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

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In the Matter of the Arbitration Between:

Names of the Claimants

Westminster Financial Securities, Inc.  
Westminster Financial Advisory Corp.  
Westminster Financial Companies, Inc.

Case Number: 05-01079

Names of the Respondents

Briarcliff Capital Corporation  
Jack Spiegelman  
John D. Kinder

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Member and Non-Member vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Westminster Financial Securities, Inc. ("WFSI"), Westminster Financial Advisory Corp. ("WFAC") and Westminster Financial Companies, Inc. ("WFCI"), hereinafter collectively referred to as "Claimants": Scott A. Kane, Esq., Squire, Sanders & Dempsey, L.L.P., Cincinnati, Ohio.

For Respondents Briarcliff Capital Corporation ("BCC") and Jack Spiegelman ("Spiegelman"): Robert P. Bramnik, Esq., Duane Morris, LLP, Chicago, Illinois.

For Respondent John D. Kinder ("Kinder"), Gregory K. Pratt, Esq., Pratt Singer Papakirk, Middleton, Ohio until on or about December 15, 2005. Thereafter, Mark S. Dobin, Esq., Dobin & Jenks, LLP, Jupiter, Florida appeared for Respondent Kinder.

**CASE INFORMATION**

Statement of Claim filed on or about: March 2, 2005.

Claimants signed the Uniform Submission Agreement: February 24, 2004.

Statement of Answer and Affirmative Defenses filed by Respondents BCC and Spiegelman on or about: May 25, 2005.

Respondents BCC and Spiegelman signed Uniform Submission Agreements: April 15, 2005.

Statement of Answer filed by Respondent Kinder on or about: May 25, 2005.

Counterclaim filed by Respondent Kinder on or about: May 27, 2005.

Respondent Kinder signed the Uniform Submission Agreement: May 26, 2005.

Statement of Answer to Counterclaim of Respondent Kinder filed by Claimants on or about: June 22, 2005.

### **CASE SUMMARY**

With respect to Respondents Kinder and Spiegelman, Claimants asserted the following causes of action: breach of fiduciary duty; and, breach of duty. With respect to Respondent BCC, Claimants asserted the following causes of action: breach of contract; promissory estoppel; and, tortious interference. In addition, Claimants asserted a claim for civil conspiracy and wrongful misappropriation of trade secrets against all Respondents. The causes of action relate to the Letter Agreement dated August 13, 2001 and the Advisory Service Agreement dated August 31, 2001 executed by the parties which allegedly obligate Respondent BCC to refrain from competing with Claimants for the purposes of taking clients or employees.

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

Unless specifically admitted in his Answer, Respondent Kinder denied the allegations made in the Statement of Claim and asserted various defenses. Furthermore, in his Counterclaim, Respondent Kinder asserted the following causes of action against Claimants: breach of contract; failure to pay commissions; breach of fiduciary duty; and, wrongful use of process.

Unless specifically admitted in their Response, Claimants denied the allegations made in Respondent Kinder's Counterclaim and asserted various defenses.

### **RELIEF REQUESTED**

Claimants requested: compensatory damages in the amount of \$500,000.00; punitive damages in the amount of \$500,000.00; pre and post judgment interest; an award enjoining Respondents from improper competition and misuse of trade secrets; and, all other relief that the Panel finds equitable and just, including costs and reasonable attorneys' fees.

Respondents BCC and Spiegelman requested that Claimants' claims be denied in their entirety with an award of attorneys' fees against both Claimants and their attorneys pursuant to Florida Stat. § 57.105(1).

Respondent Kinder requested that all Claimants' claims as they relate to him, be dismissed with prejudice. In addition, as asserted in his Counterclaim, Respondent Kinder requested: compensatory damages in the amount of \$300,000.00, plus pre- and post-judgment interest; punitive damages in the amount of \$256,000.00; attorneys' fees; and any other relief to which Respondent Kinder may be entitled.

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

Claimants WFAC and WFCI initially brought this case in the Court of Common Pleas, Montgomery County, Ohio (the "Court"). On Respondents' motion, the trial court determined that Respondent WFSI had to be joined as a party and issued an Agreed Order dated January 5, 2005, staying the case pending arbitration before the NASD.

