

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

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In the Matter of the Arbitration Between:

Stanley S. Bey, (Claimant) vs. J.B. Hanauer & Co. and John Kessler, (Respondents)

Case Number: 99-01691

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Stanley S. Bey, hereinafter referred to as "Claimant": Edwin A. Zipf, Esq., Bressler, Amery & Ross, P.C., Florham Park, NY.

Respondents, J.B. Hanauer & Co. ("Hanauer") and John Kessler ("Kessler"), hereinafter collectively referred to as "Respondents": Richard C. Szuch, Esq., Lowenstein Sandler PC, Roseland, NJ.

**CASE INFORMATION**

Statement of Claim filed on or about: April 6, 1999.

Claimant signed the Uniform Submission Agreement: March 18, 1998.

Joint Statement of Answer filed by Respondents on or about: August 20, 1999.

Hanauer signed the Uniform Submission Agreement: June 10, 1999.

Kessler signed the Uniform Submission Agreement: June 10, 1999.

**CASE SUMMARY**

Claimant asserted the following causes of action: churning; unsuitability; unauthorized trading; breach of contract; fraud; misrepresentation; breach of fiduciary duty; negligence and gross negligence; and respondent superior. Claimant's Claim involved unspecified bonds.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant has failed to state a claim for which relief may be granted; this arbitration is barred by the applicable statutes of limitation; at all relevant times Claimant had, or should have had, full knowledge of all material facts concerning his account, including the positions maintained and the transactions made therein; Claimant authorized and directed the execution of all transactions in his account; Claimant authorized and ratified all transactions in his account with full knowledge of all material facts with respect thereto; Claimant's claims are barred by the applicable principles of waiver and ratification; Claimant, with full knowledge of all material facts

concerning his account, waived the alleged claims set forth in the Statement of Claim and the alleged damage resulting therefrom by failing to take timely and appropriate action prior to incurring such damage; Respondents, in discharging their duties, if any, to Claimant acted in good faith and exercised at least that degree of care, diligence, and skill which ordinary prudent men would exercise in similar circumstances and like positions; no fiduciary duty existed between Claimant and Respondents pursuant to applicable law; and as a matter of law, punitive damages and/or attorneys' fees may not be awarded by the Panel.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the approximate amount of \$2,000,000.00, plus punitive damages, costs, and counsel fees.

Respondents requested an Award dismissing the claims contained in the Statement of Claim with prejudice, and granting such other and further relief as the Panel deems appropriate.

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

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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are hereby denied in their entirety.
2. All other requests for relief are hereby denied.

### **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 = \$ 500.00

#### **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 events giving rise to the dispute. In this matter, J.B. Hanauer & Co. is a party.

Member surcharge = \$ 2,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$ 4,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

Oct. 10, 11, 12, 17 & 18, 2000, adjournment by both sides = \$ 600.00 each

Jan. 17, 2001, adjournment by Claimant = WAIVED

#### **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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00 = \$ 450.00

Pre-hearing conference: November 14, 2000 1 session

Two (2) Pre-hearing sessions with Panel x \$1,200.00 = \$ 2,400.00

Pre-hearing conferences: March 7, 2000 1 session

September 12, 2000 1 session

Eleven (11) Hearing sessions x \$1,200.00		= \$13,200.00
Hearing Dates:	December 14, 2000	2 sessions
	December 15, 2000	2 sessions
	May 3, 2001	2 sessions
	May 4, 2001	2 sessions
	October 29, 2001	1 session
	January 28, 2002	2 sessions
Total Forum Fees		= \$16,050.00

1. The Panel has assessed \$8,025.00 of the forum fees against Claimant.
2. The Panel has assessed \$8,025.00 of the forum fees against Hanauer.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 500.00
Adjournment Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$8,025.00</u>
Total Fees	= \$9,125.00
<u>Less payments</u>	<u>= \$2,300.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$6,825.00

2. Hanauer be and hereby is solely liable for:

Member Fees	= \$7,600.00
<u>Forum Fees</u>	<u>= \$8,025.00</u>
Total Fees	= \$15,625.00
<u>Less payments</u>	<u>= \$7,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$8,025.00

3. Respondents be and hereby are jointly and severally liable for:

<u>Adjournment Fee</u>	<u>= \$ 600.00</u>
Total Fees	= \$ 600.00
<u>Less payments</u>	<u>= \$ 600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00


All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

John F. Tague, III, Esq.	-	Public Arbitrator, Presiding Chair
Arthur J. Kresch	-	Public Arbitrator
Marc R. Green, Esq.	-	Industry 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 which is my award.

  
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John F. Tague, III, Esq.  
Public Arbitrator, Presiding Chair

3/28/02  
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Signature Date

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Arthur J. Kresch  
Public Arbitrator

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Signature Date

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Marc R. Green, Esq.  
Industry Arbitrator

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Signature Date

April 8, 2002  
\_\_\_\_\_  
Date of Service (For NASD office use only)

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