
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Douglas Johnson

Case Number: 99-02776

Names of the Respondents

Alden Capital Markets, Inc.

Continental Broker-Dealer Corp.

Karl Birkenfeld

Jason Frankovich

Hearing Site: Tampa, Florida

Nature of the Dispute: Customer vs. Members and Associated Persons

REPRESENTATION OF PARTIES

For Douglas Johnson, referred to as "Claimant": Steven D. Spivey, Esq., Law Offices of Steven D. Spivey, Esquire, Ocala, Florida.

Alden Capital Markets, Inc. ("Respondent Alden") did not appear or participate.

For Continental Broker-Dealer Corp ("Respondent Continental") and Jason Frankovich ("Respondent Frankovich"): Theodore A. Krebsbach, Esq., Theodore A. Krebsbach & Associates, P.C., New York, New York. On or about September 10, 1999, Theodore A. Krebsbach withdrew as counsel for Respondents Continental and Frankovich. Thereafter, Respondents Continental and Frankovich did not appear or participate.

For Karl Birkenfeld ("Respondent Birkenfeld"): Steven M. Kaplan, Esq., Rosenfeld & Kaplan, LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: June 15, 1999.

Claimant signed the Uniform Submission Agreement on: June 1, 1999.

Respondents Alden, Continental and Frankovich did not file Statements of Answer or Uniform Submission Agreements.

Statement of Answer and Motion to Dismiss filed by Respondent Birkenfeld on or about: September 8, 2000.

Respondent Birkenfeld signed the Uniform Submission Agreement on: September 8, 2000.

CASE SUMMARY

Claimant alleged the following causes of action: 1) violation of the Florida Securities Investor Protection Act; 2) violation of the Securities Act of 1933; 3) violation of the Securities Exchange Act of 1934; 4) fraud; 5) misrepresentation; 6) unsuitability; 7) unauthorized trading; and 8) negligent supervision. The causes of action relate to investments in shares of stock in Dunn Computer, Better Online Solutions, Ltd., Jabil Circuit, Inc., Roast-N-Roll Restaurants, Gateway Computer, IDEC Pharmaceuticals, IAT Multimedia, Inc., Oracle Corp., Netscape Communications Corp., Indonesian Satellite Company, and Compaq Computer Corp.

Respondent Birkenfeld denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant requested: 1) compensatory damages in the amount of \$28,903.86; 2) pre-judgment interest in the amount of \$15,696.40; 3) costs; and 4) attorneys' fees.

Respondent Birkenfeld requested: 1) dismissal of the Statement of Claim in its entirety; 2) costs; 3) attorneys' fees; and 4) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about November 7, 2000, Claimant filed his notice of dismissal as to Respondent Birkenfeld.

On or about January 12, 2000, Claimant filed his notice of settlement and dismissal with prejudice as to Respondent Continental.

On or about January 13, 2000, Claimant filed his Motion to Preclude Answer as to Respondents Alden and Birkenfeld. On or about February 16, 2000, the Panel denied without prejudice Claimant's motion as to Respondent Alden and the Panel granted Claimant's motion as to Respondent Birkenfeld.

At the initial pre-hearing conference conducted on November 9, 2000, Claimant announced that he reached a settlement with Respondents Continental, Birkenfeld and Frankovich.

On or about February 2, 2001, Claimant filed his Motion Requesting the Panel Proceed to Final Resolution and Memorandum of Law in Support Thereof. Claimant requested the Panel to proceed to final resolution of the arbitration proceeding, present its finding of facts based on the information provided in the Statement of Claim, render an Award in favor of Claimant, and grant such other relief the Panel deemed just and proper. On or about March 27, 2001, the Panel granted in part and denied in part Claimant's motion. The Panel ordered Claimant to file a Notice of Action in newspapers of general circulation in each of the cities where any Respondent did business during the period beginning July 1, 1997, and ending April 17, 1998. The Notice of Action is to advise Respondent Alden that it has twenty (20) days from the date of first publication within which to file a response with NASD Dispute Resolution, and the Notice of Action is to run once per week for two consecutive weeks. In the event Respondent Alden files a response within the time period set forth herein, the Panel will schedule a final hearing. In the event Respondent Alden fails to provide a response, Claimant is further instructed to file an affidavit of publication and an affidavit of damages. Thereafter, the Panel will move

to final decision on the moving papers.

On or about June 20, 2002, Claimant filed his Motion to Dispense with Publication Requirement and to enter Judgment against Alden Capital Markets, Inc. On or about July 17, 2003, the Panel granted in part and denied in part Claimant's motion. The Panel ordered that: 1) to the extent Claimant's motion is in the nature of a motion for entry of default, the Panel grants the motion and deems the well plead allegations in the Statement of Claim to be true; 2) Claimant may file affidavits of liability and damages for consideration by the Panel in the entry of an Award; and 3) the Panel will move to final decision on the moving papers, once filed by Claimant.

On or about October 8, 2003, Claimant filed his Affidavit wherein Claimant testified to his compensatory damages in the amount of \$28,903.86, plus pre-judgment interest in the amount of \$15,696.40.

The Panel finds that Respondents were all properly served under the Rules and that additional efforts to notify Respondents of the pending arbitration were made. The Panel thereupon proceeded to resolution on the uncontroverted allegations in the Statement of Claim, along with Claimant's affidavit in support of the Statement of Claim.

