

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

David Brian Sullivan

and

Case Number: 05-00439  
Hearing Site: Chicago, Illinois

Names of Respondents

Augustus Capital, LLC, and  
Mark Alan Abeshouse

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**NATURE OF DISPUTE**

Associated Person v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

David Brian Sullivan ("**Claimant**") appeared *pro se*.

Augustus Capital, LLC ("**Augustus Capital**") and Mark Alan Abeshouse ("**Abeshouse**"), hereinafter collectively referred to as "Respondents," were represented by Rhonda S. Leonard, Esq., New Rochelle, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 27, 2005. The Submission Agreement of Claimant, David Brian Sullivan, was signed on or about January 18, 2005. On or about August 29, 2005, Claimant filed his Response to the Motion to Dismiss. On or about October 10, 2005, Claimant filed his Response to the Request for Reconsideration on the Motion to Dismiss.

The Statement of Answer was filed jointly by Respondents, Augustus Capital, LLC and Mark Alan Abeshouse, on or about April 19, 2005. The Submission Agreement of Respondent, Mark Alan Abeshouse, was signed on or about April 16, 2005. Respondents filed a Motion to Dismiss on or about June 29, 2005. On or about September 23, 2005, Respondents filed a Request for Reconsideration on the Motion to Dismiss. On or about October 9, 2005, Respondents filed an Amended Answer and Counterclaim. On or about November 1, 2005, Respondents filed a Reply in Support of their Request for Reconsideration.

### **CASE SUMMARY**

Claimant asserted the following causes of action: misrepresentation, omission of facts, breach of contract, libel and/or slander, defamation and indemnification. The causes of action related Claimant and Extreme Capital LLC developing and possessing a trading software system, a statistical arbitrage model, alleged to have the potential to build a hedge fund venture. Claimant and Augustus Capital entered into an agreement to test the success of the software. Claimant alleged that he had not agreed with Abeshouse to guarantee his losses.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted; the claims set forth in the Statement of Claim are barred in whole or in part, by the doctrines of estoppel, waiver and laches; some or all of the claims presented in the Statement of Claim are not arbitable; Claimant has not suffered any damages; there is no legal or equitable basis for an award of punitive damages; NASD has no subject matter jurisdiction over some or all of the claims alleged in the Statement of Claim; and Claimant failed to mitigate his damages.

In their Counterclaim, Respondents asserted the following causes of action: intentional infliction of emotional distress and tortious interference with the business of Augustus Capital, LLC.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$357,000.00
Punitive/Exemplary Damages	\$633,000.00
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent, Augustus Capital, LLC, did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having

answered the claim, appeared and testified at the prehearings is bound by the determination of the arbitration panel on all issues submitted.

On or about February 25, 2005, Respondents filed a Motion to Stay the Arbitration and to Change Venue. On or about March 23, 2005, Claimant filed his response to this Motion.

On or about September 13, 2005, the Panel issued an Order in which they denied Claimant's Motion to Deny a Defense to Respondents; denied Respondents' Motion to Dismiss; and Respondents' Motion to Stay and Change Venue was denied without prejudice.

On or about January 11, 2006, the Panel granted Respondents' Request for Reconsideration on their 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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

#### AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) The Panel issued the following Order on January 11, 2006:

The Panel met on Monday, January 9, 2006.

Based on information, discussion, and the filings that have been provided by the parties, the Panel determined that it is appropriate to dismiss the proceedings and to refer the parties to their judicial remedies. (See authority under section 10305(a) of the Code, which states: "At any time during the course of an arbitration, the arbitrators may either upon their own initiate or at the request of a party, dismiss the proceeding and refer the parties to their judicial remedies, or to any dispute resolution forum agreed to by the parties, without prejudice to any claims or defenses available to any party.") The Panel understands from the information at hand that the parties are engaged in a formal process of litigation before a judge in the courts in the State of Illinois. The Panel further understands that Defendant filed a motion to stay pending resolution of an NASD arbitration hearing, which motion was

denied.

The Panel finds that, in the interest of judicial economy and fairness to both parties, the disputes under its Case #05-00439 should all be heard and resolved by one decision-making body. That process continues in progress in the state court, and has proceeded through the submission of a fourth amended complaint. Claimant should seek remedy through the ongoing judicial proceeding.

Neither of the parties is precluded from bringing an independent claim against the other under the NASD rules. However, it should be noted that it is the sense of the Panel that all of the claims voiced thus far by each of the parties, in both the court cases referenced above and the NASD arbitration case, are part and parcel of the same matter.

Panel hereby dismisses the proceeding of Case #05-00439.

- 2.) The Counter-Claim of Respondents, Augustus Capital, LLC and Mark Alan Abeshouse, is dismissed with prejudice;
- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 375.00
Counter 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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Augustus Capital, LLC.

Member surcharge	= \$ 2,250.00
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Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

### Forum Fees and Assessments

The Arbitration 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 19, 2005	1 session
September 13, 2005	1 session
<b>Total Forum Fees</b>	<b>= \$ 2,400.00</b>

The Arbitration Panel has assessed \$1,200.00 of the forum fees to David Brian Sullivan.

The Arbitration Panel has assessed \$1,200.00 of the forum fees jointly and severally to Augustus Capital, LLC and Mark Alan Abeshouse.

### Fee Summary

Claimant, David Brian Sullivan, is liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 1,200.00
<b>Total Fees</b>	<b>= \$ 1,575.00</b>
Less payments	= \$ 1,575.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

Respondent, Augustus Capital, LLC, is liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$ 7,000.00
<b>Total Fees</b>	<b>= \$ 7,500.00</b>
Less payments	= \$ 7,500.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

Respondents, Augustus Capital, LLC and Mark Alan Abeshouse, are jointly and severally liable for:

Forum Fees	= \$ 1,200.00
<b>Total Fees</b>	<b>= \$ 1,200.00</b>
Less payments	= \$ 1,000.00

Balance Due NASD Dispute Resolution

= \$ 200.00

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

**ARBITRATION PANEL**

Shepherd G. Pryor - Public Arbitrator, Presiding Chair  
Elsa Mannarelli Miller, J.D. - Public Arbitrator  
Woody Perkins, CFP - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Shepherd G. Pryor  
Shepherd G. Pryor  
Public Arbitrator, Presiding Chair

January 20, 2006  
Signature Date

/s/ Elsa Mannarelli Miller, J.D.  
Elsa Mannarelli Miller, J.D.  
Public Arbitrator

January 20, 2006  
Signature Date

/s/ Woody Perkins, CFP  
Woody Perkins, CFP  
Non-Public Arbitrator

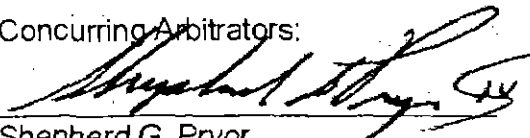
January 20, 2006  
Signature Date

January 20, 2006  
Date of Service (For NASD office use only)

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Shepherd G. Pryor  
Public Arbitrator, Presiding Chair

January 20, 2006

Signature Date

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Public Arbitrator

Signature Date

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Public Arbitrator, Presiding Chair

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*Elsa Mannarelli Miller*  
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Elsa Mannarelli Miller, J.D.  
Public Arbitrator

*1/20/06*  
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Signature Date

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Woody Perkins, CFP  
Non-Public Arbitrator

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