

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

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In the Matter of the Arbitration Between:

National Planning Corporation (Claimant) v. Jorge Fernandez (Respondent)

Case Number: 05-00952

Hearing Site: Cleveland, Ohio

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Nature of the Dispute: Member vs. Associated Person.

**REPRESENTATION OF PARTIES**

Claimant National Planning Corporation hereinafter referred to as "Claimant": Kenneth A. Bravo, Esq., Ulmer & Berne, LLP, Cleveland, OH.

Respondent Jorge Fernandez hereinafter referred to as "Respondent" did not enter an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: February 22, 2005.

Claimant signed the Uniform Submission Agreement: February 22, 2005.

Respondent did not file a Statement of Answer or sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of duty of loyalty and fiduciary duty; fraud; and embezzlement.

**RELIEF REQUESTED**

Claimant requested:

1. That Respondent immediately and fully comply with any and all orders, including the Temporary Restraining Order & Asset Order, issued in the lawsuit, *i.e.*, Case No. CV 05 555274.
2. That, because approximately \$1.5 million of the Funds has apparently been transferred offshore to a foreign bank or financial institution and the remaining \$300,000.00 of the Funds are apparently in an institution over which the NASD does not have jurisdiction, Claimant be permitted to continue to pursue injunctive relief in the Lawsuit, both against

- Fernandez and against any third party which may be holding funds which Fernandez embezzled and/or obtained by fraud.
3. A Temporary Restraining Order, preliminary injunction, and freeze on or against the disposition of any assets currently held by Fernandez.
  4. A Temporary Restraining Order, preliminary injunction, and freeze on or against the approximately \$300,000.00 remaining in the NPC account at Charter One Bank and on or against the approximately \$1,500,000.00, or any remainder thereof, in any account at the Barrington Bank in the Bahamas or elsewhere in any other foreign bank or financial institution;
  5. An order requiring Fernandez to repatriate to U.S. financial institutions the Funds which were diverted to the Bahamas or elsewhere.
  6. That Fernandez be ordered to pay compensatory damages in an amount that is presently unascertainable, but is believe to be a minimum of \$1,800,000.00.
  7. Attorneys' fees.
  8. Such other relief as the Arbitrators deem just.

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

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Respondent has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code"). The Panel found that Respondent was served at his last known address by the NASD. He received notice of the hearing at that address and by e-mail, and that Respondent declined to attend the hearing either in person or by telephone.

Respondent did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

Claimant filed this matter in accordance with Rule 10335 of the NASD Code of Arbitration Procedure. The hearing on injunctive relief was scheduled for March 7, 2005. Claimant requested that the hearing on injunctive relief be adjourned. After due consideration, the Panel granted Claimant's request. Subsequently, Claimant's request for injunctive relief became moot and the Panel never ruled upon these issues.

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, and 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 is liable for and shall pay to Claimant compensatory damages in the amount of

\$1,903,000.00, plus interest at the rate of 5% per annum from the date of the award through the date of payment of the award.

2. Respondent is liable for and shall pay to Claimant attorneys' fees in the amount of \$61,349.00 in accordance with RC 1336.11 and 6 Ohio State 3<sup>rd</sup> 198.
3. Any and all 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 = \$2,000.00

#### **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, National Planning Corporation is a party.

Member surcharge = \$2,800.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$5,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

March 7, 2005, adjournment by Claimant = \$1,200.00

#### **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. National Planning Corporation 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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Hearing session @ \$1,200.00 = \$1,200.00

Hearing Date: April 6, 2005 1 session  
Total Forum Fees = \$1,200.00

1. The Panel has assessed \$1,200.00 of the forum fees against Claimant.

**Fee Summary**

1. Claimant is solely liable for:	
Initial Filing Fee	= \$ 2,000.00
Member Fees	= \$ 8,550.00
Injunctive Relief Fees	= \$ 2,500.00
Adjournment Fee	= \$ 1,200.00
<u>Forum Fees</u>	<u>= \$ 1,200.00</u>
Total Fees	= \$15,450.00
<u>Less payments</u>	<u>= \$ 6,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 9,450.00

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

**ARBITRATION PANEL**

Michael L. King, J.D.	-	Public Arbitrator, Presiding Chairperson
Gregory P. Szuter	-	Public Arbitrator
Robert Shiffra, 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.

\_\_\_\_\_  
Michael L. King, J.D.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Gregory P. Szuter  
Public Arbitrator

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

\_\_\_\_\_  
Robert Shiffra, Esq.  
Non-Public Arbitrator

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

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Date of Service (For NASD Dispute Resolution use only)

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Public Arbitrator, Presiding Chairperson

4/8/2005  
Signature Date

\_\_\_\_\_  
Gregory P. Szuter  
Public Arbitrator

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

\_\_\_\_\_  
Robert Shiffra, Esq.  
Non-Public Arbitrator

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

April 15, 2005

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Date of Service (For NASD Dispute Resolution use only)

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Non-Public Arbitrator

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Robert Shiffra, Esq.  
Non-Public Arbitrator

4-11-05  
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Signature Date

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