

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

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In the Matter of the Arbitration Between

**Names of Claimants**

Dominic A. Cifelli, Sr.  
Mildred V. Cifelli

Case No. 99-02377

**Names of Respondents**

Palm State Equities, Inc.  
Timothy D. Lucas  
David Alterman  
Alliance Capital Management Corp.  
Steven E. Hutek  
Southern Capital Securities, Inc.

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**REPRESENTATION OF PARTIES**

For Dominic A. Cifelli and Mildred V. Cifelli, hereinafter collectively referred to as "Claimants": Kalju Nekvasil, Esq. of Goodman & Nekvasil, P.A., Clearwater, Florida.

For Palm State Equities, Inc. ("Palm State") and Timothy D. Lucas ("Lucas"): Burton W. Wiand, Esq. and Katherine C. Lake, Esq. of Fowler, White, Gillen, Boggs, Villareal and Banker, P.A., Tampa, Florida.

David Alterman ("Alterman") appeared pro se.

For Alliance Capital Management Corp. ("Alliance Capital"): Clifford J. Hunt, Esq. of Becker & Poliakoff, P.A., Tampa, Florida.

Steven E. Hutek ("Hutek") did not appear.

Southern Capital Securities, Inc. ("Southern Capital") did not appear.

**CASE INFORMATION**

Statement of Claim filed on or about: May 24, 1999.

Amended Statement of Claim filed on or about: October 27, 1999.

Claimants signed Uniform Submission Agreements on: April 21, 1999.

Statement of Answer filed by Respondents Palm State and Lucas on or about: October 18, 1999.

Respondents Palm State and Lucas did not file executed Uniform Submission Agreements.

Statement of Answer filed by Respondent Alterman on or about: July 19, 1999.  
Respondent Alterman signed the Uniform Submission Agreement on: July 15, 1999.  
Motion to Dismiss filed by Respondent Alliance Capital on or about: February 11, 2000.  
Respondent Alliance Capital did not file an executed Uniform Submission Agreement.  
Respondents Hutek and Southern Capital did not file Statements of Answer or executed Uniform Submission Agreements.

### CASE SUMMARY

Claimants asserted the following causes of action: 1) violations of the Florida Securities and Investor Protection Act; 2) breach of contract; 3) common law fraud; 4) constructive fraud through breach of fiduciary duty; 5) breach of fiduciary duty; 6) negligence; 7) gross negligence; and 8) unjust enrichment. The causes of action relate to investments in high risk, illiquid, long-term promissory notes and limited partnerships, namely, Keller Financial Services of West Florida, Inc. Secured Note, Keller Financial Services of North Florida Secured Promissory Note - Series A, ICON Cash Flow Partners L.P. Six, and ICON Cash Flow Partners L.P. Seven.

Unless specifically admitted in their Answer, Respondents Palm State and Lucas denied the allegations made in the Statement of Claim and asserted the following defenses: 1) Claimants are barred from recovery by the doctrines of estoppel, waiver, ratification, comparative negligence, assumption of the risk, unclean hands, laches, and statute of limitations; 2) Claimants' losses, if any, were caused by acts, events or conditions beyond the control of Respondents Palm State and Lucas; 3) Claimants failed to act with due diligence in connection with their investments; 4) Claimants failed to mitigate their damages; 5) Claimants' losses were proximately caused by Claimants' decisions, conduct or negligence; 6) Claimants are barred from recovery of all non-contractual claims by the economic loss doctrine; 7) Respondents Palm State and Lucas are entitled to a set-off in the amount of the recovery obtained from third parties; 8) Respondents Palm State and Lucas did not cause the losses alleged by Claimants; 9) Respondents Palm State and Lucas did not know and could not have known, after conducting reasonable due diligence of the Keller investments, of any false or misleading information, if any, that was provided to Claimants; 10) Respondents Palm State and Lucas acted in good faith; 11) Respondents Palm State and Lucas acted as agents in the transactions at issue; and 12) Respondents Palm State and Lucas had no knowledge of false or misleading information or misconduct.

Unless specifically admitted in his Answer, Respondent Alterman denied the allegations made in the Statement of Claim and asserted the following defenses: 1) Respondent Alterman did not solicit Claimants; 2) Respondent Alterman did not represent that the Keller investments were guaranteed; and 3) Claimants authorized the purchase of the Keller investments.

