

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:
Glaser Capital Corporation, Claimant vs. Duane Kriener, Respondent.

Case Number: 97-05900

REPRESENTATION OF PARTIES

Claimant, Glaser Capital Corporation, "Glaser", hereinafter referred to as "Claimant", was represented by Thomas Glaser of Cincinnati, Ohio.

Respondent, Duane Kriener, "Kriener", hereinafter referred to as "Respondent", was represented by Kenneth R. Jones, Esq., of Nashville, Tennessee.

CASE INFORMATION

Statement of Claim filed on or about: December 19, 1997
Stephen M. Coffey, CEO of Claimant, Glaser Capital Corporation, signed the Uniform Submission Agreement: December 17, 1997
Statement of Answer filed by Respondent on or about: June 17, 1998
Respondent did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following cause of action: breach of written contract. The cause of action relates to the balance of certain margin accounts Respondent had with Claimant.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: contributory negligence; the doctrine of unclean hands; and failure to mitigate.

RELIEF REQUESTED

Claimant requested:	
Compensatory Damages	\$23,404.48
Interest	\$unspecified
Attorneys' Fees	\$unspecified
Other Costs	\$unspecified

Respondent requested that all claims be dismissed. Additionally, Respondent filed an Amended Answer and Counter claim requesting that all applicable agreements be rescinded, as well as:

Interest	\$unspecified
Attorneys' Fees	\$unspecified
Other Costs	\$unspecified

OTHER ISSUES CONSIDERED AND DECIDED

Respondent, Duane Kriener, filed in the Chancery Court of Tennessee a Motion to Vacate the original arbitration award in this matter. On or about March 25, 1999, the court granted Kriener's Motion to Vacate and ordered a rehearing before a new Panel of arbitrators.

Respondent (and Counter-Claimant), Duane Kriener, requested that the Panel review the matter on affidavit, and waived his right to a formal hearing on the merits. The Panel in this case viewed affidavits and ruled on the matter without a formal hearing, pursuant to Code section 10302.

Respondent, Kriener, did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code based on a written agreement with the Claimant and, having answered the claim and asserted a Counterclaim, is bound by the determination of the Panel on all issues submitted.

AWARD

After considering the pleadings and evidence presented, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Panel finds in favor of Respondent and Counter-Claimant, Duane Kriener, and awards \$474,947.50 in compensatory damages, as well as \$236,663.90 in interest, for a total award of **\$711,611.40**. Additionally, the Panel awards interest on the total award amount of \$711,611.40 at the rate of 10% per annum, accruing from March 18, 2000, until the date of payment.

Any and all relief not specifically addressed herein, including punitive [treble] damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$500

Counter claim filing fee = \$250

The Panel Orders Claimant, Glaser, to reimburse Respondent, Kriener, the \$250 Counter claim filing fee amount of \$250.

Member Fees

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 event giving rise to the dispute. In this matter, the member firm is Glaser Capital Corporation.

Member surcharge = \$400

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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:

One (1) Pre-hearing session with a single arbitrator x \$300	= \$ 300
Pre-hearing conference: July 2, 1998	1 session
One (1) Pre-hearing session with Panel x \$600	= \$ 600
Pre-hearing conference: January 27, 2000	1 session
Four (4) Hearing sessions x \$600	= \$2,400
Hearing Date(s): July 6, 1998	2 sessions
July 7, 1998	2 sessions
Total Forum Fees	= \$3,300

The Panel has assessed all \$3,300 of the forum fees to Claimant, Glaser Capital Corporation.

Fee Summary

1. Claimant, Glaser Capital Corporation, be and hereby is solely liable for:

Initial Filing Fee	= \$ 500
Member Fees	= \$ 400
Forum Fees	= \$3,300
Total Fees	= \$4,200
Less payments	= \$1,900
Balance Due NASD Regulation, Inc.	= \$2,300

2. Respondent and Counter-Claimant, Duane Kriener, be and hereby is solely liable for:

Counter claim Filing Fee	= \$ 250
Total Fees	= \$ 250
Less payments	= \$ 250
Balance Due NASD Regulation, Inc.	= \$ 0

As noted herein, Claimant, Glaser, is ordered to reimburse the above \$250 Counter claim filing fee directly to Respondent, Kriener.

