

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Eric Zipfel and Neil Zipfel (Claimants) vs. Fifth Third Securities, Inc. (Respondent)

Case Number: 05-02520

Hearing Site: Columbus, Ohio

Mark Zipfel (Claimant) vs. Fifth Third Securities, Inc. (Respondent)

Case Number: 05-04932

Hearing Site: Columbus, Ohio

Fifth Third Securities, Inc. (Claimant) vs. Mark Zipfel (Respondent)

Case Number: 05-04948

Hearing Site: Columbus, Ohio

Nature of the Dispute 05-02520: Associated Persons vs. Member.

Nature of the Dispute 05-04932: Associated Person vs. Member.

Nature of the Dispute 05-04948: Member vs. Associated Person.

REPRESENTATION OF PARTIES

05-02520

Claimants Eric Zipfel (E. Zipfel") and Neil Zipfel ("N. Zipfel") hereinafter collectively referred to as "Zipfel Claimants": Gary D. Greenwald, Esq., Shayne & Greenwald Co., LPA, Columbus, Ohio, and Thomas B. Lewis, Esq., Stark & Stark, Lawrenceville, NJ.

Respondent Fifth Third Securities, Inc., hereinafter referred to as "Fifth Third": Marion H. Little, Jr., Esq., Zeiger, Tiggs, & Little, LLP, Columbus, OH.

05-04932

Claimant Mark Zipfel hereinafter referred to as "M. Zipfel": Gary D. Greenwald, Esq., Shayne & Greenwald Co., LPA, Columbus, Ohio, and Thomas B. Lewis, Esq., Stark & Stark, Lawrenceville, NJ.

Respondent Fifth Third Securities, Inc., hereinafter referred to as "Fifth Third": Marion H. Little, Jr., Esq., Zeiger, Tiggs, & Little, LLP, Columbus, OH.

05-04948

Claimant Fifth Third Securities, Inc., hereinafter referred to as "Fifth Third": Marion H. Little, Jr., Esq., Zeiger, Tiggs, & Little, LLP, Columbus, OH.

Respondent Mark Zipfel hereinafter referred to as "M. Zipfel": Gary D. Greenwald, Esq., Shayne & Greenwald Co., LPA, Columbus, Ohio, and Thomas B. Lewis, Esq., Stark & Stark, Lawrenceville, NJ.

CASE INFORMATION

05-02520

Statement of Claim filed by Zipfel Claimants on or about: March 11, 2005.

Statement of Answer to Fifth Third's Counterclaim filed by Zipfel Claimants on or about: September 14, 2005.

E. Zipfel signed the Uniform Submission Agreement: May 23, 2005.

N. Zipfel signed the Uniform Submission Agreement: May 23, 2005.

Statement of Answer and Counterclaims filed by Fifth Third on or about: July 28, 2005.

Fifth Third signed the Uniform Submission Agreement: June 13, 2005.

05-04932

Statement of Claim filed by M. Zipfel on or about: September 19, 2005.

Reply to Counterclaim filed by M. Zipfel on or about: November 28, 2005.

M. Zipfel signed the Uniform Submission Agreement: September 19, 2005.

Statement of Answer and Counterclaims filed by Fifth Third on or about: November 4, 2005.

Fifth Third did not submit a Uniform Submission Agreement.

05-04948

Statement of Claim filed Fifth Third on or about: September 16, 2005.

Reply to Counterclaim filed by Fifth Third on or about: January 22, 2006.

Fifth Third did not submit a Uniform Submission Agreement.

Statement of Answer and Counterclaims filed by M. Zipfel on or about: August 5, 2006.

M. Zipfel did not submit a Uniform Submission Agreement.

CASE SUMMARY

05-02520

The Zipfel Claimants asserted the following causes of action: defamation, mandatory and prohibitory injunctions, breach of contract, and declaratory judgment.

Unless specifically admitted in its Answer, Fifth Third denied the allegations made in the Statement of Claim.

Fifth Third asserted the following causes of action in its Counterclaim: breach of fiduciary duty, implied indemnification, contribution, breach of contract, tortious interference with contract and prospective business relationships, trade secrets, unfair competition, and conversion.

05-04932

M. Zipfel asserted the following causes of action: defamation, mandatory and prohibitory injunctions, breach of contract, and declaratory judgment.

Unless specifically admitted in its Answer, Fifth Third denied the allegations made in the Statement of Claim.

Fifth Third asserted the following causes of action in its Counterclaim: breach of fiduciary duty, implied indemnification, contribution, breach of contract, tortious interference with contract and prospective business relationships, trade secrets, unfair competition, and conversion.

05-04948

Fifth Third asserted the following causes of action: breach of fiduciary duty, implied indemnification, contribution, breach of contract, tortious interference with contract and prospective business relationships, trade secrets, unfair competition, and conversion.

