

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

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In the Matter of the Arbitration Between:

Rosemarie D'Alessandro and Frank D'Alessandro, Rosemarie D'Alessandro, Custodian for Michael John D'Alessandro, and Rosemarie D'Alessandro, Custodian for John Charles D'Alessandro, (Claimants) v. Investors Associates, Inc., Lesley Betts, and Francois Xavier Poirier, (Respondents)

Case Number: 98-00384

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimants Rosemarie D'Alessandro and Frank D'Alessandro, Rosemarie D'Alessandro, Custodian for Michael John D'Alessandro, and Rosemarie D'Alessandro, Custodian for John Charles D'Alessandro, hereinafter collectively referred to as "Claimants": Mark F. Heinze, Esq. Of Eck & Heinze, LLP, New York, NY.

Respondent Investors Associates, Inc. ("Investors") did not enter an appearance in this matter.

Respondent Lesley Betts ("Betts") did not enter an appearance in this matter.

Respondent Francois Xavier Poirier ("Poirier"): Lawrence R. Gelber, Esq., Brooklyn, NY. Previously appeared *pro se*.

**CASE INFORMATION**

Statement of Claim filed on or about: January 30, 1998.

Claimants signed the Uniform Submission Agreement: January 23, 1998.

Statement of Answer and Motion to Dismiss filed by Respondent Poirier on or about: March 30, 1998.

Poirier signed the Uniform Submission Agreement: March 27, 1998.

Investors did not submit a Statement of Answer or sign a Uniform Submission Agreement.

Betts did not submit a Statement of Answer or sign a Uniform Submission Agreement.

### **CASE SUMMARY**

Claimants asserted the following causes of action: wrongful acts and omissions, negligence, breach of fiduciary duty, unsuitability, churning, breach of contract, breach of implied covenant of good faith and fair dealing, vicarious liability, and failure to supervise.

Claimants' claims involved unspecified stocks.

Unless specifically admitted in his Answer, Respondent Poirier denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested:

1. Compensatory damages in the amount of \$39,153.01, plus interest;
2. Recision of all unsuitable trades;
3. Attorneys' fees;
4. Commissions; and
5. Such other and further relief as the Panel deems just and proper.

Poirier requested the claims should either be denied or dismissed in their entirety, and the Panel should render such other and further relief as justice and equity require.

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

On or about December 10, 2002, Respondent Poirier filed a Motion to Dismiss. On or about December 13, 2002. Claimants submitted Affidavits in Support of their Claim in Arbitration. After due deliberation, the Panel determined to grant said Motion to Dismiss, thereby, dismissing Claimants' claims in their entirety, with prejudice.

Respondents Betts and Investors did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but are required to submit to arbitration pursuant to the Code and are bound by the determination of the 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.

### **AWARD**

After considering the pleadings, including the Motion to Dismiss filed by Respondent Poirier and all responses thereto, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are hereby dismissed, with prejudice, in their entirety.
2. Any and all relief not specifically addressed herein is denied.

### **FEES**

*Pursuant to 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 = \$120.00

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Six (6) Pre-hearing sessions with Panel @ \$400.00 = \$2,400.00

Pre-hearing conferences:	February 16, 1999	1 session
	June 3, 1999	1 session
	July 12, 1999	1 session
	October 15, 1999	1 session
	September 20, 2000	1 session
	November 3, 2000	1 session

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Total Forum Fees = \$2,400.00

1. The Panel has assessed all of the forum fees jointly and severally against Respondents Investors, Betts, and Poirier.

**Fee Summary**

1. Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 120.00
Total Fees	= \$ 120.00
<u>Less payments</u>	= \$ 520.00
Refund Due Claimant	= \$ 400.00

2. Respondents Investors, Betts, and Poirier are jointly and severally liable for:

<u>Forum Fees</u>	= \$2,400.00
Balance Due NASD Dispute Resolution	= \$2,400.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.
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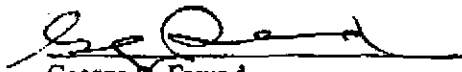
NASD Dispute Resolution  
Arbitration No. 98-00384  
Award Page 5 of 5

**ARBITRATION PANEL**

George R. Freund	--	Public Arbitrator, Presiding Chair
Martin D. Sklar	-	Public Arbitrator
Michael G. Schwartz	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.

  
George R. Freund  
Public Arbitrator, Presiding Chairperson

8/7/03  
Signature Date

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Martin D. Sklar  
Public Arbitrator

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

\_\_\_\_\_  
Michael G. Schwartz  
Non-Public Arbitrator

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Signature Date

August 12, 2003  
Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution  
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Award Page 5 of 5

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