With that noted exception, all balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signature(s)

Joe C. Loser, Jr.
Joe C. Loser, Jr., Esq.
Public Arbitrator, Presiding Chair

July 19, 2000
Signature Date

Joe P. Lane, Jr.
Joe P. Lane, Jr., Esq.
Public Arbitrator

July 17, 2000
Signature Date

Harvey W. McDonald
Harvey W. McDonald, Esq.
Industry Arbitrator

July 13, 2000
Signature Date

July 19, 2000
Date of Service (For NASD office use only)

Fee Summary

1. Claimant, Glaser Capital Corporation, be and hereby is solely liable for:

Initial Filing Fee	= \$ 500
Member Fees	= \$ 400
Forum Fees	= \$3,300
Total Fees	= \$4,200
Less payments	= \$1,900
Balance Due NASD Regulation, Inc.	= \$2,300

2. Respondent and Counter-Claimant, Duane Kriener, be and hereby is solely liable for:

Counter claim Filing Fee	= \$ 250
Total Fees	= \$ 250
Less payments	= \$ 250
Balance Due NASD Regulation, Inc.	= \$ 0

As noted herein, Claimant, Glaser, is ordered to reimburse the above \$250 Counter claim filing fee directly to Respondent, Kriener.

With that noted exception, all balances are due to NASD Regulation, Inc.

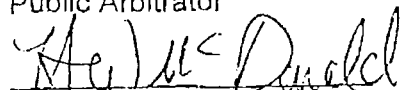
Concurring Arbitrators' Signature(s)

Joe C. Loser, Jr., Esq.
Public Arbitrator, Presiding Chair

Signature Date

Joe P. Lane, Jr., Esq.
Public Arbitrator

Signature Date



Harvey W. McDonald, Esq.
Industry Arbitrator



Signature/Date

Date of Service (For NASD office use only)

Fee Summary

1. Claimant, Glaser Capital Corporation, be and hereby is solely liable for:

Initial Filing Fee	= \$ 500
Member Fees	= \$ 400
<u>Forum Fees</u>	<u>= \$3,300</u>
Total Fees	= \$4,200
<u>Less payments</u>	<u>= \$1,900</u>
Balance Due NASD Regulation, Inc.	= \$2,300

2. Respondent and Counter-Claimant, Duane Kriener, be and hereby is solely liable for:

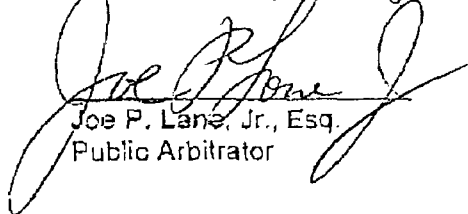
Counter claim Filing Fee	= \$ 250
Total Fees	= \$ 250
<u>Less payments</u>	<u>= \$ 250</u>
Balance Due NASD Regulation, Inc.	= \$ 0

As noted herein, Claimant, Glaser, is ordered to reimburse the above \$250 Counter claim filing fee directly to Respondent, Kriener.

With that noted exception, all balances are due to NASD Regulation, Inc

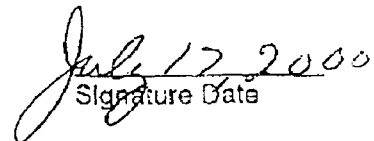
Concurring Arbitrators' Signature(s)

Joe C. Loser, Jr., Esq.
Public Arbitrator, Presiding Chair



Joe P. Lane, Jr., Esq.
Public Arbitrator

Signature Date



Signature Date

Harvey W. McDonald, Esq.
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

Fee Summary

1. Claimant, Glaser Capital Corporation, be and hereby is solely liable for:

Initial Filing Fee	= \$ 500
Member Fees	= \$ 400
Forum Fees	= \$3,300
Total Fees	= \$4,200
Less payments	= \$1,900
Balance Due NASD Regulation, Inc.	= \$2,300

