

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

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

Howard D. Farias and Howard D. Farias Charitable Remainder Trust, Claimants v. RFCA Financial Services, Inc., USA Capital, Inc., Kenneth A. Parker, David M. Berkowitz, Albert L. Whalen, Patrick James Wilde II, and Todd Charles Bauman, Respondents

**Third-Party/Cross Claim:**

RFCA Financial Services, Inc., Third-Party/Cross Claimant v. Patrick James Wilde II, Todd Charles Bauman, Aragon Financial Services, Inc., Bradford Barker, Frederick B. Platz, and Jerry Coughlin, Third-Party/Cross Respondents

**Cross-Claim:**

Aragon Financial Services, Inc., Cross-Claimant v. Patrick James Wilde II, Todd Charles Bauman, and RFCA Financial Services, Inc., Cross-Respondents

Case Number: 99-02704

Hearing Site: Las Vegas, Nevada

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**REPRESENTATION OF PARTIES**

For Claimants:

John E. Lawlor, Esq.  
Law Offices of John E.  
Lawlor  
Mineola, New York

For Respondent RFCA Financial Services, Inc.:

Robert Tretiak  
RFCA Financial Services Inc.  
Las Vegas, Nevada

For Respondents USA Capital, Inc. and  
David M. Berkowitz:

Cassandra G. Sasso, Esq.  
Baker & Hostetler  
Denver, Colorado

For Respondent Kenneth A. Parker:

Michael Kalmus, Esq.  
Kalmus & Mostucello, PC  
New York, New York

For Respondent Albert L. Whalen:

Christina R. Pfirman, Esq.  
Law Offices of Christina R.  
Pfirman  
San Francisco, California

For Respondents Patrick James Wilde II  
and Todd Charles Bauman:

Jonathan Schwartz, Esq.  
Law Offices of Jonathan  
Schwartz  
Marina del Rey, California

For Third-Party Respondents Aragon Financial  
Services, Inc. and Jerry Coughlin:

Samuel Y. Edgerton, III, Esq.  
Nash & Edgerton  
Hermosa Beach, California

For Third-Party Respondent Bradford Barker:

Bradford Barker  
In Pro Per  
Las Vegas, Nevada

For Third-Party Respondent Frederick B. Platz:

Frederick B. Platz  
In Pro Per  
Henderson, Nevada

### **CASE INFORMATION**

Statement of Claim filed: June 13, 1999

Claimants' Uniform Submission Agreement signed: May 25, 1999

Statement of Answer filed by Respondent RFCA Financial Services, Inc.: February 21, 2000

Respondent RFCA Financial Services, Inc.'s Uniform Submission Agreement signed: None  
Filed

Statement of Answer filed by Respondent USA Capital, Inc.: None Filed

Respondent USA Capital, Inc.'s Uniform Submission Agreement signed: None Filed

Statement of Answer filed by Respondent Kenneth A. Parker: October 3, 2000

Respondent Kenneth A. Parker's Uniform Submission Agreement signed: None Filed

Statement of Answer filed by Respondent Albert L. Whalen: December 17, 1999

Respondent Albert L. Whalen's Uniform Submission Agreement signed: December 14, 1999

Statement of Answer filed by Respondents Patrick James Wilde II: January 14, 2000

Respondent Patrick James Wilde II's Uniform Submission Agreement signed: January 16, 2000

Statement of Answer filed by Respondent Todd Charles Bauman: January 19, 2000

Respondent Todd Charles Bauman's Uniform Submission Agreement signed: January 21, 2000

Third-Party/Cross Claim filed by RFCA Financial Services, Inc.: February 21, 2000

Statement of Answer to Third-Party/Cross Claim filed by Cross-Respondent  
Patrick James Wilde II: None Filed

Statement of Answer to Third-Party/Cross Claim filed by Cross-Respondent Todd Charles  
Bauman: None Filed

Statement of Answer to Third-Party/Cross Claim filed by Third-Party Respondent Aragon  
Financial Services, Inc.: None Filed

Third-Party Respondent Aragon Financial Services, Inc.'s Uniform Submission Agreement  
signed: None Filed

Statement of Answer to Third-Party/Cross Claim filed by Third-Party Respondent Bradford  
Barker: None Filed

Third-Party Respondent Bradford Barker's Uniform Submission Agreement signed:  
July 20, 2001

Statement of Answer to Third-Party/Cross Claim filed by Third-Party Respondent Frederick  
B. Platz: None Filed

Third-Party/Cross Respondent Frederick B. Platz's Uniform Submission Agreement signed:  
None Filed

Statement of Answer to Third-Party Claim filed by Third-Party Respondent Jerry Coughlin:  
None Filed

