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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Bill F. Ford

Case Number: 06-00602

Names of the Respondent  
Brinker Capital Securities, Inc.

Hearing Site: Columbia, South Carolina

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Bill F. Ford ("Ford"), hereinafter referred to as "Claimant": Milton H. Fried, Jr., Esq., Woska & Hayes, LLP, Houston, Texas.

For Brinker Capital Securities, Inc. ("Brinker"), hereinafter referred to as "Respondent": William R. Grimm, Esq., Hinckley, Allen & Snyder, LLP, Providence, Rhode Island.

**CASE INFORMATION**

Statement of Claim filed on or about: February 07, 2006.

Claimant signed the Uniform Submission Agreement: December 12, 2005.

Answer of Statement of Claim filed by Respondent on or about: April 17, 2006.

Respondent signed the Uniform Submission Agreement: April 10, 2006.

Motion to Dismiss filed by Respondent on or about: July 19, 2006.

Response to Motion to Dismiss filed by Claimant on or about: August 18, 2006.

Reply to Response to Motion to Dismiss filed by Respondent on or about: August 25, 2006.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) controlling person liability pursuant to Section 20(A) of the Exchange Act; 2) breach of fiduciary duty; 3) breach of contract; 4) violation of Know Your Customer Rule; 5) unsuitability; 6) failure to diversify; 7) failure to supervise; 8) violation of securities laws: (a) Securities Regulatory Rules, (b) Uniform Securities Act, (c) South Carolina Unfair Trade Practices, and (d) common law claims; and 9) failure to hedge. The causes of action relate to Claimant's investments in, amongst other things, various unspecified technology stocks.

**RELIEF REQUESTED**

Claimant requested the following: 1) compensatory damages of \$175,000.00; 2) pre- and post-judgment interest; 3) costs; 4) attorneys' fees; 5) punitive damages; and 6) other and further relief.

Respondent requested the following: 1) judgment in its favor dismissing the Statement of Claim in its entirety, with prejudice; 2) recovery of all costs and attorneys' fees expended in the defense of this matter; and 3) any and other relief as deemed just and proper.

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

On or about October 27, 2006, the Panel entered an order granting Respondent's Motion to Dismiss.

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

### **AWARD**

After considering the pleadings and argument on Respondent's Motion to Dismiss, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed, without prejudice.
2. Any and all other claims for relief not specifically addressed herein, including Claimant's statutory claims, Claimant's and Respondent's respective requests for attorneys' fees and Claimant's request for punitive damages, 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	= \$ 300.00
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#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent is a member firm and a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournments were requested 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.

Injunctive relief fees were not assessed 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 assessed 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with the Panel @ \$1,125.00/session	= \$3,375.00
Pre-hearing conferences:	
July 28, 2006	1 session
October 10, 2006	1 session
October 27, 2006	1 session

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Total Forum Fees	= \$3,375.00
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The Panel has assessed forum fees in the amount of \$2,250.00 to Claimant.

The Panel has assessed forum fees in the amount of \$1,125.00 to Respondent.

**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.

There were no administrative costs incurred in this matter.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$2,250.00</u>

Total Fees	= \$2,550.00
<u>Less Payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$1,125.00

Respondent is solely liable for:

Member Fees	= \$5,200.00
<u>Forum Fees</u>	<u>= \$1,125.00</u>
Total Fees	= \$6,325.00
<u>Less Payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$1,125.00

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

**ARBITRATION PANEL**

<i>Stephen P. Hoffman, Esq.</i>	- <i>Public Arbitrator, Presiding Chairperson</i>
<i>Susan L. Luck</i>	- <i>Public Arbitrator</i>
<i>Mary O. Pitts, Esq.</i>	- <i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Stephen P. Hoffman, Esq.  
Public Arbitrator, Presiding Chairperson

October 31, 2006  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Susan L. Luck  
Public Arbitrator

November 2, 2006  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Mary O. Pitts, Esq.  
Non-Public Arbitrator

October 31, 2006  
Signature Date

November 2, 2006  
Date of Service (For NASD Dispute Resolution office use only)

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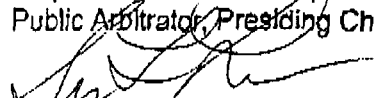
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Signature Date

  
Susan L. Luck  
Public Arbitrator

11/2/06  
Signature Date

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