

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between: Leonard Gotshalk, Claimant v. Fortress Financial Group Ltd.; Janda & Garrington LLC; Hampton-Porter, Investment Bankers, a California LLP (hereinafter "Hampton-Porter"); Lance R. Dalton; James D. Green; John W. Laurienti; Gregory D. Walker; SmartServ Online, Inc.; and National Union Fire Insurance Co., Respondents

Case Number: 99-02933

Hearing Site: Portland, Oregon

REPRESENTATION OF PARTIES

For Claimant: Leonard Gotshalk, pro se
Ashland, Oregon

For Respondents Fortress Financial Group Ltd., Janda & Garrington LLC, Hampton-Porter, and Gregory D. Walker: Gregory D. Walker
San Diego, California

For Respondent James D. Green: James D. Green, pro se
San Diego, California

CASE INFORMATION

Statement of Claim filed: June 23, 1999

Claimant's Uniform Submission Agreement signed: June 16, 1999

Joint Statement of Answer filed by Respondents Fortress Financial Group Ltd., Janda & Garrington LLC, Hampton-Porter, James D. Green, John W. Laurienti and Gregory D. Walker: October 6, 1999

CASE SUMMARY

Claimant alleged breach of a settlement agreement entered into between Claimant and Respondent Fortress Financial Group Ltd. in September 1998 in connection with trades of SmartServ Online, Inc. (SSOL) stock, and a loan from Claimant to Respondents of 400,000 shares of Financial Network (FNTN) stock.

Respondents Fortress Financial Group Ltd., Janda & Garrington LLC, Hampton-Porter, James D. Green, John W. Laurienti and Gregory D. Walker denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$1,000,000.00, including the balance due on the settlement agreement of approximately \$179,000.00, damages for loss of opportunity and mental anguish, and reimbursement of attorney's fees and costs incurred as a result of the arbitration. He also requested return to him of 400,000 shares of Financial Network stock.

Respondents Fortress Financial Group Ltd., Janda & Garrington LLC, Hampton-Porter, James D. Green, John W. Laurienti and Gregory D. Walker requested dismissal of the Claimant's Statement of Claim in its entirety, reimbursement of reasonable attorney fees and costs incurred as a result of the arbitration, and any further relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Fortress Financial Group Ltd., Janda & Garrington LLC, Hampton-Porter, Lance R. Dalton, James D. Green, John W. Laurienti, and Gregory D. Walker did not file with the NASD Dispute Resolution, Inc. properly executed submission agreements, but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code").

Having answered the claim and appeared and testified at the hearing, Respondents Fortress Financial Group Ltd., Janda & Garrington LLC, Hampton-Porter, James D. Green and Gregory D. Walker are bound by the determination of the Panel on all issues submitted.

Upon review of the file and the representations made by/on behalf of the Claimants, the Panel determined that Respondent Lance R. Dalton was properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent Lance R. Dalton present, in accordance with the Code.

According to the Statement of Claim, Respondent Fortress Financial Group Ltd. merged with Respondent Janda & Garrington LLC on or about November 30, 1998, and began doing business as Hampton-Porter. According to the registration records maintained by the NASD Central Registration Depository (CRD), prior to the time this arbitration was filed, Fortress Financial Group Ltd. had terminated its membership with the NASD and Janda & Garrington LLC had changed its name to Hampton-Porter.

On May 14, 2001, Claimant requested the dismissal of Respondent John W. Laurienti with prejudice.

SmartServ Online, Inc. and National Union Fire Insurance Co. were never members of the NASD. They were not required to and did not submit to this arbitration.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

The Panel makes the following statement of the claims and defenses as established by the evidence presented at the hearing on the merits:

Claimant is a former client of Respondent Fortress Financial Group Ltd. ("Fortress"). He was introduced to that firm through Respondent John W. Laurienti, a broker who had handled the Claimant's accounts at Richmark Capital, Inc. Laurienti left Richmark Capital, and transferred to Fortress Financial. Claimant moved his accounts with him.

