

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

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**In the Matter of the Arbitration Between:**

Name of the Claimant  
Dr. Andrew Hirschl

Case Number: 99-00200

Names of the Respondents  
Stephen Roger Schwartz  
A.F. Best Securities, Inc.  
Julius Baer Securities, Inc.

Hearing Site: Boca Raton, Florida

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**REPRESENTATION OF PARTIES**

For Dr. Andrew Hirschl ("Hirschl"), hereinafter referred to as "Claimant": Adam C. Hall, Esq., Hall, David and Joseph, P.A., Miami, Florida.

For Respondents Stephen Roger Schwartz ("Schwartz") and A.F. Best Securities, Inc. ("AFB"): Samantha N. Tesser, Esq., Adorno & Yoss, Fort Lauderdale, Florida.

For Respondent Julius Baer Securities, Inc. ("Baer"): Michael S. Helfer and Satish M. Kini, Wilmer, Cutler & Pickering, Washington, DC.

**CASE INFORMATION**

Statement of Claim filed on or about: January 19, 1999.

Amended Statement of Claim filed on or about: October 22, 2001.

Claimant signed the Uniform Submission Agreement: January 11, 1999 and May 17, 1999.  
Statement of Answer and Motion to Dismiss filed by Respondent Baer on or about: August 2, 1999.

Claimant's Response to Motion to Dismiss and Claimant's Motion to Abate filed on or about: September 9, 1999.

Respondent Baer's Opposition to Claimant's Motion to Abate filed on or about: September 28, 1999.

Statement of Answer filed by Respondents Schwartz and AFB on or about: December 20, 1999.

Statement of Answer to Amended Statement of Claim filed by Respondents Schwartz and AFB on or about: February 26, 2002.

Respondents Baer, Schwartz and AFB did not file executed Uniform Submission Agreements.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) violations of Florida Statutes, Sections 517.301 and 517.211; 2) negligent misrepresentation; 3) violations of the rules and regulations of the Municipal Securities Rules Board; and 4) breach of fiduciary duty. The

causes of action relate to the purchase of Florida Housing Finance Agency Multi-family Housing-Lake Side Series A municipal bonds.

Unless specifically admitted in its Answer, Respondent Baer denied the allegations made in the Statement of Claim and asserted various defenses.

Unless specifically admitted in their Answer and Answer to Amended Statement of Claim, Respondents Schwartz and AFB denied the allegations made in the Statement of Claim and the Amended Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

In his Statement of Claim, Claimant requested compensatory damages of \$100,215.28. In his Amended Statement of Claim, Claimant requested compensatory damages of \$90,000.00, rescission, plus interest, attorneys' fees, the costs of this proceeding and such other relief as is deemed just and proper.

Respondent Baer requested that all claims against it be dismissed, that it be awarded its costs, including reasonable expenses and attorneys' fees, and that it be awarded the \$1,500.00 surcharge paid by Respondent Baer to NASD.

Respondents Schwartz and Best requested that all claims against them be dismissed, that they be awarded their costs and attorneys' fees and any other relief as is deemed appropriate. In addition, Respondent Schwartz requested that all references to this matter be expunged from his NASD Central Registration Depository ("CRD") record.

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

Respondents Baer, Schwartz and AFB did not file with NASD Dispute Resolution, properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the undersigned Arbitrators (the "Panel") on all issues submitted.

On November 18, 1999, the Panel denied Claimant's Motion to Abate, granted Respondent Baer's Motion to Dismiss without prejudice and ordered a refund of the \$1,500.00 member surcharge paid by Respondent Baer to NASD. Thereafter, the Panel ordered a refund of the \$600.00 pre-hearing processing fee paid by Respondent Baer to NASD.

On April 27, 2000, the Panel granted the parties' joint request to abate the arbitration proceedings.

On October 22, 2001, the Panel granted Claimant's request to reactivate the arbitration proceeding and to amend his Statement of Claim.

On October 23, 2002, the panel adjourned the evidentiary hearing pending settlement of the arbitration by the parties.