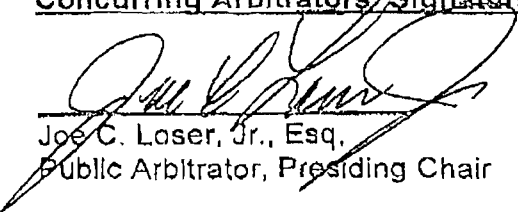
2. Respondent and Counter-Claimant, Duane Kriener, be and hereby is solely liable for:

Counter claim Filing Fee	= \$ 250
Total Fees	= \$ 250
Less payments	= \$ 250
Balance Due NASD Regulation, Inc.	= \$ 0

As noted herein, Claimant, Glaser, is ordered to reimburse the above \$250 Counter claim filing fee directly to Respondent, Kriener.

With that noted exception, all balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signature(s)


Joe C. Loser, Jr., Esq.
Public Arbitrator, Presiding Chair

7/19/00
Signature Date

Joe P. Lane, Jr., Esq.
Public Arbitrator

Signature Date

Harvey W. McDonald, Esq.
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD Regulation, Inc., Award

In the Matter of Arbitration Between

**Glaser Capital Corporation,
Claimant,**

and

No. 97-05900

**Duane Kriener,
Respondent.**

REPRESENTATION OF PARTIES

Claimant, Glaser Capital Corporation ("Glaser,") were represented by William B. Federman, Esquire, at Day Edwards Federman Propester & Christensen, P.C., located Oklahoma City, Oklahoma.

Respondent, Duane Kriener ("Kriener,") was represented by Martin H. Aussenberg, Esquire, of Memphis, Tennessee.

CASE INFORMATION

Claimant, Glaser's Statement of Claim was filed on or about January 2, 1998. Claimant, Glaser's Submission Agreement was signed on January 2, 1998.

Respondent, Kriener's Statement of Answer was filed on or about June 17, 1998. Respondent, Kriener's Submission Agreement was signed on December 17, 1997 by Stephen M. Coffey, CFO of Glaser Capital Corporation.

HEARING INFORMATION

The pre-hearing was held on July 2, 1998 at 3:00 p.m., for one (1) session. The hearing was held on July 6 and 7, 1998, at 9:00 a.m. each day, for two (2) sessions each day in Nashville, Tennessee.

CASE SUMMARY

Glaser Capital Corporation ("Claimant,") asserted that Duane Kriener, who was a customer of Glaser's since 1995, has failed to pay a debit in his account in an amount in excess of \$23,404.48. Claimant said that in May of 1997, Kriener was informed of the need to liquidate his account due to his failure to meet the Federal Call and House Calls, and still did not pay the funds despite repeated demands by the Claimant.

Duane Kriener ("Respondent,") denied any wrongdoing as alleged in the Claimants' Statement of Claim. Respondent said that he was induced to purchase shares of Duramed, because of misrepresentations of Claimant that the stock was extremely undervalued and would grow rapidly when the FDA approved a particular drug. Furthermore, Respondent said that Claimant represented that it had privileged insider information and as evidence of such, Claimant sent him documents of Duramed which had the stamp "For Internal Use Only," which indicated that his investment would be successful. As of May 1, 1997, Respondent said that his Account consisted of 31,215 shares of Duramed, with a market value of \$10.00 per share, and also had a margin debit balance of \$229,600.52 (\$145,524.52 as a margin loan and \$84,076.00 in short options,) for a net value of \$89,451.48. On May 6, 1997, however, Respondent explained how the market value of Duramed stock plummeted from approximately \$10.38 to \$5.25, and as such, caused the stock to exceed the margin loan by \$18,354.23. Respondent said that on May 7, 1997, he then received a Western Union Mailgram from Alex Brown & Sons, to respond to the maintenance call on his account or they would sell securities in his account in order to reduce his margin debit. He said on that day, he called and ordered Glaser Capital to liquidate his entire position in Duramed, but that Claimant tried to convince him not to sell and then ignored his order to sell. Later, Respondent said that Glaser Capital did sell the stock, but not until May 12 (10,000 shares), May 13 (6,000 shares,) May 20 (1,000 shares,) May 28 (9,500 shares,) and May 29 (4,715 shares.) Respondent said he believed that Glaser Capital's failure to liquidate his holdings of Duramed stock caused Respondent to incur additional and unnecessary losses, and that these losses resulted in gains to other sellers who were able to "get out" before Respondent's stock was sold. Respondent asserted that the Claimant lacked standing to seek recovery, that Claimant should be barred from recovery by virtue of its' breach of fiduciary duty, fraud, violation of NASD rules and regulations, failure to mitigate damages, beach of contract, and by the doctrine of unclean hands.

