On or about June 27, 2005, the parties notified NASD Dispute Resolution that the case settled and that the parties would be submitting a Stipulated Award for the Panel's consideration.

Respondent John Hancock, a non-member of NASD, did not agree to voluntarily submit to this arbitration. This case continued to proceed against all Respondents other than John Hancock.

### **AWARD**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Arbitrator grants the motion and enters this award granting the following relief:

1. Claimants' claims are dismissed in their entirety.
2. The Arbitrator recommends the expungement of all reference to the above captioned arbitration from Respondent Joseph S. Porto's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Joseph S. Porto 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 Arbitrator has made the following affirmative findings of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

3. Any and all other relief not specifically addressed herein 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	= \$ 125.00
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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 firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, Signator Investment Company is a party.

Member Surcharge = \$ 425.00

**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:

June 14, 2005, settled by Claimants	= \$ 100.00
Claimants' share	= \$ 50.00
Respondent Signator Investment, Porto and Goodwin Insurance's share	= \$ 50.00

**Forum Fees and Assessments**

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Forum fees associated with these proceedings are:

Two (2) Pre-hearing conference sessions with a single arbitrator @ \$ 450.00 per session  
= \$ 900.00

Pre-hearing conferences:	February 15, 2005	1 session	
	May 9, 2005	1 session	
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Total Forum Fees			= \$ 900.00

1. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure, Gregory Marshall has been assessed \$150.00 of the forum fees.
2. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure, Valerie Marshall has been assessed \$150.00 of the forum fees.
3. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure, Nickel City Sales, Inc., has been assessed \$150.00 of the forum fees.
4. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Signator Investment has been assessed \$150.00 of the forum fees.
5. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Goodwin Insurance has been assessed \$150.00 of the forum fees.
6. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure, Porto has been assessed \$150.00 of the forum fees.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 125.00
Three-Day Cancellation Fee	= \$ 50.00

Total Fees	= \$ 175.00
<u>Less payments</u>	= \$ 175.00
Balance Due NASD Dispute Resolution	= \$ 0.00
2. Claimant Gregory Marshall is liable for:	
<u>Forum Fees</u>	= \$ 150.00
Total Fees	= \$ 150.00
<u>Less payments</u>	= \$ 150.00
Refund Due Gregory Marshall	= \$ 150.00
3. Claimant Valerie Marshall is liable for:	
<u>Forum Fees</u>	= \$ 150.00
Total Fees	= \$ 150.00
<u>Less payments</u>	= \$ 150.00
Balance Due NASD Dispute Resolution	= \$ 0.00
4. Claimant Nickel City Sales, Inc. is liable for:	
<u>Forum Fees</u>	= \$ 150.00
Total Fees	= \$ 150.00
<u>Less payments</u>	= \$ 375.00
Refund due Nickel City Sales, Inc.	= \$ 225.00
5. Respondent Signator Investment is solely liable for:	
Member Fees	= \$ 425.00
<u>Forum Fees</u>	= \$ 150.00
Total Fees	= \$ 575.00
<u>Less payments</u>	= \$ 425.00
Balance Due NASD Dispute Resolution	= \$ 150.00
6. Respondent Goodwin Insurance is solely liable for:	
<u>Forum Fees</u>	= \$ 150.00
Total Fees	= \$ 150.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 150.00
7. Respondent Porto is solely liable for:	
<u>Forum Fees</u>	= \$ 150.00
Total Fees	= \$ 150.00
<u>Less payments</u>	= \$ 225.00
Refund Due Porto	= \$ 75.00

8. Respondents Porto, Goodwin Insurance and Signator Investment are jointly and severally for:

<u>Three-Day Cancellation Fee</u>	= \$ 50.00
Total Fees	= \$ 50.00
<u>Less payments</u>	= \$ 50.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

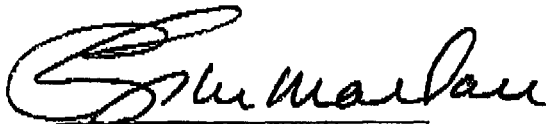
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**ARBITRATION PANEL**

Philip Marshall, Esq.

Public Arbitrator, Presiding Chair

**Arbitrator's Signature**

A handwritten signature in cursive script, appearing to read "Philip Marshall", written over a horizontal line.

Philip Marshall, Esq.  
Public Arbitrator, Presiding Chair

3/25/06

Signature Date

March 29, 2006

Date of Service (For NASD office use only)