

**Award  
NASD Dispute Resolution**

---

In the Matter of the Arbitration Between:

Charles DeMartini, Claimant v. Manuel "Sonny" Arias, Steven D. Hotovec, Hotovec, Pomeranz & Co., Inc. a/k/a Hotovec, Pomeranz & Co., LLC and HPC Ventures, LLC, Respondents

Manuel "Sonny" Arias, Cross-Claimant v. Hotovec, Pomeranz & Co., Inc. a/k/a Hotovec, Pomeranz & Co., LLC, HPC Ventures, LLC and Steven D. Hotovec, Cross-Respondents

Manuel "Sonny" Arias, Third-Party Claimant v. Jeffrey J. Pomeranz, Third-Party Respondent

Case Number: 05-04501

Hearing Site: San Francisco, California

---

Nature of the Dispute:    Customer v. Associated Persons, Member and Non-Member  
   Associated Person v. Member, Non-Member and  
   Associated Person  
   Associated Person v. Associated Person

**REPRESENTATION OF PARTIES**

For Claimant:

Curtis J. Morris, Esq.  
Law Offices of Curtis J. Morris  
Sonoma, California

For Respondent, Cross-Claimant and  
and Third-Party Claimant Manuel "Sonny" Arias:

Kevin J. Holl  
Gordon-Creed, Kelley, Holl &  
Sugerman LLP  
San Francisco, California

For Respondent and Cross-Respondent  
Steven D. Hotovec:

Steven D. Hotovec  
Redwood City, California

For Respondent and Cross-Respondent  
Hotovec, Pomeranz & Co., Inc. a/k/a  
Hotovec, Pomeranz & Co., LLC  
("Hotovec, Pomeranz & Co., LLC"):

Jeffrey Pomeranz, Custodian  
Hotovec, Pomeranz & Co., LLC  
San Francisco, California

For Respondent and Cross-Respondent  
HPC Ventures, LLC:

Corporate Officer  
HPC Ventures, LLC  
Redwood City, California

### **CASE INFORMATION**

Statement of Claim filed: August 19, 2005

Claimant's Uniform Submission Agreement signed: June 11, 2005

Respondent Manuel "Sonny" Arias' Answer to Statement of Claim, Cross-Claim Against Respondents Hotovec, Pomeranz & Co., Inc. a/k/a Hotovec, Pomeranz & Co., LLC, HPC Ventures, LLC, Steven D. Hotovec and Third-Party Claim Against Jeffrey J. Pomeranz filed: December 20, 2005

Respondent Manuel "Sonny" Arias' Uniform Submission Agreement signed: December 8, 2005

### **CASE SUMMARY**

Claimant alleged breach of contract and negligence with respect to the handling of his account. Claimant's dispute involved investments in various unspecified high-tech stocks.

Respondent Manuel "Sonny" Arias denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondent Manuel "Sonny" Arias also asserted affirmative defenses.

Respondent Manuel "Sonny" Arias alleged indemnification and/or contribution with respect to his Cross-Claim against Respondents Hotovec, Pomeranz & Co., Inc. a/k/a Hotovec, Pomeranz & Co., LLC, HPC Ventures, LLC, and Steven D. Hotovec and Third-Party Claim against Jeffrey J. Pomeranz.

### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$61,684.18, interest at the legal rate of ten percent and costs.

Respondent Manuel "Sonny" Arias requested that the Panel find in favor of Arias and dismiss Claimant's claims in their entirety; find in favor of Arias on his Cross-Claim and award Arias indemnification and/or contribution on such Cross-Claim; and require that

Claimant and/or Respondents Hotovec, Pomeranz & Co., Inc. a/k/a Hotovec, Pomeranz & Co., LLC, HPC Ventures, LLC, Steven D. Hotovec and Jeffrey J. Pomeranz pay all applicable fees.

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

On or about June 14, 2005, the above-captioned dispute was ordered to arbitration before NASD Dispute Resolution ("NASD-DR") by the Superior Court of the State of California, County of Sonoma.