At the time he opened his account at Fortress, Claimant was interested in SmartServ Online, Inc. ("SSOL"), a company that he and Laurienti had followed while Claimant was at Richmark Capital. About the time of the transfer and Laurienti's move to Fortress, Claimant and Laurienti met with Respondent Lance R. Dalton, one of the principals at Fortress. Respondent Gregory D. Walker was probably at the meeting, but did not recall many of the details of what took place. Claimant explains that, at the meeting, Fortress told Claimant that it had the right to acquire up to 1.5 million shares of SSOL's common stock at \$1 per share, and that the stock would be registered. The parties to that meeting agreed to a plan for Claimant to put up capital so that Fortress could acquire the stock and the parties would then resell it at 2 2/3 and 2 5/8 and divide the profits.

To confirm that Fortress Financial has stock rights in SSOL, Walker faxed to Claimant an Investment Banking Agreement (the "Agreement"). At page 13, the Agreement included an addendum, which described certain rights to acquire SSOL stock that were consistent with Walker's explanation. The Agreement was dated in early January 1998. At the hearing, Walker explained that the Agreement never took effect because SSOL found someone else and Fortress never performed. He had no recollection of why he sent the Agreement on January 27, 1998, or what the significance of page 13 was. He did state, however, that Fortress never received the rights to acquire 1.5 million shares of SSOL. The facts that the Agreement was sent and it was never operative established a strong presumption supporting Claimant's recollection of the reasons for his cash investments in Fortress.

Claimant sent \$350,000 to Fortress Financial on January 28, 1998. While he states that the investment served as financing to Fortress for the acquisition of a block of 500,000 shares of SSOL (Fortress was going to finance the additional \$150,000 through its own resources), the documentation that was prepared and accepted by Claimant showed it as an investment in the preferred stock of Fortress. Regardless, at the time of the investment, Fortress and its principals and officers had a duty to disclose the true state of affairs at Fortress and, in particular, that the SSOL contract was not in effect. There was no evidence that any such disclosures were ever made.

Subsequent to the investment, Dalton and Walker advised Claimant on the progress of the acquisition of the block of 500,000 shares and the subsequent resale. Walker admits that he told Claimant about subsequent sales and any positions held by Fortress in SSOL, and relied completely on Dalton, who told him about the acquisition and resale of SSOL stock. This testimony corroborated Claimant's testimony that the \$350,000 was sent to fund an investment in SSOL.

Walker admitted, however, that Fortress never acquired any SSOL stock to his knowledge. This, of course, was inconsistent with his reports to Claimant about specific sales of SSOL stock by Fortress. Walker provided no explanation on why Fortress would feel the need to report to Claimant on fictitious sales of SSOL stock.

Claimant testified that he began to suspect that the story about SSOL was not true, and that, about ten days after he had sent the \$350,000, he began asking for documentation to confirm the purchase and sale of SSOL stock by Fortress. None was received. Finally, on February 15, 1998, he flew to South Carolina, and met directly with the principals of Fortress. At that time, he concluded that he had been lied to.

Claimant testified that he was interested in providing financial support to a start-up company called "Financial Network" ("FNTN"). He wanted the profits from the SSOL transaction to go, in part, to FNTN. About \$50,000 actually did find its way to FNTN from Fortress. This was consistent with Claimant's testimony.

Claimant also testified that he deposited 400,000 shares of FNTN with Fortress so that it could show the FNTN stock as part of its net capital. Instead, Fortress immediately began liquidating the FNTN stock, thus driving the stock down. Walker admitted that liquidating the FNTN stock did depress the market. He also admitted that Fortress had signed an Investment Banking Agreement with FNTN, and, under the Agreement, had a duty to support its stock prices, which was inconsistent with liquidating the stock.

However, at the same time period that Claimant stated he wanted the FNTN stock to be held by Fortress, he was actively liquidating FNTN stock in his own account. FNTN stock is now valueless.

When Claimant demanded his money and the FNTN stock back, Fortress transferred a number of securities of other companies to him. Thereafter, Fortress entered into a settlement agreement with Claimant. At the time that the settlement agreement was entered into, the parties reached an agreement on the balance owed under the account, after giving Fortress credit for the stock previously transferred. Thereafter, Fortress made some payments. Walker now explains that Fortress believes that Claimant has been paid in full because it miscalculated the values of the stock previously transferred to Claimant.

when it entered into the settlement agreement.

Given that the parties reached an agreement at the time the settlement agreement was executed as to what the prior credit should be, and then Walker had no evidence to indicate that the agreement was not well founded except for a list of new values that he wants to place on the stock that was delivered to Claimant before the settlement agreement was arrived at, we see no reason to upset the parties' "statement of account." There is no issue that the settlement agreement is in breach, and has been unilaterally abandoned by Fortress.