Third-Party/Respondent Jerry Coughlin's Uniform Submission Agreement signed: None Filed

Cross-Claim filed by Cross-Claimant Aragon Financial Services, Inc.: October 27, 2000

Statement of Answer to Cross-Claim filed by Cross-Respondent Patrick James Wilde II:  
None Filed

Statement of Answer to Cross-Claim filed by Cross-Respondent Todd Charles Bauman:  
None Filed

Statement of Answer to Cross-Claim filed by Cross-Respondent RFCA Financial Services, Inc.:  
None Filed

### **CASE SUMMARY**

Claimants alleged unsuitability, fraud, negligent supervision, and breach of fiduciary duty. Allegations arose out of the purchase and/or sale of investments in Olympiad and Arch Leasing securities.

Respondents RFCA Financial Services, Inc., Kenneth A. Parker, Albert L. Whalen, Patrick James Wilde II, and Todd Charles Bauman denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

Third-Party/Cross-Claimant RFCA Financial Services, Inc. alleged failure to supervise and lack of due diligence.

Cross-Claimant Aragon Financial Services, Inc. alleged unsuitability, breach of fiduciary duty, and fraud.

### **RELIEF REQUESTED**

At the hearing, Claimants requested approximately \$215,000.00 in compensatory damages, attorney's fees, and arbitration costs.

Respondents RFCA Financial Services, Inc., Kenneth A. Parker, Albert L. Whalen, Patrick James Wilde II, and Todd Charles Bauman requested dismissal of the Claimants' Statement of Claim in its entirety, attorney's fees, and arbitration costs. Additionally, Respondent Albert L. Whalen requested expungement of his CRD record.

Third-Party/Cross-Claimant RFCA Financial Services, Inc. requested contribution and/or indemnity, and expungement of its CRD record.

Cross-Claimant Aragon Financial Services, Inc. requested contribution and/or indemnity, consequential damages, interest, attorney's fees, and arbitration costs.

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

Upon review of the file and the representations made on behalf of the Claimants, the undersigned Panel determined that all Respondents were properly served with the Statement of Claim and received due notice of the hearing. The arbitration of the matter proceeded with remaining Respondents present, and in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents RFCA Financial Services, Inc. and Bradford Barker did not file with the NASD Dispute Resolution, Inc. properly executed submission agreements but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

On March 13, 2000, the NASD Dispute Resolution, Inc. received notice from Claimants that all claims against Respondent Frederick B. Platz were withdrawn with prejudice.

On August 24, 2000, the NASD Dispute Resolution, Inc. received notice from Claimants that all claims against Respondents USA Capital, Inc. Kenneth A. Parker and David M. Berkowitz were withdrawn with prejudice.

On August 24, 2000, the NASD Dispute Resolution, Inc. received notice that the Panel dismissed without prejudice all claims against Respondent Albert L. Whalen.

### **AWARD**

After considering the pleadings, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) In regard to Claimants' claims: The Panel finds meritorious claims for unsuitability, failure to supervise, and breach of fiduciary duty. The Panel also finds Claimants' claim for fraud unmeritorious, and denies the claim with prejudice.
- 2) Respondents RFCA Financial Services, Inc., Patrick James Wilde II, and Todd Charles Bauman are jointly and severally liable to and shall pay Claimants \$200,000.00 in compensatory damages.
- 3) Respondents RFCA Financial Services, Inc., Patrick James Wilde II, and Todd Charles

Bauman are jointly and severally liable to and shall pay Claimants twelve percent (12%) simple interest per annum on \$200,000.00 from the date of July 20, 2001, until the Award is paid in full.

- 4) In regard to the Third-Party/Cross Claim of RFCA Financial Services, Inc., the Panel grants indemnity against Respondents.
- 5) Respondent Bradford Barker is liable to and shall pay RFCA Financial Services, Inc. forty percent (40%) of any amount paid to Claimants by RFCA Financial Services, Inc.
- 6) Respondent Todd Charles Bauman is liable to and shall pay RFCA Financial Services, Inc. twenty percent (20%) of any amount paid to Claimants by RFCA Financial Services, Inc.
- 7) Respondent Patrick James Wilde II is liable to and shall pay RFCA Financial Services, Inc. thirty percent (30%) of any amount paid to Claimants by RFCA Financial Services, Inc.
- 8) Respondent Bradford Barker individually, and Respondents Patrick James Wilde II and Todd Charles Bauman jointly and severally, are liable to and shall pay RFCA Financial Services, Inc. twelve percent (12%) simple interest per annum from the date that RFCA Financial Services, Inc. pays Claimants through the date that RFCA Financial Services, Inc. is indemnified by said Respondents.
- 9) The Cross-Claim of Aragon Financial Services, Inc. is denied, and the Panel dismisses the claim with prejudice.
- 10) Each party shall bear its own costs, including attorney's fees.
- 11) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Albert L. Whalen's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Albert L. Whalen must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 12) All other claims, and all other relief, not expressly granted are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 300.00
Respondent RFCA Financial Services, Inc.'s Third-Party/Cross Claim filing fee	= \$ 500.00
Third Party Respondent Aragon Financial Services, Inc.'s Cross Claim filing fee	= \$ 500.00

