

**Stipulated Award  
NASD Dispute Resolution**

**IRA FBO KENNETH R. LEESON,  
DLJSC AS CUSTODIAN  
ROLLOVER ACCOUNT,  
IRA FBO KENNETH R. LEESON,  
DLJSC AS CUSTODIAN, and**

**NASD Case No. 04-08582  
Hearing Site: Milwaukee, Wisconsin**

**KENNETH R. LEESON AND  
PATRICIA I. LEESON AS JOINT TENANTS**

**Claimants,**

**vs.**

**B.C. ZIEGLER AND COMPANY  
and DAVID C. KOVALASKE,**

**Respondents.**

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**NATURE OF THE DISPUTE**

Customers vs. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Claimants, IRA FBO Kenneth R. Leeson DLJSC as Custodian Rollover Account, IRA FBO Kenneth R. Leeson, DLJSC as Custodian, and Kenneth R. Leeson and Patricia I. Leeson as Joint Tenants (the "Leesons"), hereinafter "**Claimants**": David J. Hase, Esquire, Cook & Franke, S.C., 660 E. Mason Street, Milwaukee, Wisconsin, 53202.

Respondents, B.C. Ziegler and Company ("Ziegler") and David C. Kovalaske ("Kovalaske"), hereinafter "**Respondents**": Matthew J. Flynn, Esquire and Cristina D. Hernandez-Malaby, Esquire, Quarles & Brady LLP, 411 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202.

**CASE INFORMATION**

Statement of Claim filed on or about: December 21, 2004

Claimants signed the Uniform Submission Agreement: December 10, 2004

Statement of Answer filed by Respondents on or about: February 10, 2005

Motion to Dismiss filed by Respondents on or about: February 10, 2005

Respondents filed the Uniform Submission Agreement: February 10, 2005

Opposition to Motion to Dismiss filed by Claimants on or about: September 16, 2005

Amended Statement of Claim filed on or about: September 16, 2005

Reply in support of Motion to Dismiss filed by Respondents on: October 17, 2005

Amended Statement of Answer filed by Respondents on or about: October 17, 2005

### **CASE SUMMARY**

Claimants asserted the following causes of action: Breach of fiduciary duty and negligence. The cause of action concerned the suitability of investment recommendations made by Respondents concerning primarily a 401K rollover account. The causes of action related to securities in AIM funds including, AIM Global Telecomm & Tech Fund, Class A; AIM Midcap Growth Fund, Class A; AIM Bent Demographic Trends Fund, Class A; AIM Select Growth Fund, Class A; and AIM Value Fund, Class A. Other funds included shares in General Electric stock and Ford Motor Company common stock.

Respondents denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted various affirmative defenses:

1. Neither the Amended Statement of Claim, nor any purported claim alleged therein, states facts sufficient to constitute a claim for relief.
2. Claimants' rights to recovery are barred by the doctrine of ratification.
3. Each claim made by the Claimants is barred by the doctrine of laches.
4. Claimants knowingly and voluntarily assumed the risks of the investments, events and matters alleged, and any losses or damages incurred by the Claimants were the proximate result of the risks which Claimants knowingly assumed.
5. Claimants by their conduct with respect to the matters alleged are barred from obtaining any recovery by the doctrine of estoppel.
6. The Amended Statement of Claim is barred by the doctrine of waiver.
7. Each claim made by the Claimants is barred by principals of equity.
8. Respondents allege that at no time did they make any promise, warranty, express or implied, or representation to Claimants in connection with the allegations of the Amended Statement of Claim.
9. Respondents allege that at no time mentioned herein did Claimants rely on any promise, warranty, express or implied, or representation to Claimants in connection with the allegations of the Amended Statement of Claim.
10. Claimants knew and approved of the transactions in their accounts.
11. Respondents are not liable to Claimants in any amount because, at all relevant times, they acted properly, in good faith, and in a commercially reasonable manner with respect to Claimants' accounts.
12. All risks inherent in the investments and strategies at issue were fully disclosed and/or known to Claimants. Moreover, any losses incurred by Claimants were the direct result of adverse economic and market conditions.
13. Claimants' alleged losses were proximately caused by their own conduct, negligence or comparative negligence, and therefore Claimants are precluded from recovery.
14. Claimants suffered no damages by reason of the acts or omissions of Respondents.
15. All transactions upon which Claimants base their alleged claims were conducted in accordance with all applicable rules and regulations and in compliance with all applicable provisions of state and federal law.

16. All activity in the accounts at issue were suitable for and consistent with the Claimants' net worth, stated investment objectives and risk tolerance.
17. By the exercise of reasonable efforts, Claimants could have mitigated their alleged damages and should be barred from recovering to the extent that they failed to do so.
18. Claimants' claims are barred by the statute of limitations.
19. Claimants are not entitled to any award of attorney's fees, punitive damages, interest, or the costs of this proceeding.

### **RELIEF REQUESTED**

Claimants requested \$1,500,000.00 in compensatory damages; unspecified punitive damages; attorney's fees and costs.

Respondents requested that the Statement of Claim be dismissed with prejudice; that Mr. Kovalaske's registration record be expunged of any reference to this proceeding; that Respondents be awarded attorney's fees and costs.