On or about February 8, 2006, the Panel was advised of Third-Party Respondent Jeffrey J. Pomeranz's bankruptcy filing and that the above-captioned dispute is stayed with respect to Mr. Pomeranz.

Respondents Steven D. Hotovec, Hotovec, Pomeranz & Co., Inc. a/k/a Hotovec, Pomeranz & Co., LLC and HPC Ventures, LLC did not file with NASD-DR a Statement of Answer or properly executed submission to arbitration. The Panel determined that said Respondents have been properly served with Claimant's Statement of Claim and further determined that said Respondents are required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and are bound by the determination of the Panel on all issues submitted.

On July 24, 2006, the Panel reviewed and considered the positions of the parties relative to Respondent Manuel "Sonny" Arias' Motion for Summary Judgment and to Dismiss Claims, dated May 22, 2006. The Panel denied the Motion.

On or about September 15, 2006, the Panel reviewed and considered the positions of the parties relative to the Motion of Respondent Manuel "Sonny" Arias for Reconsideration of the Order Denying the Motion for Summary Judgment. The Panel denied the Motion for Reconsideration.

Respondents Hotovec, Pomeranz & Co., Inc. a/k/a Hotovec, Pomeranz & Co., LLC and HPC Ventures, LLC did not appear at the evidentiary hearing in this matter. Pursuant to Rule 10318 of the Code, the Panel determined that said Respondents received proper notice of the hearing and ruled to proceed in their absence.

The parties present at hearing 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, testimony, and evidence presented at the hearing, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. All claims by Claimant against Respondent Steven D. Hotovec are dismissed.
2. Respondents Hotovec, Pomeranz & Co., Inc. a/k/a Hotovec, Pomeranz & Co., LLC and HPC Ventures, LLC are jointly and severally liable for and shall pay to Claimant the sum of \$44,000.14.
3. Respondents Hotovec, Pomeranz & Co., Inc. a/k/a Hotovec, Pomeranz & Co., LLC, HPC Ventures, LLC and Manuel "Sonny" Arias are jointly and severally liable for and shall pay to Claimant the sum of \$14,666.72. The Panel finds that Respondent Arias was negligent in making unsuitable investments for Claimant and thus finds that he is liable for 25% of the total award amount of \$58,666.86, but that his negligence did not proximately cause all of Claimant's damages; the damages were caused in large part due to the failure to supervise Respondent Arias and prevent him from making such investments.
4. Cross-Claimant Manuel "Sonny" Arias shall recover from Cross-Respondents Hotovec, Pomeranz & Co., Inc. a/k/a Hotovec, Pomeranz & Co., LLC and HPC Ventures, LLC, any portion of the aforementioned sum of \$14,666.72, paid by Mr. Arias to Claimant.
5. Cross-Respondents Hotovec, Pomeranz & Co., Inc. a/k/a Hotovec, Pomeranz & Co., LLC and HPC Ventures, LLC are jointly and severally liable for and shall pay to Cross-Claimant Manuel "Sonny" Arias the sum of \$123,208.33 in attorney's fees and costs per the declaration of Kevin J. Holl, counsel for Mr. Arias, dated November 14, 2006, and per California Civil Code Section 2779 and Code of Civil Procedure Section 1021.6.
6. Except as noted in paragraph 5 above, each party shall bear its own costs, including attorneys' fees.
7. All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

### **Filing Fees**

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

Initial claim filing fee	= \$225.00
Cross-Claim/Third-Party Claim filing fee	= \$225.00

### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, Hotovec, Pomeranz & Co., LLC is a party and the following fees are assessed:

Member Surcharge	= \$ 1,100.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 1,700.00
Total Member Fees	= \$ 3,550.00

### **Adjournment Fees**

The following adjournment fees are assessed:

The Panel granted Respondent Manuel "Sonny" Arias' request to postpone the September 18-20, 2006, hearing dates and assessed Respondent Arias the \$750.00 postponement fee.

