

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

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In the Matter of the Arbitration Between:

Keith Jennings, Claimant v. Louis Michael Nolfo, Respondent

Case Number: 05-01888

Hearing Site: San Francisco, California

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Nature of the Dispute: Customer v. Associated Person

**REPRESENTATION OF PARTIES**

For Claimant:

Timothy A. Canning, Esq.  
Attorney at Law  
Novato, California

For Respondent:

Neil S. Baritz, Esq.  
Baritz & Colman LLP  
Boca Raton, Florida

**CASE INFORMATION**

Statement of Claim filed: April 8, 2005

Claimant's Uniform Submission Agreement signed: March 22, 2005

Statement of Answer and Motion to Dismiss filed by Respondent: July 14, 2005

Respondent's Uniform Submission Agreement signed: July 14, 2005

**CASE SUMMARY**

Claimant alleged fraud, negligence, misrepresentation, breach of contract, and breach of fiduciary duty. Claimant's allegations primarily involved stock in Cyber Games Inc. and Enterprise Solutions.

Respondent denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

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### **RELIEF REQUESTED**

Claimant requested \$51,356.25 in compensatory damages, unspecified punitive damages, \$26,000.00 or more in interest, disciplinary referrals, and costs.

Respondent requested dismissal of Claimant's Statement of Claim in its entirety and costs.

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

On May 5, 2005, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

At the hearing, Respondent moved to dismiss Claimant's Statement of Claim on the grounds that it is time-barred. Claimant opposed the motion. After due deliberation in executive session, the Panel denied the Respondent's Motion to Dismiss.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **FINDINGS**

The Panel finds that there are, in effect, two losers in this controversy. The Respondent demonstrated that his lack of competence as a registered stockbroker and his self-proclaimed naiveté are of such a degree as to render him liable for disciplinary action.

The Claimant, on the other hand, showed himself to be devoid of basic common sense in willingly plunging into highly risky investments in an attempt to recover earlier losses incurred in a similar situation where eventual arbitration had made him well. The Claimant must appreciate that all losses are not subject to compensation and that each person bears responsibility for his or her own actions, including the willful misrepresentation of one's financial status.

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### **AWARD**

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

- 1) Claimant's claims for monetary relief are denied in their entirety.
- 2) Claimant's request for a disciplinary referral is granted. The Panel will submit a disciplinary referral against Respondent to NASD.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$ 225.00

#### **Forum Fees and Assessments**

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

(1) Decision on discovery-related motions on the papers  
with one arbitrator @ \$200.00 = \$ 200.00  
Respondent submitted one discovery-related motion

(1) Pre-hearing conference session with the Panel @ \$750.00/session = \$ 750.00  
Pre-hearing conference: September 29, 2005 1 session

(2) Hearing sessions @ \$750.00/session = \$1,500.00  
Hearings: May 16, 2006 2 sessions

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**Total Forum Fees = \$2,450.00**

1. The Panel assessed \$1,325.00 of the forum fees to Claimant.
2. The Panel assessed \$1,125.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 1,325.00
Total Fees	= \$ 1,550.00
Less payments	= \$ (975.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 575.00</b>
2. Respondent is charged with the following fees and costs:

Forum Fees	= \$ 1,125.00
Less payments	= \$ (0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,125.00</b>

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

**ARBITRATION PANEL**

James N. D'Orso	-	Public Arbitrator, Presiding Chair
John J. Flynn	-	Public Arbitrator
E. Duane Stephens	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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James N. D'Orso  
Chair, Public Arbitrator

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Signature Date

  
John J. Flynn  
Public Arbitrator

  
Signature Date

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E. Duane Stephens  
Non-Public Arbitrator

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

5/25/06  
Date of Service

**ARBITRATION PANEL**

James N. D'Orso	-	Public Arbitrator, Presiding Chair
John J. Flynn	-	Public Arbitrator
E. Duane Stephens	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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James N. D'Orso  
Chair, Public Arbitrator

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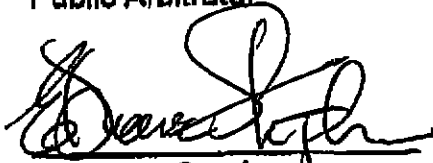
Signature Date

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John J. Flynn  
Public Arbitrator

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Signature Date



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E. Duane Stephens  
Non-Public Arbitrator

May 24 2006  
Signature Date

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5/25/06  
Date of Service

**ARBITRATION PANEL**

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John J. Flynn	-	Public Arbitrator
E. Duane Stephens	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
James N. D'Orso  
Chair, Public Arbitrator

05/23/06  
Signature Date

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John J. Flynn  
Public Arbitrator

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Signature Date

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E. Duane Stephens  
Non-Public Arbitrator

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Signature Date

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5/25/06  
Date of Service