According to Respondent, the Claimant was not registered as a broker-dealer nor were any of the Claimant's agents or employees who were acting as brokers/salespersons with respect to the Respondent's account, registered with the state of Tennessee during the period of time that virtually all of the transactions in the Respondent's account, which gave rise to Claimant's claims occurred. Therefore, Respondent counterclaimed for rescission, both under Tennessee law and under principles of equity, of all transactions effected in his account during the period Claimant was in violation of the registration requirement.

RELIEF REQUESTED

Claimant, Glaser Capital Corporation, requested an award for \$23,404.48 in actual damages, as well as costs and attorney fees related to this matter. Claimant also requested interest be awarded pursuant to its contract.

Respondent, Duane Kriener, requested that the claims asserted against him be dismissed in their entirety, that the named transactions be rescinded, and that he be awarded his costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by/on behalf of Claimant, Glaser Capital Corporation, the undersigned Arbitrators have determined that Respondent, Duane Kriener, has been properly served with the Statement of Claim pursuant to Rules 10302 and 10314 of the NASD Code of Arbitration Procedure ("the Code.") The undersigned Arbitrators have also determined that Respondent, Duane Kriener, did receive due notice of the hearing as required under Rule 10318 of the Code.

Respondent, Duane Kriener, did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration, but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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. In either case, the parties have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

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

1. That Respondent, Duane Kriener is liable for and shall pay to Claimant, Glaser Capital Corporation, the sum of \$25,000.00 in compensatory damages;
2. That Respondent, Duane Kriener is liable for and shall pay to Claimant, Glaser Capital Corporation, the sum of \$3,750.00 in attorneys' fees; In deciding to award attorneys' fees the panel considered the arguments presented by claimant's counsel, as well as the statutory law and case law presented by claimant's counsel, and determined that the authority existed for an award of attorneys fees to the Claimant, Glaser Capital Corporation; and,
3. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$600.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There was one (1) pre-hearing conference x \$300.00 plus (+) there were four (4) hearing sessions x \$600.00 = \$2,700.00 in total forum fees.

Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure (the "Code,) a hearing session is any meeting between the parties and the Arbitrator(s), including a pre-hearing conference with an Arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the Code, Claimant, Glaser Capital Corporation, has paid to the NASD Regulation, Inc., Office of Dispute Resolution, the non-refundable filing fee of \$500.00 and has also paid the hearing session deposit of \$600.00. Respondent, Duane Kriener, is liable for the forum fees in this matter and shall pay the sum of \$2,100.00 to NASD Regulation, Inc., Office of Dispute Resolution.

Fees are payable to the NASD Regulation, Inc., Office of Dispute Resolution.

OTHER FEES

Pursuant to Rule 10333 of the Code, Respondent, Glaser Capital Corporation, shall pay to the NASD Regulation, Inc., Office of Dispute Resolution, the \$400.00 past due member surcharge previously invoiced.

Fees are payable to the NASD Regulation, Inc., Office of Dispute Resolution.

Concurring Arbitrators' Signatures:

/s/ Peter J. Towle

September 25, 1998

Peter J. Towle, Esq.
Chairperson
Public Arbitrator

Date

/s/ Michael A. Meyer

September 29, 1998

Michael A. Meyer, Esq.
Panelist
Public Arbitrator

Date

/s/ Richard G. Isaac

September 21, 1998

Richard G. Isaac
Panelist
Industry Arbitrator

Date