

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

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In the Matter of the Arbitration Between:

R. KENT BAKER and CNC SALES, INC.,  
Claimants,

Case Number: 05-00204

v.

GOELZER INVESTMENT MANAGEMENT, INC.,  
Respondent.

Hearing Site: Indianapolis, Indiana

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Nature of the Dispute: Customers vs. Member

**REPRESENTATION OF PARTIES**

Claimants, R. Kent Baker ("Baker") and CNC Sales, Inc. ("CNC"), hereinafter collectively referred to as "Claimants": Patrick C. Badell, Esq. of Badell and Wilson, P.C., located in Rushville, Indiana.

Goelzer Investment Management, Inc. ("Goelzer"), hereinafter referred to as "Respondent": Bradley W. Skolnik, Esq. of Stewart & Irwin, P.C., located in Indianapolis, Indiana. Goelzer was later represented by Tucker Byrd, Esq. of Greenberg Traurig, P.A., located in Orlando, Florida, who filed their appearance on July 3, 2006.

**CASE INFORMATION**

Statement of Claim filed on or about January 13, 2005. Claimants Baker and CNC jointly signed the Uniform Submission Agreement on December 16, 2004.

Statement of Answer filed by Respondent Goelzer on or about March 7, 2005. Goelzer signed the Uniform Submission Agreement on March 1, 2005.

**CASE SUMMARY**

Claimants Baker and CNC asserted the following causes of action: breach of contract, negligence, dividends, failure to supervise, breach of fiduciary duty, churning, manipulations and unauthorized trading. The causes of action relate to unspecified securities, which Claimants asserted were mismanaged by Respondent.

Unless specifically admitted in its Answer, Respondent Goelzer denied the allegations made in the Statement of Claim and asserted various affirmative defenses: accord and satisfaction; payment; estoppel; release and discharge; comparative fault; and failure to mitigate damages.

**RELIEF REQUESTED**

Claimants, Baker and CNC, requested \$329,394.91 in compensatory damages; costs and other proper relief.

Respondent, Goelzer, requested that Claimants take nothing by way of their Statement of Claim for all other relief.

### **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. Respondent, Goelzer Investment Management, Inc., is solely liable for and shall pay to Claimant, R. Kent Baker, the sum of \$84,500.00 as compensatory damages, plus interest at the rate of 8.00% per annum to accrue from September 30, 2002 until the date the award is paid in full.
2. Respondent, Goelzer Investment Management, Inc., is solely liable for and shall pay to Claimant, CNC System Sales, Inc., the sum of \$97,000.00 as compensatory damages, plus interest at the rate of 8.00% per annum to accrue from September 30, 2002 until the date the award is paid in full.
3. Respondent, Goelzer Investment Management, Inc., is solely liable for and shall pay to Claimants, R. Kent Baker and CNC System Sales, Inc. the sum of \$300.00 as reimbursement for the non-refundable NASD Dispute Resolution filing fee.
4. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
5. 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
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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. Accordingly, Goelzer Investment Management, Inc. is a party and is assessed the following fees:

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

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

March 20-24, 2006, adjournment by both parties to mediate	= \$ 1,125.00
(Fee waived by NASD)	

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Decision on discovery-related motions on the papers  
with three (3) arbitrators @ \$600.00 = \$ 600.00  
Claimant submitted one (1) discovery-related motion

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$ 1,125.00  
Pre-hearing conference: June 21, 2005 1 session

Five (5) Hearing sessions @ \$1,125.00 = \$ 5,625.00  
Hearing Dates: July 26, 2006 2 sessions  
July 27, 2006 2 sessions  
July 28, 2006 1 session

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Total Forum Fees = \$ 7,350.00

1. The Panel has assessed \$600.00 in forum fees for the cost of the discovery-related motion jointly and severally to Claimants, R. Kent Baker and CNC System Sales, Inc.
2. The Panel has assessed \$6,750.00 of the forum fees solely to Respondent Goelzer Investment Management, Inc.

**Fee Summary**

1. Claimants, R. Kent Baker and CNC System Sales, Inc. is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 600.00
Total Fees	= \$ 900.00
<u>Less payments</u>	= \$ 1,425.00
Balance Refund Due from NASD Dispute Resolution	= \$ 525.00
2. Respondent, Goelzer Investment Management, Inc. is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 6,750.00
Total Fees	= \$11,950.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 6,750.00

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

**ARBITRATION PANEL**

Sharon B. Merriman, Esq.	-	Public Arbitrator, Presiding Chairperson
Donald G. Russell	-	Public Arbitrator
Beth Schmidt	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Sharon B. Merriman, Esq.  
Sharon B. Merriman, Esq.  
Public Arbitrator, Presiding Chairperson

8/1/06  
Signature Date

/s/ Donald G. Russell  
Donald G. Russell  
Public Arbitrator

7/31/06  
Signature Date

/s/ Beth Schmidt  
Beth Schmidt  
Non-Public Arbitrator

7/30/06  
Signature Date

8/1/06  
Date of Service (For NASD Dispute Resolution use only)

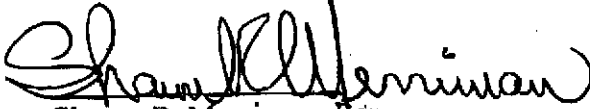
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Arbitration No. 05-00204  
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**ARBITRATION PANEL**


Sharon B. Merriman, Esq.  
Donald G. Russell  
Beth Schmidt

- Public Arbitrator, Presiding Chairperson  
- Public Arbitrator  
- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Sharon B. Merriman, Esq.  
Public Arbitrator, Presiding Chairperson

  
Signature Date

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Donald G. Russell  
Public Arbitrator

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

\_\_\_\_\_  
Beth Schmidt  
Non-Public Arbitrator

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Arbitration No. 03-00204  
Award Page 4 of 4

**ARBITRATION PANEL**

Sharon B. Merriman, Esq.  
Donald G. Russell  
Beth Schmidt

- Public Arbitrator, Presiding Chairperson  
- Public Arbitrator  
- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Sharon B. Merriman, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

Donald G. Russell  
Donald G. Russell  
Public Arbitrator

July 31, 2006  
Signature Date

Beth Schmidt  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Sharon B. Merriman, Esq.	-	Public Arbitrator, Presiding Chairperson
Donald G. Russell	-	Public Arbitrator
Beth Schmidt	-	Non-Public Arbitrator

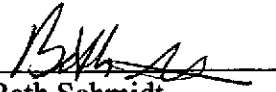
**Concurring Arbitrators' Signatures**

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Sharon B. Merriman, Esq.  
Public Arbitrator, Presiding Chairperson

NASD Dispute Resolution, Inc.  
**RECEIVED**  
AUG 03 2006  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Donald G. Russell  
Public Arbitrator

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

  
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Beth Schmidt  
Non-Public Arbitrator

7/30/2006  
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Signature Date

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