

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

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In the Matter of the Arbitration Between:

Neal Solomon (Claimant) v. Lincoln Investment Planning, Inc. and Edward Forst, Jr.  
(Respondents)

Case Number: 05-00869

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant Neal Solomon hereinafter referred to as "Claimant": Chad N. Cagan, Esq.,  
Sonnenblick, Parker & Selvers, P.C., Freehold, NJ.

Respondents Lincoln Investment Planning, Inc. ("Lincoln Investment") and Edward  
Forst, Jr., ("Forst") hereinafter collectively referred to as "Respondents": Steve Kapustin,  
Esq., Kaplin Stewart Meloff Reiter & Stein, P.C., Blue Bell, PA.

**CASE INFORMATION**

Statement of Claim filed on or about: February 16, 2005.

Response to Counterclaims filed on or about: May 26, 2005.

Claimant signed the Uniform Submission Agreement: February 10, 2005.

Statement of Answer and Counterclaims filed by Respondents on or about: May 13,  
2005.

Lincoln Investment signed the Uniform Submission Agreement: May 25, 2005.

Forst signed the Uniform Submission Agreement: May 25, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: violations of NASD Conduct Rules,  
breach of contract, breach of implied covenant of good faith and fair dealing, fraud,  
negligent misrepresentation, unjust enrichment, and conversion.

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

In their Counterclaims, Respondents asserted the following causes of action: breach of  
contract, unjust enrichment, and previous litigation.

Unless specifically admitted in his Response, Claimant denied the allegations made in the Counterclaims and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested that the Panel:

- i. direct Respondents to cause the immediate change of broker dealer, and
- ii. enjoin Lincoln Investment from further unsolicited contact with Claimant's clients, and
- iii. direct Respondents to pay to Claimant any and all commissions earned by Claimant or relating to Claimant's accounts, and
- iv. direct Respondents to produce a full accounting of Claimant's accounts, and
- v. direct Respondents to pay to Claimant additional commissions of 1 ½ percent, and
- vi. direct Respondents to provide a complete log of any and all customer contacts, and
- vii. direct Respondents to cause all fund and insurance companies to send statements, confirmations, and transaction data directly to Claimant's office, and
- viii. direct Respondents to allow any and all vested fixed insurance renewal commissions to be paid by any insurance company directly to Claimant, and
- ix. direct Respondents to provide to Claimant "Lincoln Downloads", memos, notes, reports of clients' account activity, "Retirement/Investor Solutions" statements, Pershing statements, and a listing of all client positions, and
- x. direct Respondents not to disparage Claimant or Strategic, and
- xi. direct Respondents not to issue a 1099 to Claimant for commissions, and
- xii. award Claimant compensatory damages plus pre-judgment interest, punitive damages, expenses, fees, commissions, costs, attorneys' fees, and such other and further relief as the Panel may deem equitable, just, and necessary.

Respondents requested that the Panel deny all of Claimant's requests for injunctive relief, that the Panel deny all of Claimant's requests for damages, that the Panel deny all of Claimant's requests for accounting, and that the Panel deny all of Claimant's requests for costs, attorneys' fees, and interest.

In their Counterclaims Respondents requested compensatory damages in the amount of \$26,688.60, costs, attorneys' fees, and such other relief as this Panel deems just and proper.

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

On June 12, 2006 an Award was served on the parties which reflected the majority

opinion of Chairperson Carol Weir and Arbitrator Orestes Mihaly. The Award was signed by Chairperson Weir and Arbitrator Mihaly, and was not signed by Arbitrator Kenneth Felder. Subsequently, Arbitrator Felder notified NASD Dispute Resolution of his dissenting opinion. Accordingly, NASD Dispute Resolution serves this Modified Award on the parties which includes Arbitrator Felder's dissenting opinion.

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 majority of 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. Respondents' Counterclaims are denied in their entirety.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **DISSENTING OPINION**

Part of Claimant's request for relief relates to unpaid but earned commissions held by Respondents, which Arbitrator Kenneth Felder deemed to be an unchallenged and valid position. Part of Respondents' Counterclaims relate to specified compensatory damages which Arbitrator Kenneth Felder likewise found supportable.

