

## **AWARD**

**NASD, Regulation, Inc.,  
Office of Dispute Resolution**

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In the matter of the Arbitration Between

NASD Regulation, Inc.  
No. 96-02948

John S. Harada

Claimant

vs.

Respondents

William K. Woodruff, III  
William K. Woodruff & Company, Inc.

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### **REPRESENTATION OF PARTIES**

For Claimant: David H. Zimmer, Esq., Potomac, Maryland, and Edward A. Jaffe, Esq.,  
Torkildson, Katz, Fonseca, Jaffe, Moore & Hetherington, Honolulu, Hawaii

For Respondents: Corbet F. Bryant, Jr., Esq., Carrington, Coleman, Sloman & Blumenthal,  
Dallas, Texas

### **CASE INFORMATION**

Statement of Claim filed: July 8, 1996

Claimant's Submission Agreement signed: July 5, 1996

Joint Statement Answer and Counterclaim filed: September 16, 1996

Respondents' Submission Agreements signed: August 22, 1996

Reply to Counterclaim filed: October 15, 1996

### **HEARING INFORMATION**

Pre-hearing telephone conferences lasting one session were held on February 21, 1997, and April 25, 1997.

The evidentiary hearing was held in Honolulu, Hawaii, as follows:

July 15, 1997	-	3 sessions
July 16, 1997	-	2 sessions
July 17, 1997	-	2 sessions

### **CASE SUMMARY**

Claimant alleged negligent misrepresentation, fraudulent nondisclosure, breach of fiduciary duty and failure to supervise with respect to advice Claimant received from Respondents regarding his investments in shares of Forefront Group, Inc.

Respondents denied the allegations of wrongdoing, and asserted that Claimant was a knowledgeable, experienced investor who made a profit on his investments in Forefront.

Respondents asserted a counterclaim, and alleged tortious interference with business relationships and slander with respect to statements made by Claimant to employees, competitors, individuals and companies with whom Respondents conducted business for the purpose of harming Respondents.

### **RELIEF REQUESTED**

Claimant request damages of approximately \$1,000,000, plus punitive damages, interest, costs of arbitration and attorney's fees.

Respondents requested dismissal of all claims, and an award on the counterclaim of more than \$500,000, punitive damages of \$1,000,000, costs of arbitration and attorney's fees.

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

At the first hearing session, Claimant requested leave to amend the claim to allege failure to register pursuant to the Hawaii securities law. After argument, the panel denied the request.

At hearing, Respondents withdrew the allegations of the counterclaim, except the requests for costs and attorney's fees.

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

### AWARD

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

1. The panel finds that the evidence did not support the allegations of the claim. All claims asserted by Claimant are dismissed in their entirety.
2. The parties shall each bear their respective costs of arbitration, including attorney's fees.

### FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, the NASD shall retain the non-refundable filing fees paid by the parties.

Forum fees are assessed to Claimant, as follows:

1 pre-hearing telephone conference @ \$300/session	\$ 300
7 hearing sessions @ \$1000/session	<u>7000</u>
Total	\$7,300
Credit for deposit	<u>(1,000)</u>
Balance due	\$6,300
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The NASD shall refund to Respondents their \$1000 hearing session deposit.

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

Concurring Arbitrators Signatures:

Date signed:

  
James K. Moenig, Esq.

7/28/97

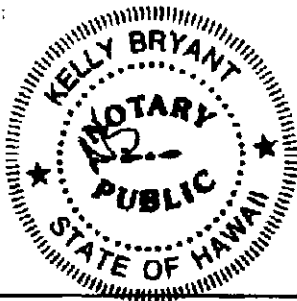
STATE OF HAWAII

)  
) SS:

CITY AND COUNTY OF HONOLULU : )

On this 28<sup>th</sup> day of July, 1997, before me personally appeared James K. Moenig, Esq., to me known to be the person described in and who executed the foregoing instrument and

acknowledged that he executed the same as his free act and deed.



Kelly Bryant  
Notary Public, State of Hawaii

My commission Expires: 4-11-2000

\_\_\_\_\_  
Robert E. Cooling

STATE OF HAWAII )  
 ) SS:  
CITY AND COUNTY OF HONOLULU : )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, before me personally appeared Robert E. Cooling, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

\_\_\_\_\_  
Notary Public, State of Hawaii

My commission Expires: \_\_\_\_\_

\_\_\_\_\_  
David Zerfoss

STATE OF HAWAII )  
 ) SS:  
CITY AND COUNTY OF HONOLULU : )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, before me personally appeared David Zerfoss, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

\_\_\_\_\_  
Notary Public, State of Hawaii

My commission Expires: \_\_\_\_\_

Date served: 8/12/1997

acknowledged that he executed the same as his free act and deed.

\_\_\_\_\_  
Notary Public, State of Hawaii

My commission Expires: \_\_\_\_\_

Robert E. Cooling  
Robert E. Cooling

July 28, 1997

STATE OF HAWAII )  
 ) SS:  
CITY AND COUNTY OF HONOLULU : )

On this 28th day of July, 1997, before me personally appeared Robert E. Cooling, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

W.S.

Joseph A. Pina  
Notary Public, State of Hawaii

My commission Expires: 07-17-98

\_\_\_\_\_  
David Zerfoss

STATE OF HAWAII )  
 ) SS:  
CITY AND COUNTY OF HONOLULU : )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, before me personally appeared David Zerfoss, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

\_\_\_\_\_  
Notary Public, State of Hawaii

My commission Expires: \_\_\_\_\_

Date served: 8/12/1997

acknowledged that he executed the same as his free act and deed.

\_\_\_\_\_  
Notary Public, State of Hawaii

My commission Expires: \_\_\_\_\_

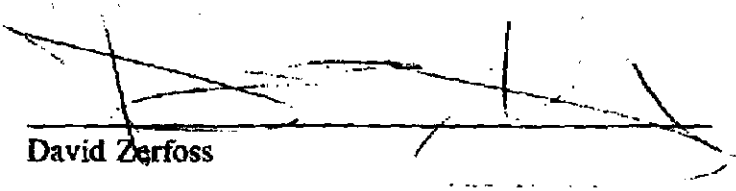
\_\_\_\_\_  
Robert E. Cooling

STATE OF HAWAII )  
 ) SS:  
CITY AND COUNTY OF HONOLULU : )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, before me personally appeared Robert E. Cooling, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

\_\_\_\_\_  
Notary Public, State of Hawaii

My commission Expires: \_\_\_\_\_

  
\_\_\_\_\_  
David Zerfoss

STATE OF HAWAII )  
 ) SS: DAVID ZERFOSS  
CITY AND COUNTY OF HONOLULU : )

On this 4 day of August, 1997, before me personally appeared David Zerfoss, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

  
\_\_\_\_\_  
Notary Public, State of Hawaii

My commission Expires: June 14, 2000

Date served: 8/12/1997