#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events, which gave rise to the dispute, claim, or controversy. Accordingly, the member firm RFCA Financial Services, Inc., USA Capital, Inc. and Aragon Financial Services, Inc. are parties and the following fees are assessed to each:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 2,500.00</u>
<b>Total Member Fees</b>	<b>= \$ 4,600.00</b>

#### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or Panel. The following fees are assessed:

1 Pre-hearing conference session with a single arbitrator @ \$ 450.00/session	= \$ 450.00
Pre-hearing conference: January 9, 2001 1 session	
3 Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 3,375.00
Pre-hearing conferences: June 29, 2000 1 session	
January 23, 2001 1 session	
March 16, 2001 1 session	
4 Hearing sessions @ \$1,125.00/session	= \$ 4,500.00
Hearings: July 19, 2001 2 sessions	
July 20, 2001 2 sessions	
<b>Total Forum Fees</b>	<b>= \$ 8,325.00</b>

1. The Panel assessed \$ 4,162.50 of the forum fees jointly and severally to Claimants Howard D. Farias and Howard D. Farias Charitable Remainder Trust.
2. The Panel assessed \$ 4,162.50 of the forum fees jointly and severally to Respondents RFCA Financial Services, Inc., Patrick James Wilde II, and Todd Charles Bauman, and Bradford J. Barker.

#### **Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Party Respondents James Wilde II, and Todd Charles Bauman  
requested tapes: = \$ 15.00

#### **Fee Summary**

1. Howard D. Farias and Howard D. Farias Charitable Remainder Trust are charged jointly and severely with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 4,162.50
Total Fees	= \$ 4,462.50
<u>Less payment plus \$270.83 transfer from Mediation</u>	= \$(1,695.83)
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 2,766.67</b>

2. RFCA Financial Services, Inc. is charged with the following fees and costs:

Third-Party/Cross Claim Filing Fee	= \$ 500.00
<u>Member Fees</u>	= \$ 4,600.00
Total Fees	= \$ 5,100.00
<u>Less payments</u>	= \$( 15.00)
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 5,085.00</b>

3. USA Capital, Inc. is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
<u>Less Payments</u>	= \$(3,100.00)
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 1,500.00</b>

4. Aragon Financial Services, Inc. is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
<u>Cross Claim Filing Fees</u>	= \$ 500.00
Total Fees	= \$ 5,100.00
<u>Less Payments</u>	= \$(5,910.50)
<b>Refund Due to Aragon Financial Services, Inc.</b>	<b>= \$ (810.50)</b>



5. Patrick James Wilde II, and Todd Charles Bauman are charged jointly and severally with the following fees and costs:

<u>Administrative Costs</u>	= \$	15.00
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$</b>	<b>15.00</b>

6. RFCA Financial Services, Inc., Patrick James Wilde II, and Todd Charles Bauman and Bradford J. Barker are charged jointly and severally with the following fees and costs:

<u>Member Fees</u>	= \$	4,162.50
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$</b>	<b>4,162.50</b>

All balances are payable to NASD Dispute Resolution, Inc. and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Joseph D. Sheppard III, Esq.	-	Public Arbitrator, Presiding Chair
Robert F. Saint-Aubin, Esq.	-	Public Arbitrator
Lincoln F. Stock	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Joseph D. Sheppard III, Esq.  
Chair, Public Arbitrator

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Signature Date



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Robert F. Saint-Aubin, Esq.  
Public Arbitrator

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10-19-01  
Signature Date

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Lincoln F. Stock  
Non-Public Arbitrator

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Signature Date

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9-19-01  
Date of Service

**ARBITRATION PANEL**

Joseph D. Sheppard III, Esq.	-	Public Arbitrator, Presiding Chair
Robert F. Saint-Aubin, Esq.	-	Public Arbitrator
Lincoln F. Stock	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Joseph D. Sheppard III, Esq.  
Chair, Public Arbitrator

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Signature Date

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Robert F. Saint-Aubin, Esq.  
Public Arbitrator

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Signature Date

  
Lincoln F. Stock  
Non-Public Arbitrator

10.19.01 9:05 PM  
Signature Date

9.19.01  
Date of Service