Unless specifically admitted in his Answer, M. Zipfel denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Respondent M. Zipfel asserted the following causes of action in his Counterclaim: defamation, mandatory and prohibitory injunctions, breach of contract, and declaratory judgment.

RELIEF REQUESTED

05-02520

The Zipfel Claimants requested compensatory damages in an amount in excess of \$2,500,000.00, amendment of their Forms U5, that the Panel declares the Registered Representative Agreement and Section IX of the Compensation Plan unreasonable and against public policy, punitive damages, attorneys' fees, and other relief as the Panel may deem just and proper.

Fifth Third requested dismissal of the Statement of Claim in its entirety, with prejudice, costs, attorneys' fees, and such other relief as the Panel deems just.

In its Counterclaim, Fifth Third requested compensatory damages in an amount in excess of \$25,000.00, punitive damages, costs, attorneys' fees, and such other relief as the Panel deems just and proper.

05-04932

Claimant M. Zipfel requested compensatory damages in an amount in excess of \$3,000,000.00, amendment of his Form U5, that the Panel declares the Registered Representative Agreement and Section IX of the Compensation Plan unreasonable and against public policy, punitive damages, attorneys' fees, and other relief as the Panel may deem just and proper.

Fifth Third requested dismissal with prejudice of the Statement of Claim in its entirety, costs, attorneys' fees, and such other relief as the Panel deems just.

In its Counterclaim, Fifth Third requested compensatory damages in an amount in excess of \$25,000.00, punitive damages, costs, attorneys' fees, and such other relief as the Panel deems just and proper.

05-04948

Claimant Fifth Third requested compensatory damages in an amount in excess of \$25,000.00, punitive damages, costs, attorneys' fees, and such other relief as the Panel deems just and proper.

M. Zipfel requested dismissal of the Statement of Claim, attorneys' fees, costs, and all other relief the Panel deems just and proper.

In his Counterclaim, M. Zipfel requested compensatory damages in an amount in excess of \$3,000,000.00, amendment of his Form U5, that the Panel declares the Registered Representative Agreement and Section IX of the Compensation Plan unreasonable and against public policy, punitive damages, attorneys' fees, and other relief as the Panel may deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Fifth Third submitted a Motion to Consolidate Case Numbers 05-02520, 05-04932, and 05-04948. During the October 11, 2005 Initial Pre-Hearing Conference for Case Number 05-02520, the Panel heard oral arguments on the Motion to Consolidate. After due deliberation, the Panel granted the Motion.

By letter dated April 20, 2006, Fifth Third sought the dismissal of Eric Zipfel, Neil Zipfel and Mark Zipfel's claims or the removal of the arbitration panel due to the Zipfels' conduct at the hearing. By letter dated April 27, 2006, Eric Zipfel, Neil Zipfel and Mark Zipfel filed their objection. After due deliberation, the Director of Arbitration denied Fifth Third's request to remove the panel.

At the hearing in this matter, Fifth Third filed a Motion for a Directed Verdict. After due deliberation, the Panel denied the Motion for a Directed Verdict.

By letter dated January 2, 2007, Fifth Third renewed its Motion to Dismiss/Motion to Remove the Panel. The Director of Arbitration determined that it was inappropriate for him to determine the issues that were raised in the Motion. The Motion and response was forwarded to the Panel for decision. After due deliberation, the Panel denied the Motion.

After the conclusion of the hearing, the Panel determined that Zipfel Trial Exhibits No. 80 (Eric Zipfel's prenuptial agreement, dated August 20, 2004) and No. 131 (Affidavit of Gary Greenwald, Esq.) were admissible and the documents were entered into the record.

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, and the post hearing submissions, the Panel has decided in full and final resolution of

the issues submitted for determination as follows:

1. Fifth Third Securities, Inc., is liable for and shall pay to Mark Zipfel, Eric Zipfel and Neil Zipfel compensatory damages in the amount of \$257,000.00.
2. Fifth Third Securities, Inc.'s counterclaim is denied in its entirety.
3. The Eric Zipfel, Neil Zipfel and Mark Zipfel's request for expungement is denied.
4. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

05-02520

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

Initial claim filing fee	= \$ 500.00
Counterclaim filing fee	= \$ 750.00

05-04932

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

Initial claim filing fee	= \$ 500.00
Counterclaim filing fee	= \$ 750.00

05-04948

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

Initial claim filing fee	= \$ 750.00
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Member Fees

05-02520

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, Fifth Third Securities, Inc. is a party.

Member Surcharge	= \$ 2,800.00
Pre-hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 5,000.00

05-04932

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, Fifth Third Securities, Inc. is a party.

Member Surcharge = \$ 2,800.00

05-04948

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, Fifth Third Securities, Inc. is a party.

