

## **AWARD**

### **NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION**

In the matter of the Arbitration Between

Name of Claimant(s)

Financial Network Investment Corporation

v.

Arbitration No.  
96-02372

Name of Respondent(s)

Sheldon G. Zimmerman  
June Sayer Zimmerman

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And Related Counterclaims

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## **REPRESENTATION**

For Claimant: Samuel Y. Edgerton, III, Esq.  
Nash & Edgerton  
Hermosa Beach, California

For Respondents: James M. Peterson, Esq.  
Higgs, Fletcher & Mack  
San Diego, California

## **CASE INFORMATION**

Statement of Claim filed: June 3, 1996

Amended Statement of Claim filed: June 12, 1997

Claimant's Submission Agreement signed: May 22, 1996

Statement of Answer filed by Sheldon Zimmerman: July 31, 1996

Statement of Answer filed by June Sayer Zimmerman: June 12, 1997

Counterclaim filed by Respondents: June 16, 1997

Respondents' Submission Agreement signed:

Sheldon Zimmerman: July 16, 1996

June Sayer Zimmerman: Not dated

Claimant's Answer to Counterclaim filed July 7, 1997

### **HEARING INFORMATION**

A telephone motion conference lasting one session was held on May 8, 1998.

The evidentiary hearing was held in San Diego, California, as follows:

January 19, 1998	-	2 sessions
January 20, 1998	-	2 sessions
May 18, 1998	-	2 sessions
May 19, 1998	-	2 sessions

### **CASE SUMMARY**

Claimant alleged that Respondents breached the terms of their Representative/Agent Agreements by selling away, taking personal loans from clients, and conducting business in client accounts which compelled Claimant to settle a client arbitration claim. Claimant alleged breach of contract, fraud, constructive fraud, negligent misrepresentation, breach of fiduciary duty, violation of NASD Rules of Fair Practice, contribution, partial equitable indemnity, and tort of another.

Respondents contested Claimant's standing to assert claims based on indemnity and contribution theories, and asserted that the remaining claims are barred by applicable statutes of limitations and/or are not supported by the facts of the case or the applicable law. Respondents asserted that the amount paid in settlement of the underlying arbitration claim was disproportionate to the validity of that claim, and that the amount sought here is disproportionate to the portion of the claim alleged to be the responsibility of each Respondent.

Respondents asserted a counterclaim for breach of contract (for express and implied indemnity) for Claimant's refusal to defend and indemnify them in the underlying arbitration action.

Claimant denied the allegations of the counterclaim, and stated it had no obligation to indemnify Respondents for selling away and borrowing money from clients.

### **RELIEF REQUESTED**

Claimant requested damages in the amount of no less than \$50,000.00, plus attorney's fees and costs incurred in the underlying arbitration action, punitive damages of no less than \$150,000.00, interest and costs of arbitration. Claimant further requested dismissal of the counterclaim.

Respondents requested dismissal of the claim, and further requested damages on the counterclaim in an amount to be proven, plus attorney's fees and costs.

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

The parties have agreed to receive conformed copies of the Award while the originals remain on file with NASDR, Inc.

### **AWARD**

The undersigned arbitrators, having considered the pleadings, the testimony and the evidence presented at the hearing, have determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$35,000.00 in satisfaction of all claims.
2. The claim for punitive damages is dismissed.
3. The counterclaims of Respondents are dismissed in their entirety.
4. The parties shall bear their respective costs, including attorney's fees.

### **FORUM FEES**

Pursuant to Section 10205 of the Code of Arbitration Procedure, the NASDR shall retain the \$500.00 non-refundable filing fee paid by Claimant as well as the \$350.00 member surcharge.

Forum fees are assessed as follows:

Total fees

9 hearing session @ \$750/session

\$ 6,750.00

Claimant's one-half share

\$ 3,375.00

Credit for deposit

(\$ 750.00)

Balance due: \$ 2,625.00

Respondents' joint & several one-half share

\$ 3,375.00

Non-refundable filing fee for counterclaim

\$ 500.00

Balance due: \$ 3,875.00

**Fees are payable to the National Association of Securities Dealers Regulation, Inc.**

Concurring Arbitrators Signatures  
Name

Public/Industry

\_\_\_\_\_  
James D. Knotter, Esq.  
Presiding Chairperson

\_\_\_\_\_  
James H. Mayer, Esq.

\_\_\_\_\_  
Bernadotte P. Lester

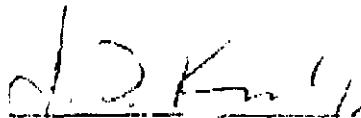
**Total fees**

9 hearing session @ \$750/session	\$ 6,750.00
Claimant's one half share	\$ 3,375.00
Credit for deposit	( <u>\$ 750.00</u> )
	<b>Balance due: <u>\$ 2,625.00</u></b>
Respondents' joint & several one-half share	\$ 3,375.00
Non-refundable filing fee for counterclaim	<u>\$ 500.00</u>
	<b>Balance due: <u>\$ 3,875.00</u></b>

**Fees are payable to the National Association of Securities Dealers Regulation, Inc.**

Concurring Arbitrators Signatures  
Name

Public/Industry

  
James D. Knotter, Esq.  
Presiding Chairperson

Public

James H. Mayer, Esq.

Bernadette P. Lester

Date served: 6/9/98

Total fees

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Credit for deposit

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Balance due:

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Presiding Chairperson

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Public

Bernadotte P. Lester

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*Bernadotte P. Lester*  
Bernadotte P. Lester

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*Industry*

Date served: 6/9/98