Claimants WFAC and WFCI are not members of the NASD, but pursuant to the Court order have agreed to arbitrate this dispute through NASD Dispute Resolution and having executed

Uniform Submission Agreements, answered the claim, and appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

At the evidentiary hearing session held on March 29, 2006, former Chairperson Jonathan E. Perlman withdrew from the Panel. The parties stipulated on the record to proceed with Arbitrators Conner and Sprung and without the appointment of a replacement, third arbitrator. Furthermore, the parties stipulated on the record to the chairperson appointment of Arbitrator Sprung, and Arbitrator Sprung accepted appointment as Chairperson of the Panel.

At the conclusion of Claimants' case-in-chief, Respondents made *ore tenus* motions for directed verdict and summary judgment. Claimants opposed the motions. The Panel denied the motions.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

### **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:

Claimants' claims against Respondents BCC and Spiegelman are denied in their entirety.

Respondent Kinder is liable for breach of fiduciary duty in his capacity as Director and shall pay to Claimants, jointly and severally, compensatory damages in the amount of \$7,500.00.

Claimants' request for pre-judgment interest is denied.

Claimants' request for punitive damages is denied.

Respondent Kinder's counterclaim is denied, in its entirety.

Each party shall bear its own attorneys' fees and costs.

Any and all claims for relief not specifically addressed herein, including the request for attorneys' fees pursuant to Fla. Stat. § 57.105(1) by Respondents BCC and Spiegelman, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 1,250.00
Counterclaim filing fee	= \$ 375.00

#### **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. Accordingly, Westminster Financial Securities, Inc. and Briarcliff Capital Corporation are parties and member firms.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00
Total Member Fees	= \$7,000.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournments were requested in this matter.

### **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:

No three-day cancellation fees were incurred in this matter.

### **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.

No injunctive relief fees were incurred in this matter.

### **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) Pre-hearing session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: August 30, 2005	1 session

Six (6) Hearing sessions @ \$1,200.00/session	= \$ 7,200.00
Hearing Dates: March 28, 2006	2 sessions
March 29, 2006	2 sessions
March 30, 2006	2 sessions

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Total Forum Fees	= \$ 8,400.00
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The Panel has assessed \$2,800.00 of the forum fees to Claimants, jointly and severally.  
The Panel has assessed \$2,800.00 of the forum fees to Respondents BCC and Spiegelman, jointly and severally.

The Panel has assessed \$2,800.00 of the forum fees to Respondent Kinder.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to: additional copies of arbitrator awards; copies of audio transcripts; retrieval of documents from archives; interpreters; and, security.

No administrative costs were incurred in this matter.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 1,250.00
<u>Forum Fees</u>	= \$ 2,800.00
Total Fees	= \$ 4,050.00
<u>Less payments</u>	= \$ 2,450.00
Balance Due NASD Dispute Resolution	= \$ 1,600.00

Respondent Kinder is solely liable for:

Counterclaim Filing Fee	= \$ 375.00
<u>Forum Fees</u>	= \$ 2,800.00
Total Fees	= \$ 3,175.00
<u>Less payments</u>	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 1,600.00

Respondent BCC is solely liable for:

<u>Member Fees</u>	= \$ 7,000.00
Total Fees	= \$ 7,000.00
<u>Less payments</u>	= \$ 5,750.00
Balance Due NASD Dispute Resolution	= \$ 1,250.00

Claimant WFSI is solely liable for:

<u>Member Fees</u>	= \$ 7,000.00
Total Fees	= \$ 7,000.00
<u>Less payments</u>	= \$ 5,750.00
Balance Due NASD Dispute Resolution	= \$ 1,250.00

Respondents BCC and Spiegelman are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 2,800.00
Total Fees	= \$ 2,800.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,800.00

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

**ARBITRATION PANEL**

John B. Sprung, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Richard E. Conner, Esq.	-	Public Arbitrator

### Concurring Arbitrators' Signatures

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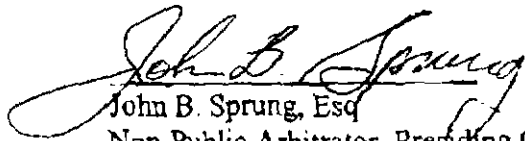
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

Arbitration No. 05-01079

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Concurring Arbitrators' Signatures

  
John B. Sprung, Esq.

Non-Public Arbitrator, Presiding Chairperson

April 4, 2006  
Signature Date

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Richard E. Conner, Esq.  
Public Arbitrator

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Signature Date

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Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No. 05 01079  
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Concurring Arbitrators' Signatures

\_\_\_\_\_  
John B. Sprung, Esq.  
Non-Public Arbitrator, Presiding Chairperson

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

  
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Richard E. Conner, Esq.  
Public Arbitrator

APRIL 4, 2006  
Signature Date

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