

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:

Eduardo Acuna, (Claimant) vs. Robert Cruces, Joseph Crispino, Edward Duffy, Briarwood Investment Counsel, and Hanifen, Imhoff Clearing Corp., (Respondents)

Case Number: 99-00799

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Eduardo Acuna ("Acuna"), hereinafter referred to as "Claimant", appeared *pro se*.

Respondent, Robert Cruces ("Cruces"), appeared *pro se*.

Respondent, Joseph Crispino ("Crispino"), appeared *pro se*. Previously represented by: Daniel H. Hecht, Esq., Kaufmann, Feiner, Yamin, Gildin & Robbins, LLP, New York, NY.

Respondent, Hanifen, Imhoff Clearing Corp. ("Hanifen"): Steven D. Plissey, Esq., Williams, Youle & Koenigs, P.C., Denver, CO.

Respondent, Briarwood Investment Counsel ("Briarwood"): Michael P. Gilmore, Esq., Wexler & Burkhardt, P.C., Mitchel Field, NY.

Respondent, Edward Duffy ("Duffy") did not enter an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: February 18, 1999.

Claimant signed the Uniform Submission Agreement: January 7, 1999.

Statement of Answer filed by Cruces on or about: March 20, 1999.

Cruces signed the Uniform Submission Agreement: March 20, 1999.

Statement of Answer filed by Crispino on or about: May 10, 1999.

Crispino signed the Uniform Submission Agreement: April 23, 1999.

Statement of Answer and Motion to Dismiss filed by Hanifen on or about: March 24, 1999.

Hanifen signed the Uniform Submission Agreement: March 16, 1999.

Briarwood did not file a Statement of Answer or sign a Uniform Submission Agreement.

Duffy did not file a Statement of Answer or sign a Uniform Submission Agreement.

### **CASE SUMMARY**

Claimant asserted the following causes of action: failure to execute a sell order; misrepresentation; breach of contract; breach of fiduciary responsibility; negligence; fraudulent activities; and successor liability.

Unless specifically admitted in his Answer, Respondent Cruces denied the allegations made in the Statement of Claim.

Unless specifically admitted in his Answer, Respondent Crispino denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant was kept informed and aware of the status of his account at all times, and Claimant did not request that Crispino sell the stock in question until July 1998, at which time the sell order was complied with.

Unless specifically admitted in its Answer, Respondent Hanifen denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted; Hanifen is not in any way liable for the actions of the other Respondents; Claimant's claims are barred by the doctrines of estoppel, assumption of risk, waiver, and laches; and Claimant failed to mitigate his damages.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$17,647.74, together with consequential damages, interest, costs, reasonable attorneys' fees (if necessary), punitive damages, and such other relief as the Arbitrator may consider appropriate.

Respondent Crispino requested that all claims against him be dismissed, that he be awarded his costs and attorneys' fees, and that all reference to this case on his CRD be expunged.

Respondent Hanifen requested that the claims against it be denied, that it be awarded attorneys' fees, expert witness fees, and costs pursuant to its agreement with Claimant, and that other relief be granted as the Arbitrator deems appropriate.

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

Upon review of the file and the representations made by the Claimant, the undersigned arbitrator (the "Arbitrator") determined that Respondent Duffy has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents Briarwood and Duffy did not file with the NASD Regulation, Inc. Office of Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Arbitrator on all

issues submitted.

Prior to the hearings in this matter, Respondent Hanifen had made a Motion to Dismiss. The Arbitrator granted this Motion after hearing Claimant's testimony.

During the hearings in this matter, Respondent Briarwood made a Motion to Dismiss. After due consideration, the Arbitrator denied this Motion.

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, the testimony and evidence presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Duffy be and hereby is liable and shall pay to Claimant the sum of \$8,647.74 as compensatory damages, plus interest at the rate of 9% per annum from February 20, 1998 to May 17, 2000.
2. Upon confirmation of this Award by a court of competent jurisdiction, NASD Regulation, Inc. shall expunge all references to this arbitration from the permanent CRD records of Respondents Cruces, Crispino, and Briarwood.
3. All other requests for relief are hereby 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	= \$ 75.00
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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 persons at the time of the events giving rise to the dispute. In this matter, Briarwood Investment Counsel and Hanifen, Imhoff Clearing Corp. are parties.

Briarwood Investment Counsel

Member surcharge = \$400.00

Hanifen, Imhoff Clearing Corp.

Member surcharge = \$400.00

Forum Fees and Assessments

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

One (1) Pre-hearing session with a single arbitrator x \$300.00 = \$300.00  
Pre-hearing conference: September 28, 1999 1 session

Two (2) Hearing sessions x \$300.00 = \$600.00  
Hearing Date: May 17, 2000 2 sessions

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Total Forum Fees = \$900.00

The Arbitrator has assessed all of the forum fees against Duffy.

Fee Summary

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 75.00
Total Fees	= \$ 75.00
<u>Less payments</u>	= \$500.00
Refund Due Claimant	= \$425.00

2. Duffy be and hereby is solely liable for:

<u>Forum Fees</u>	= \$900.00
Total Fees	= \$900.00
<u>Less Payments</u>	= \$ 0.00
Balance Due NASD Regulation, Inc.	= \$900.00

3. Briarwood be and hereby is solely liable for:

<u>Member Fees</u>	= \$400.00
Total Fees	= \$400.00
<u>Less payments</u>	= \$400.00
Balance Due NASD Regulation, Inc.	= \$ 0.00

4. Hanifen be and hereby is solely liable for:

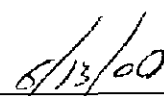
<u>Member Fees</u>	= \$400.00
<u>Total Fees</u>	= \$400.00
<u>Less Payments</u>	= \$400.00
Balance Due NASD Regulation, Inc.	= \$ 0.00

All balances are due and payable to NASD Regulation, Inc.

**Concurring Arbitrators' Signature**

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 which is my award.

  
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Vincent C. Pangia  
Public Arbitrator

  
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Signature Date

June 22, 2000  
Date of Service (For NASD office use only)