Member Surcharge = \$ 425.00
Pre-hearing Process Fee = \$ 750.00

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. Fifth Third is assessed:
Injunctive relief surcharge = \$ 2,500.00
Additional arbitrator honoraria = \$ 1,250.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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) Decision on discovery-related motion on the papers
with (1) one arbitrator @ \$200.00 = \$ 200.00
Claimant submitted (one) discovery-related motion

One (1) Pre-hearing session with Panel @ \$1,200.00/session = \$ 1,200.00
Pre-hearing conference: October 11, 2005 1 session

Four (4) Injunctive Hearing sessions @ \$1,200.00/session = \$ 4,800.00
Hearing Dates: October 24, 2005 2 sessions
October 25, 2005 2 sessions

Thirty-six (36) Hearing sessions @ \$1,200.00/session = \$43,200.00
Hearing Dates: April 10, 2006 2 sessions
April 11, 2006 2 sessions
April 12, 2006 2 sessions
May 30, 2006 2 sessions
May 31, 2006 2 sessions
June 1, 2006 2 sessions
June 2, 2006 2 sessions
July 10, 2006 2 sessions
July 11, 2006 2 sessions
July 12, 2006 2 sessions

July 13, 2006	2 sessions
July 14, 2006	2 sessions
September 18, 2006	2 sessions
September 19, 2006	2 sessions
October 16, 2006	2 sessions
October 17, 2006	2 sessions
October 18, 2006	2 sessions
December 20, 2006	2 sessions
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Total Forum Fees	= \$49,400.00

1. The Panel has assessed \$49,400.00 of the forum fees to Fifth Third.

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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Fifth Third requested copies of tapes = \$ 120.00

Fee Summary

05-02520

1. Eric and Neil Zipfel are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Total Fees	= \$ 500.00
Less payments	= \$ 1,700.00
Refund Due Eric and Neil Zipfel	= \$ 1,200.00

2. Fifth Third is solely liable for:

Counterclaim Filing Fees	= \$ 1,500.00
Member Fees	= \$ 8,550.00
Forum Fees	= \$ 49,400.00
Injunctive Relief Fees	= \$ 1,250.00
Administrative Costs	= \$ 120.00
Total Fees	= \$ 60,820.00
Less payments	= \$ 14,015.00
Balance Due NASD Dispute Resolution	= \$ 46,805.00

05-04932

1. Mark Zipfel is solely liable for:

Initial Filing Fee	= \$ 500.00
Total Fees	= \$ 500.00
Less payments	= \$ 1,800.00
Refund Due Mark Zipfel	= \$ 1,300.00

2. Fifth Third is solely liable for:

Member Fees	= \$ 2,800.00
Total Fees	= \$ 2,800.00
Less payments	= \$ 0.00

Balance Due NASD Dispute Resolution = \$ 2,800.00

05-4948

1. Fifth Third is solely liable for:

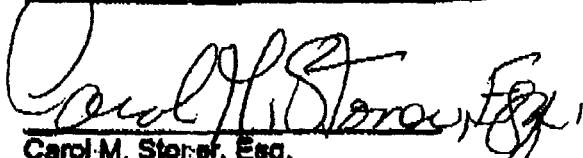
Initial Filing Fee	= \$ 750.00
Member Fees	= \$ 1,175.00
<u>Injunctive Relief Fees</u>	<u>= \$ 2,500.00</u>
Total Fees	= \$ 4,425.00
<u>Less payments</u>	<u>= \$ 3,675.00</u>
Balance Due NASD Dispute Resolution	= \$ 750.00

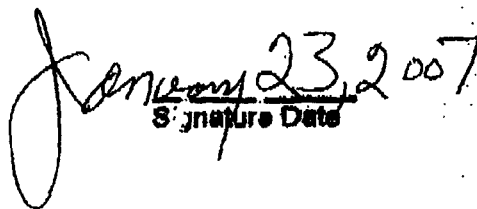
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Carol M. Stoner, Esq.	-	Public Arbitrator, Presiding Chairperson
Benjamin B. Segel, Esq.	-	Public Arbitrator
Erick R. Zanner	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Carol M. Stoner, Esq.
Public Arbitrator, Presiding Chairperson


Signature Date

Benjamin B. Segel, Esq.
Public Arbitrator

Signature Date

Erick R. Zanner
Non-Public Arbitrator

Signature Date

January 29, 2007
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Carol M. Stoner, Esq.	-	Public Arbitrator, Presiding Chairperson
Benjamin B. Segel, Esq.	-	Public Arbitrator
Erick R. Zanner	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Carol M. Stoner, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Benjamin B. Segel, Esq.
Public Arbitrator

1/27/07

Signature Date

Erick R. Zanner
Non-Public Arbitrator

Signature Date

January 29, 2007

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Carol M. Stoner, Esq.
Benjamin B. Segel, Esq.
Erick R. Zanner

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Carol M. Stoner, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Benjamin B. Segel, Esq.
Public Arbitrator

Signature Date



Erick R. Zanner
Non-Public Arbitrator

1-23-07
Signature Date

January 29, 2007
Date of Service (For NASD Dispute Resolution use only)