

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Adrian S. McOmber, Claimant vs. Bruce Howard Chmara, Respondent.

Case Number: 99-01505

Hearing Site: San Francisco, California

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**REPRESENTATION OF PARTIES**

Claimant, Adrian S. McOmber ("McOmber"), hereinafter referred to as "Claimant": Craig S. Fox, Esq., King, Snell, Mildwurm & Fox, Fremont, California

Respondent, Bruce Howard Chmara ("Chmara"), hereinafter referred to as "Respondent": Elizabeth Lowery, Esq., Fields, Fehn & Sherwin, Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed on or about: March 22, 1999

Claimant's Summary of Case filed on or about: April 26, 2000

Claimant's Arbitration Brief filed on or about: July 24, 2000

Claimant, McOmber, signed the Uniform Submission Agreement: March 22, 1999

Statement of Answer filed by Respondent, Chmara, on or about: September 1, 1999

Respondent's Summary of Case filed on or about: April 26, 2000

Respondent's Arbitration Brief and Request for Sanctions against Claimant filed on or about: May 5, 2000

Respondent, Chmara, signed the Uniform Submission Agreement: September 2, 1999

**CASE SUMMARY**

Claimant alleged that Respondent Chmara, a broker from First Cambridge Securities which is no longer in business, solicited him to invest in securities. Claimant further alleged that in the end of July 1996 Claimant became dissatisfied with Respondent when he received margin calls and was told by Respondent to ignore them. Claimant further alleged that Respondent repeatedly refused to provide information about Claimant's account, refused to fully explain the transactions, and refused to liquidate Claimant's account. Claimant further alleged that Respondent's conduct constitutes breach of contract, breach of fiduciary duty, breach of the implied covenant of good faith and fair dealing, and intentional infliction of emotional distress.

Respondent Chmara denied each and every allegation in the Statement of Claim. Respondent asserts that Claimant is a sophisticated investor with over thirty years of investment experience, who knew and understood the risks involved in his investments and was actively involved in the management of his portfolio. Respondent alleged that Claimant had an account at First

Cambridge with Respondent Chmara from December of 1995 to May of 1997, but did not file the Statement of Claim until March of 1999, despite receiving written confirmations of each trade and accurate monthly account statements. Respondent further alleged that Claimant told Mr. Chmara that he was open to purchasing securities with varying degrees of risk. Respondent further alleged that prior to making each investment decision, Mr. Chmara fully informed Claimant of the nature of each security contemplated for his portfolio, in addition to providing Claimant written materials such as research reports to consider. Respondent further alleged that he spoke with Claimant after each trade to confirm its execution.

### **RELIEF REQUESTED**

Claimant requested:

1. Damages in the amount of \$18,731.91;
2. Interest in the amount of \$6,864.31;
3. Punitive damages pursuant to Civil Code Section 3294;
4. Attorney's fees pursuant to the elder abuse statutes contained in Welfare and Institutions Code 15657 and under the public benefit theory; and
5. Costs.

Respondent Chmara requested dismissal of Claimant's claims in their entirety, that all forum fees for this arbitration be assessed to Claimant, and that Respondent be awarded the costs and attorneys fees he incurred in this matter. Respondent also requested sanctions against Claimant for discovery abuses in the amount of at least \$1,000.00.

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

Presiding Arbitrator Leba G. Wine granted Respondent Chmara's request for a waiver of the \$450.00 postponement fee in connection with the adjourned hearing date of May 12, 2000.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submission, the Presiding Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims by Claimant, including the claims for costs and punitive damages, are denied.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Bruce Howard Chmara's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Chmara must obtain confirmation from a court of

competent jurisdiction before the CRD will execute the expungement directive.

3. Claimant is liable for and shall pay to Respondent Chmara costs in the amount of \$362.50 for appearance of third-party witness, Robert Zieger in accordance with Rule 10322(b) of the NASD-DR Code of Arbitration Procedure.

4. All other costs/sanctions requested by Respondent Chmara are denied.

5. The parties shall each bear their respective attorney's fees incurred in this matter.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$125.00
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#### **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 x \$450.00	= \$450.00
Pre-hearing conference: February 2, 2000	1 session
Two (2) Hearing sessions x \$450.00	= \$900.00
Hearing Date: August 8, 2000	2 sessions
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Total Forum Fees	= \$1,350.00

The Panel has assessed the \$1,350.00 in forum fees to Claimant, McOmber.

#### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

The parties did not incur administrative costs.

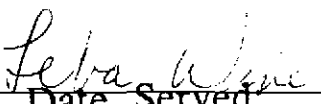
**Fee Summary**

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

Initial Filing Fee	= \$ 125.00
Forum Fees	= \$1,350.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$1,475.00
<u>Less payments</u>	= \$ 575.00
Balance Due NASD Regulation, Inc.	= \$ 900.00

All balances are due to NASD Dispute Resolution, Inc. and are payable within 30 days of the service date of this Award.

**Presiding Arbitrator's Signature**

  
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Leba G. Wine, Esq.  
Public Arbitrator  
**SEP 11 2000**

9/8/00  
\_\_\_\_\_  
Signature Date

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

Date Served:  
**SEP 11 2000**