AWARD

After considering the pleadings and Claimant's affidavit, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel finds all issues raised in the Statement of Claim in favor of Claimant and against Respondent Alden. The Panel enters an award in favor of Claimant against Respondent Alden for compensatory damages plus pre-judgment interest as of October 7, 2003 in the amount of \$44,600.26, plus interest thereafter at the judgment rate established from time to time pursuant to Florida law.
2. The Panel defers to a court of competent jurisdiction on the issue of Claimant's entitlement to and the amount of a reasonable attorneys' fee.
3. Respondent Alden is liable and shall reimburse Claimant \$150.00 which represents the initial claim filing fee previously paid by Claimant to NASD Dispute Resolution.
4. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 150.00

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. Accordingly, Respondent Continental is a member firm and a party.

Member surcharge = \$ 600.00

Pre-hearing process fee = \$ 600.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 Panel @ \$600.00 per session = \$600.00

Pre-hearing conference: November 9, 2000 1 session

Total Forum Fees = \$600.00

The Panel has assessed the total forum fees in the amount of \$600.00 to Respondent Alden.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee = \$ 150.00

Total Fees = \$ 150.00

<u>Less payments</u>	= \$ 150.00
Balance Due NASD	= \$ 0.00

Respondent Continental is solely liable for:

<u>Member Fees</u>	= \$1,200.00
Total Fees	= \$1,200.00
<u>Less payments</u>	= \$1,200.00
Balance Due NASD	= \$ 0.00

Respondent Alden is solely liable for:

<u>Forum Fees</u>	= \$ 600.00
Total Fees	= \$ 600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD	= \$ 600.00

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

ARBITRATION PANEL

<i>Langfred W. White, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Jacquelyn M. Shannon, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Andrew G. Fellios</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

 /s/
Langfred W. White, Esq.
Public Arbitrator, Presiding Chairperson

November 19, 2003
Signature Date

 /s/
Jacquelyn M. Shannon, Esq.
Public Arbitrator

November 20, 2003
Signature Date

 /s/
Andrew G. Fellios
Non-Public Arbitrator

November 18, 2003
Signature Date

November 20, 2003
Date of Service (For NASD use only)

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Less payments	= \$ 150.00
Balance Due NASD	= \$ 0.00

Respondent Continental is solely liable for:

Member Fees	= \$1,200.00
Total Fees	= \$1,200.00
Less payments	= \$1,200.00
Balance Due NASD	= \$ 0.00

Respondent Alden is solely liable for:

Forum Fees	= \$	600.00
Total Fees	= \$	600.00
Less payments	= \$	0.00
Balance Due NASD	= \$	600.00

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ARBITRATION PANEL

<i>Langfred W. White, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Jacquelyn M. Shannon, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Andrew G. Fellios</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Langfred W. White, Esq.
Public Arbitrator, Presiding Chairperson

November 19, 2005
Signature Date

Jacquelyn M. Shannon, Esq.
Public Arbitrator

Signature Date

Andrew G. Fellios
Non-Public Arbitrator

Signature Date

Date of Service (For NASD use only)

NASD Dispute Resolution
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<u>Less payments</u>	= \$ 150.00
<u>Balance Due NASD</u>	= \$ 0.00

Respondent Continental is solely liable for:

<u>Member Fees</u>	= \$1,200.00
<u>Total Fees</u>	= \$1,200.00
<u>Less payments</u>	= \$1,200.00
<u>Balance Due NASD</u>	= \$ 0.00

Respondent Alden is solely liable for:

<u>Forum Fees</u>	= \$ 600.00
<u>Total Fees</u>	= \$ 600.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD</u>	= \$ 600.00

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ARBITRATION PANEL

Langfred W. White, Esq.

Jacquelyn M. Shannon, Esq.

Andrew G. Fellios

Public Arbitrator, Presiding Chairperson

Public Arbitrator

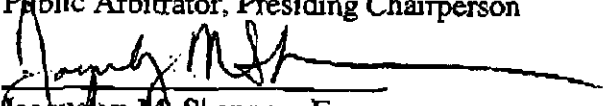
Non-Public Arbitrator

Concurring Arbitrators' Signatures

 Langfred W. White, Esq.

Public Arbitrator, Presiding Chairperson

 Signature Date


 Jacquelyn M. Shannon, Esq.

Public Arbitrator

11-20-03

 Signature Date

 Andrew G. Fellios

Non-Public Arbitrator

 Signature Date

 Date of Service (For NASD use only)

NASD Dispute Resolution
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<u>Less payments</u>	= \$ 150.00
<u>Balance Due NASD</u>	= \$ 0.00

Respondent Continental is solely liable for:

<u>Member Fees</u>	= \$1,200.00
<u>Total Fees</u>	= \$1,200.00
<u>Less payments</u>	= \$1,200.00
<u>Balance Due NASD</u>	= \$ 0.00

Respondent Alden is solely liable for:

<u>Forum Fees</u>	= \$ 600.00
<u>Total Fees</u>	= \$ 600.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD</u>	= \$ 600.00

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ARBITRATION PANEL

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<i>Jacquelyn M. Shannon, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Andrew G. Fellios</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Langfred W. White, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Jacquelyn M. Shannon, Esq.
Public Arbitrator

Signature Date

Andrew G. Fellios

Andrew G. Fellios
Non-Public Arbitrator

18 November 2003

Signature Date

Date of Service (For NASD use only)