### **Forum Fees and Assessments**

The Panel 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(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

(2) Pre-hearing conference sessions with a single arbitrator		
@ \$450.00/session		= \$900.00
Pre-hearing conferences:	August 2, 2006	1 session
	September 6, 2006	1 session

(4) Pre-hearing conference sessions with the Panel		
@ \$750.00/session		= \$3,000.00
Pre-hearing conferences:	April 4, 2006	1 session
	July 24, 2006	1 session
	September 12, 2006	1 session
	September 20, 2006	1 session

(4) Hearing sessions @ \$750.00/session	=	\$3,000.00
Hearing Dates:                      October 31, 2006	2 sessions	
November 1, 2006	2 sessions	

---

<b>Total Forum Fees</b>	<b>=</b>	<b>\$6,900.00</b>
-------------------------	----------	-------------------

The Panel assessed \$1,725.00 of the forum fees to Respondent Manuel "Sonny" Arias.

The Panel assessed \$5,175.00 of the forum fees jointly and severally to Respondents Hotovec, Pomeranz & Co., Inc. a/k/a Hotovec, Pomeranz & Co., LLC and HPC Ventures, LLC.

**Fee Summary**

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

Initial Filing Fee	= \$	225.00
<u>Less Waiver of Initial Filing Fee</u>	= \$(	225.00)
<b>Balance Due NASD-DR</b>	<b>= \$</b>	<b>0.00</b>

2. Respondent Manuel "Sonny" Arias is charged with the following fees and costs:

Cross-Claim/Third-Party Claim Filing Fee	= \$	225.00
Adjournment Fees	= \$	750.00
<u>Forum Fees</u>	<u>= \$</u>	<u>1,725.00</u>
<b>Total Fees</b>	<b>= \$</b>	<b>2,700.00</b>
<u>Less Payments</u>	<u>= \$(</u>	<u>1,000.00)</u>
<b>Balance Due NASD-DR</b>	<b>= \$</b>	<b>1,700.00</b>

3. Respondent Hotovec, Pomeranz & Co., LLC is charged with the following fees and costs:

Member Fees	= \$	3,550.00
<u>Less Payments</u>	<u>= \$(</u>	<u>0.00)</u>
<b>Balance Due NASD-DR</b>	<b>= \$</b>	<b>3,550.00</b>

4. Respondents Hotovec, Pomeranz & Co., Inc. a/k/a Hotovec, Pomeranz & Co., LLC and HPC Ventures, LLC are charged jointly and severally with the following fees and costs:

Forum Fees	= \$	5,175.00
<u>Less Payments</u>	<u>= \$(</u>	<u>0.00)</u>
<b>Balance Due NASD-DR</b>	<b>= \$</b>	<b>5,175.00</b>

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

**ARBITRATION PANEL**

Darryl J. Horowitz, Esq.	-	Public Arbitrator, Presiding Chair
Paul F. Faberman	-	Public Arbitrator
Mary Curran, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  

---

Darryl J. Horowitz, Esq.  
Chair, Public Arbitrator

12/8/06  
Signature Date

---

Paul F. Faberman  
Public Arbitrator

---

Signature Date

---

Mary Curran, Esq.  
Non-Public Arbitrator

---

Signature Date

12/8/06  
Date of Service

**ARBITRATION PANEL**

Darryl J. Horowitz, Esq.	-	Public Arbitrator, Presiding Chair
Paul F. Faberman	-	Public Arbitrator
Mary Curran, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Darryl J. Horowitz, Esq.  
Chair, Public Arbitrator



\_\_\_\_\_  
Paul F. Faberman  
Public Arbitrator

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

12/8/06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Mary Curran, Esq.  
Non-Public Arbitrator

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

12/8/06  
\_\_\_\_\_  
Date of Service



**ARBITRATION PANEL**

Darryl J. Horowitz, Esq.	-	Public Arbitrator, Presiding Chair
Paul F. Faberman	-	Public Arbitrator
Mary Curran, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Darryl J. Horowitz, Esq.  
Chair, Public Arbitrator

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

\_\_\_\_\_  
Paul F. Faberman  
Public Arbitrator

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

  
\_\_\_\_\_  
Mary Curran, Esq.  
Non-Public Arbitrator

December 8, 2006  
Signature Date

12/8/06  
Date of Service