Respondent Alliance Capital asserted the following: 1) Claimants are not entitled to damages because Claimants' losses were not proximately caused by unlawful conduct of Respondent Alliance Capital; 2) Claimants assumed the risks of their investments; 3) Claimants failed to state a claim upon which relief may be granted; 4) Claimants are barred from recovery by

Claimants' actual knowledge of the risks of their investments; 5) Claimants approved, authorized, ratified, or acquiesced in the acts, omissions, misrepresentations and transactions at issue; 6) Respondent Alliance Capital did not intend to deceive or defraud Claimants; 7) Respondent Alliance Capital did not act in a reckless manner; 8) Claimants failed to exercise the requisite diligence to discover the existence of misrepresentations or omissions; 9) Claimants did not justifiably rely upon any misrepresentation or omission made by Respondent Alliance Capital; 10) Claimants knew or should have known of the existence of those matters which are alleged to be violations of law or causes of action; 11) Respondent Alliance Capital is not liable due to intervening causes beyond the control of Respondent Alliance Capital; 12) Claimants failed to exercise ordinary care; 13) Claimants failed to mitigate their damages; 14) Claimants did not make their investment decisions in reliance upon the misrepresentations and omissions at issue; 15) Claimants' losses, if any, were caused by Claimants' contributory negligence; 16) Claimants are barred from recovery by the doctrine of laches; 17) Respondent Alliance Capital did not cause injury or damages to Claimants; 18) Respondent Alliance Capital acted in good faith; and 19) Respondent Alliance Capital did not manage Claimants' account.

#### **RELIEF REQUESTED**

Claimants requested: 1) compensatory damages in the amount of at least \$90,000.00; 2) punitive damages; 3) interest; 4) costs; and 5) attorneys' fees.

Respondents Alliance Capital and Alterman requested dismissal of the Statement of Claim.

Respondents Palm State and Lucas requested: 1) dismissal of the Statement of Claim; 2) costs; and 3) attorneys' fees.

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

On or about July 7, 1999, Claimants and Respondent Alliance Capital entered into a Joint Stipulation for Dismissal of Respondent Alliance Capital. Said parties stipulated and agreed that the above-referenced arbitration shall be dismissed without prejudice against Respondent Alliance Capital and that said parties shall bear their respective costs and attorneys' fees. The Panel accepted said parties' dismissal without prejudice of the above-referenced claims.

On September 7, 1999, Respondent Southern Capital filed a voluntary petition under Chapter 7 in the United States Bankruptcy Court, Tampa Division, Case No. 99-14552-8G7. Pursuant to the automatic stay contained in Section 362 of the Bankruptcy Code, the above-referenced proceeding was stayed as to Respondent Southern Capital. As such, the Panel made no determination with respect to the claims asserted against Respondent Southern Capital pursuant to the automatic stay imposed by the United States Bankruptcy Court, Tampa Division.

On September 7, 1999, Respondent Hutek filed a voluntary petition under Chapter 7 in the United States Bankruptcy Court, Tampa Division, Case No. 99-14551-8G7. Pursuant to the

automatic stay contained in Section 362 of the Bankruptcy Code, the above-referenced proceeding was stayed as to Respondent Hutek. As such, the Panel made no determination with respect to the claims asserted against Respondent Hutek pursuant to the automatic stay imposed by the United States Bankruptcy Court, Tampa Division.

On or about January 13, 2000, Claimants and Respondents Palm State and Lucas entered into a settlement agreement. As such, the Panel made no determination with respect to the claims asserted against Respondents Palm State and Lucas.

The parties present at the evidentiary hearing 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 (if any), the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Alterman is liable and shall pay to Claimants, jointly, compensatory damages in the amount of \$48,381.92, pre-judgment interest specifically excluded. Post-judgment interest shall begin to accrue sixty (60) days after service of the Award, and shall continue to accrue until the Award is paid in full.
2. The Panel specifically finds that Respondent Alterman violated the Florida Securities and Investor Protection Act, Section 517.301 et. seq., as alleged in the Statement of Claim. Accordingly, the violation shall be noted to Respondent Alterman's Central Registration Depository ("CRD") record maintained by the NASD CRD.
3. Claimants' request for punitive damages is denied.
4. Claimants' request for attorneys' fees is denied.
5. All other requests for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the NASD-DR Code of Arbitration Procedure (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	= \$225.00
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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 firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, Respondents Palm State and Alliance Capital were member firms and parties at the time of accrual of the member surcharge and pre-hearing process fee.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

There were no adjournments requested during these proceedings.