### **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	= \$ 250.00
Counterclaim filing fee	= \$ 1,000.00

#### **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, Lincoln Investment Planning, Inc. is a party.

Member surcharge	= \$ 1,500.00
Pre-hearing Process fee	= \$ 750.00
Hearing Process fee	= \$ 2,200.00

### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

1. Claimant is assessed:  
Injunctive relief surcharge = \$ 2,500.00

### **Forum Fees and Assessments**

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

One (1) Pre-hearing session with single arbitrator @ 450.00 = \$ 450.00  
Pre-hearing conference: May 10, 2006 1 session

One (1) Pre-hearing session with Panel @ \$1,000.00 = \$ 1,000.00  
Pre-hearing conference: December 19, 2005 1 session

Eleven (11) Hearing sessions with Panel @ \$1,000.00 = \$ 11,000.00  
Hearing dates: May 17, 2006 2 sessions  
May 18, 2006 2 sessions  
May 19, 2006 2 sessions  
June 6, 2006 2 sessions  
June 7, 2006 3 sessions

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Total Forum Fees = \$12,450.00

1. The Panel has assessed \$6,225.00 of the forum fees to Claimant.
2. The Panel has assessed \$6,225.00 of the forum fees to Respondents, jointly and severally.

### **Fee Summary**

1. Claimant is solely liable for:  
Initial Filing Fee = \$ 250.00  
Injunctive Relief Fee = \$ 2,500.00  
Forum Fees = \$ 6,225.00  
Total Fees = \$ 8,975.00  
Less payments = \$ 3,750.00

Balance Due NASD Dispute Resolution = \$ 5,225.00

2. Respondents are jointly and severally liable for:

Counterclaim Filing Fee = \$ 1,000.00

Forum Fees = \$ 6,225.00

Total Fees = \$ 7,225.00

Less payments = \$ 1,600.00

Balance Due NASD Dispute Resolution = \$ 5,625.00

3. Respondents Lincoln Investment is solely liable for:

Member Fees = \$ 4,450.00

Total Fees = \$ 4,450.00

Less payments = \$ 4,450.00

Balance Due NASD Dispute Resolution = \$ 0.00

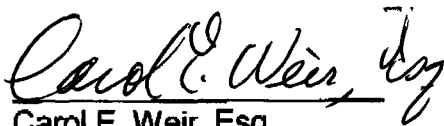
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.
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**ARBITRATION PANEL**

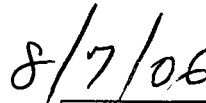
Carol E. Weir, Esq.	-	Public Arbitrator, Presiding Chairperson
Kenneth M. Felder	-	Public Arbitrator
Orestes J. Mihaly, Esq.	-	Non-Public Arbitrator

**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.



Carol E. Weir, Esq.  
Public Arbitrator, Presiding Chairperson



Signature Date

Orestes J. Mihaly, Esq.  
Non-Public Arbitrator

Signature Date

**Dissenting Arbitrator's Signature**

Kenneth M. Felder  
Public Arbitrator

Signature Date

August 15, 2006

Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Carol E. Weir, Esq.	-	Public Arbitrator, Presiding Chairperson
Kenneth M. Felder	-	Public Arbitrator
Orestes J. Mihaly, Esq.	-	Non-Public Arbitrator

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Carol E. Weir, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
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Orestes J. Mihaly, Esq.  
Non-Public Arbitrator

August 3, 2006  
\_\_\_\_\_  
Signature Date

**Dissenting Arbitrator's Signature**

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Kenneth M. Felder  
Public Arbitrator

  
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Signature Date

August 15, 2006

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Date of Service (For NASD Dispute Resolution use only)

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Kenneth M. Felder	-	Public Arbitrator
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Public Arbitrator, Presiding Chairperson

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Signature Date

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Orestes J. Mihaly, Esq.  
Non-Public Arbitrator

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Signature Date

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Kenneth M. Felder  
Public Arbitrator

  
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Signature Date

August 15, 2006

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