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

In an Order dated November 3, 2005, the Panel issued a ruling, which denied Respondents' Motion to Dismiss.

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 parties' submissions and representations, and the two days of hearings conducted in this matter during which Claimants' primary factual case was presented, the undersigned arbitrators order as follows:

- 1.) The Panel recommends that the parties' settlement of this matter be entered as the award in this case. Such settlement requires Respondent B.C. Ziegler and Company to pay a total of \$75,000.00 (seventy five thousand dollars) to IRA FBO Kenneth R. Leeson DLJSC as Custodian Rollover Account, as well as pay all outstanding hearing fees owed to the NASD for hearings conducted concerning Respondents' Motion to Dismiss and the two days of arbitration proceedings, but not any fees already paid or covered by any existing deposit.
- 2.) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent David C. Kovalaske's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to

Members 04-16, Respondent David C. Kovalaske 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, the arbitration panel has made the following affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

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

- 3.) That any and all claims by Claimants against Respondents not specifically enumerated, including punitive damages is hereby denied with prejudice.

### **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 = \$ 500.00

#### **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. In this matter, B.C. Ziegler and Company is a party.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

#### **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:

January 26-27, 2006 hearing dates, settled by both parties	= \$ 300.00
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**Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing 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:

Two (2) Pre-hearing sessions with Panel x \$1,200.00 = \$ 2,400.00

Pre-hearing conferences:            July 28, 2005            1 session  
   November 3, 2005            1 session

Four (4) Hearing sessions x \$1,200.00 = \$ 4,800.00

Hearing Dates:                    January 24, 2006            2 sessions  
   January 25, 2006            2 sessions

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Total Forum Fees = \$ 7,200.00

The parties have agreed to pay forum fees as follows:

Respondent, B.C. Ziegler and Company, shall solely pay 100% of the forum fees and assessments for the hearings held on November 3, 2005, January 24, 2006, and January 25, 2006 in the amount of \$6,000.00. Respondents, B.C. Ziegler and Company and David C. Kovalaske, shall pay 50% of the forum fees for the initial pre-hearing conference of July 28, 2005, jointly and severally, in the amount of \$600.00.

Claimants shall pay 50% of the forum fees for the initial pre-hearing conference of July 28, 2005 in the amount of \$600.00.

**Fee Summary**

Claimants, Kenneth R. Leeson and Patricia I. Leeson, are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 600.00
<u>3-Day Cancellation Fee</u>	= \$ 100.00
Total Fees	= \$ 1,200.00
<u>Less payments</u>	= \$ 1,700.00
Refund Due from NASD Dispute Resolution	= \$ 500.00

Respondent, B.C. Ziegler and Company, is solely liable for:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 6,000.00
<u>3- Day Cancellation Fee</u>	= \$ 100.00
Total Fees	= \$14,650.00
<u>Less payments</u>	= \$ 9,300.00
Balance Due NASD Dispute Resolution	= \$ 5,350.00

Respondents, B.C. Ziegler and Company and David C. Kovalaske, are jointly and severally liable for:

Forum Fees	= \$	600.00
<u>Less payments</u>	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	600.00

Respondent, David C. Kovalaske, is solely liable for:

3- Day Cancellation Fee	= \$	100.00
<u>Less payments</u>	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	100.00

All balances are due to NASD Dispute Resolution.

**ARBITRATION PANEL**

Charles Orlove	-	Public Arbitrator, Presiding Chairperson
Kevin J. Demet, JD	-	Public Arbitrator
Susan H. Schleisner, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Charles Orlove  
Charles Orlove  
Public Arbitrator, Presiding Chair

2/10/06  
Signature Date

/s/ Kevin J. Demet, JD  
Kevin J. Demet, JD  
Public Arbitrator

2/9/06  
Signature Date

/s/ Susan H. Schleisner, Esq.  
Susan H. Schleisner, Esq.  
Non-Public Arbitrator

2/14/06  
Signature Date

2/10/06  
Date of Service (For NASD office use only)

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Respondents, B.C. Ziegler and Company and David C. Kovalaske, are jointly and severally liable for:

Forum Fees	= \$ 600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 600.00

Respondent, David C. Kovalaske, is solely liable for:

3- Day Cancellation Fee	= \$ 100.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 100.00

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Kevin J. Demet, JD	-	Public Arbitrator
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 Public Arbitrator, Presiding Chair

2/10/06  
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Signature Date

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Arbitration 04-08582  
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Respondents, B.C. Ziegler and Company and David C. Kovalaske, are jointly and severally liable for:

Forum Fees	= \$ 600.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 600.00

Respondent, David C. Kovalaske, is solely liable for:

3- Day Cancellation Fee	= \$ 100.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 100.00

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Charles Orlove  
Public Arbitrator, Presiding Chair

Signature Date

  
Kevin J. Demet, JD  
Public Arbitrator

2/9/16  
Signature Date

Susan H. Schleisner, Esq.  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)



Respondents, B.C. Ziegler and Company and David C. Kovalaske, are jointly and severally liable for:

Forum Fees	= \$	600.00
<u>Less payments</u>	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	600.00

Respondent, David C. Kovalaske, is solely liable for:

3- Day Cancellation Fee	= \$	100.00
<u>Less payments</u>	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	100.00

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