### **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 with Panel x \$750.00	= \$ 750.00
Pre-hearing conference: August 30, 2000 1 session	
Two (2) Hearing sessions x \$750.00	= \$1,500.00
Hearing Date: November 1, 2000 2 sessions	
Total Forum Fees	= \$2,250.00

The Panel has assessed \$1,125.00 of the forum fees jointly and severally to Claimants.  
The Panel has assessed \$1,125.00 of the forum fees to Respondent Alterman.

### **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.

No administrative costs were incurred during these proceedings.

### **Fee Summary**

Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$1,125.00
Total Fees	= \$1,350.00
<u>Less payments</u>	<u>= \$ 975.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$375.00

Respondent Alterman be and hereby is solely liable for:

Forum Fees	= \$1,125.00	
Total Fees	= \$1,125.00	
<u>Less payments</u>	<u>= \$ 0.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$1,125.00

Respondent Palm State be and hereby is solely liable for:

Member Fees	= \$1,600.00	
Total Fees	= \$1,600.00	
<u>Less payments</u>	<u>= \$ 0.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$1,600.00

Respondent Alliance Capital be and hereby is solely liable for:

Member Fees	= \$1,600.00	
Total Fees	= \$1,600.00	
<u>Less payments</u>	<u>= \$1,600.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$0.00

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award.

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Bernard J. Kune  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_/s/\_\_\_\_\_  
Geoffrey Paul Nuckolls, CPA  
Public Arbitrator

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

\_\_\_\_\_/s/\_\_\_\_\_  
Scott A. Spencer  
Industry Arbitrator

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

December 1, 2000  
Date of Service (For NASD-DR office use only)

Respondent Alterman be and hereby is solely liable for:

Forum Fees	= \$1,125.00	
Total Fees	= \$1,125.00	
<u>Less payments</u>	<u>= \$ 0.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$1,125.00

Respondent Palm State be and hereby is solely liable for:


Member Fees	= \$1,600.00	
Total Fees	= \$1,600.00	
<u>Less payments</u>	<u>= \$ 0.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$1,600.00

Respondent Alliance Capital be and hereby is solely liable for:

Member Fees	= \$1,600.00	
Total Fees	= \$1,600.00	
<u>Less payments</u>	<u>= \$1,600.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$0.00

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award.

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Bernard J. Kune  
Public Arbitrator, Presiding Chair

11/22/2005  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Geoffrey Paul Nuckolls, CPA  
Public Arbitrator

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

\_\_\_\_\_  
Scott A. Spencer  
Industry Arbitrator

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

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

Respondent Alterman be and hereby is solely liable for:

Forum Fees	= \$1,125.00	
Total Fees	= \$1,125.00	
Less payments	= \$ 0.00	
Balance Due NASD Dispute Resolution, Inc.		= \$1,125.00

Respondent Palm State be and hereby is solely liable for:

Member Fees	= \$1,600.00	
Total Fees	= \$1,600.00	
Less payments	= \$ 0.00	
Balance Due NASD Dispute Resolution, Inc.		= \$1,600.00

Respondent Alliance Capital be and hereby is solely liable for:

Member Fees	= \$1,600.00	
Total Fees	= \$1,600.00	
Less payments	= \$1,600.00	
Balance Due NASD Dispute Resolution, Inc.		= \$0.00

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award.

Concurring Arbitrators' Signatures

\_\_\_\_\_  
 Bernard J. Kune  
 Public Arbitrator, Presiding Chair

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Signature Date

  
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 Geoffrey Paul Nuckolls, CPA  
 Public Arbitrator

11/28/00  
 \_\_\_\_\_  
 Signature Date

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 Scott A. Spencer  
 Industry Arbitrator

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



Respondent Alterman be and hereby is solely liable for

Forum Fees	= \$1,125.00	
Total Fees	= \$1,125.00	
<u>Less payments</u>	<u>= \$ 0.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$1,125.00

Respondent Palm State be and hereby is solely liable for:

Member Fees	= \$1,600.00	
Total Fees	= \$1,600.00	
<u>Less payments</u>	<u>= \$ 0.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$1,600.00

Respondent Alliance Capital be and hereby is solely liable for:

Member Fees	= \$1,600.00	
Total Fees	= \$1,600.00	
<u>Less payments</u>	<u>= \$1,600.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$0.00

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award.


Concurring Arbitrators' Signatures

\_\_\_\_\_  
Bernard J. Kune  
Public Arbitrator, Presiding Chair

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Signature Date

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Geoffrey Paul Nuckolls, CPA  
Public Arbitrator

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

  
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Scott A. Spencer  
Industry Arbitrator

11/30/00  
\_\_\_\_\_  
Signature Date

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Date of Service (For NASD-DR office use only)