On or about November 25, 2002, Claimant informed NASD that he had settled his dispute with Respondents Schwartz and AFB.

### **AWARD**

After considering the pleadings, the testimony, the evidence presented at the hearing, and the parties' request for a Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondent Schwartz are dismissed with prejudice.
2. All claims against Respondent Baer are dismissed without prejudice.
3. Claimant has entered into a settlement agreement with Respondent AFB. Pursuant to the settlement agreement, Respondent AFB shall pay to Claimant the sum of \$12,500.00.
4. The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Schwartz' registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Schwartz must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
5. All parties to the above captioned arbitration agree to bear their own costs and attorneys' fees. All other relief requests not specifically addressed herein are 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	= \$ 200.00
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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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, AFB is a party. In addition, Baer is a member firm and was a party to this action; however, the Panel's orders waived Respondent Baer's member fees.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

May 9 through May 11, 2000 hearing dates, adjournment requested jointly by all parties. The Panel granted the adjournment and waived the adjournment fee.

July 22 through July 24, 2002 hearing dates, adjournment requested by Claimant. The Panel assessed the adjournment fee of \$750.00 to Claimant.

August 5 through August 7, 2002 hearing dates, adjournment requested by Respondents AFB and Schwartz. The Panel assessed the adjournment fee of \$750.00 to Respondent AFB.

### **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.

No injunctive relief fees were incurred during this proceeding.

### **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:

Two (2) Pre-hearing sessions with Panel @ \$500.00		= \$1,000.00
Pre-hearing conferences:		
November 22, 1999	1 session	
November 23, 1999	1 session	
Two (2) Hearing sessions @ \$500.00		= \$1,000.00
Hearing Date:	October 23, 2002	2 sessions
Total Forum Fees		= \$2,000.00

Pursuant to the agreement of the parties, the Panel has assessed \$1,000.00 of the forum fees to Claimant.

Pursuant to the agreement of the parties, the Panel has assessed \$1,000.00 of the forum fees jointly and severally to Respondents AFB and Schwartz.

### **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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

**Signature**   **Date**

/s/            
Frances D. Sheehy, Esq.  
Public Arbitrator

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

          /s/            
V. Michael Arias  
Non-Public Arbitrator

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

July 2, 2003

Date of Service (For NASD Dispute Resolution office use only)

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No administrative fees were incurred during this proceeding.

Fee Summary

1.	Claimant is solely liable for:	
	Initial Filing Fee	= \$ 200.00
	Adjournment Fee	= \$ 750.00
	Forum Fees	= \$1,080.00
	Total Fees	= \$1,950.00
	Less payments	= \$ 950.00
	Balance Due NASD Dispute Resolution	= \$1,000.00
2.	Respondent AFB is solely liable for:	
	Member Fees	= \$4,600.00
	Adjournment Fee	= \$ 750.00
	Total Fees	= \$5,350.00
	Less payments	= \$5,350.00
	Balance Due NASD Dispute Resolution	= \$ 0.00
3.	Respondents AFB and Schwartz are jointly and severally liable for:	
	Forum Fees	= \$1,000.00
	Total Fees	= \$1,000.00
	Less payments	= \$ 0.00
	Balance Due NASD Dispute Resolution	= \$1,000.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10130(g) of the Code.

ARBITRATION PANEL


Paul E. Morgan, Esq.	-	Public Arbitrator, Presiding Chairperson
Frances D. Sheehy, Esq.	-	Public Arbitrator
V. Michael Ariz, Esq.	-	Non Public Arbitrator

Concurring Arbitrators' Signatures

*Paul E. Morgan*

Paul E. Morgan, Esq.  
 Public Arbitrator, Presiding Chairperson

*06/30/03*  
 Signature Date

  
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Frances D. Sheehy, Esq.  
Public Arbitrator

6/29/03  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
V. Michael Arias  
Non-Public Arbitrator

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

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\_\_\_\_\_  
Frances D. Sheehy, Esq.  
Public Arbitrator

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

  
\_\_\_\_\_  
V. Michael Arias  
Non-Public Arbitrator.

7/1/03  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)