There is nothing to tie Respondent Green into these transactions or any personal liability to Claimant.

AWARD

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

- 1) The settlement agreement between Claimant and Respondent Fortress Financial Group Ltd. has been terminated by the breach of Respondent Fortress Financial Group Ltd. and the releases given to Respondents James D. Green and Gregory D. Walker are no longer operative.
- 2) Respondents Fortress Financial Group Ltd. and Gregory D. Walker are liable to Claimant in the amount of \$161,000.00 plus interest at the rate of 9% per annum on the unpaid balance from March 21, 1999, until paid in full.
- 3) Claimant shall produce to Respondents Fortress Financial Group Ltd. and Gregory D. Walker copies of any settlement agreements he may have entered into with any other parties based on the same claims or arising out of the same transactions, and shall account to them within ten days from the date this Award is served for any payments or other benefits received from other sources on account of the losses. Claimant shall promptly satisfy this award by the amount of any such payments whether received before or after this Award.
- 4) Respondents James D. Green and John W. Laurienti are dismissed from this case with prejudice.
- 5) Each party shall bear its own costs, including attorney's fees.
- 6) All other relief not expressly granted is 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	= \$375.00
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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 that gave rise to the dispute, claim, or controversy. Accordingly, the member firms Fortress Financial Group Ltd. and Hampton-Porter are parties and the following fees are assessed to each firm:

Member Surcharge	= \$2,000.00
Pre-Hearing Process Fee	= \$600.00
Hearing Process Fee	= \$3,500.00
Total Member Fees	= \$6,100.00

Respondent Fortress Financial Group Ltd. had terminated its membership with the NASD prior to Claimant's filing the Statement of Claim. Thus, fees assessed against the firm are waived.

Adjournment Fees

The following adjournment fees are assessed:

Hearing, November 8-10, 2000, adjournment requested by Claimant and Respondents Fortress Financial Group Ltd., Janda & Garrington LLC, Hampton-Porter, James D. Green and Gregory D. Walker	= \$1,200.00
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Hearing, May 9-10, 2001, adjournment requested by Respondents Fortress Financial Group Ltd., Janda & Garrington LLC, Hampton-Porter, John W. Laurienti, and Gregory D. Walker	= \$1,200.00
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Hearing, June 26-28, 2001, adjournment requested by Claimant and Respondents Fortress Financial Group Ltd., Janda & Garrington LLC, Hampton-Porter, James D. Green and Gregory D. Walker	= \$1,200.00
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1. The Panel assessed \$1,200.00 of the adjournment fees to Claimant.

2. The Panel assessed \$2,400.00 of the adjournment fees jointly and severally to Respondents Fortress Financial Group Ltd., Janda & Garrington LLC, Hampton-Porter, and Gregory D. Walker.

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/Panel. The following fees are assessed:

4 Pre-hearing conference sessions with the Panel @ \$1,200/session	= \$4,800.00
Pre-hearing conferences:	
June 6, 2000	1 session
November 8, 2000	1 session
May 8, 2001	1 session
July 16, 2001	1 session

3 Hearing sessions @ \$1,200/session	= \$3,600.00
Hearings:	
June 26, 2001	1 session
September 20, 2001	2 sessions

Total Forum Fees	= \$8,400.00
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3. The Panel assessed \$4,200.00 of the forum fees to Claimant.
4. The Panel assessed \$4,200.00 of the forum fees jointly and severally to Respondents Fortress Financial Group Ltd., Janda & Garrington LLC, Hampton-Porter, and Gregory D. Walker.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$375.00
Adjournment Fee	= \$1,200.00
<u>Forum Fees</u>	<u>= \$4,200.00</u>
Total Fees	= \$5,775.00
<u>Less Payments</u>	<u>=(1,575.00)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$4,200.00

2. Respondent Hampton-Porter is charged with the following fees and costs:

<u>Member Fees</u>	<u>= \$6,100.00</u>
Total Fees	= \$6,100.00
<u>Less Payments</u>	<u>=(2,000.00)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$4,100.00

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3. Respondents Fortress Financial Group Ltd., Janda & Garrington LLC, Hampton-Porter, and Gregory D. Walker are charged jointly and severally with the following fees and costs:

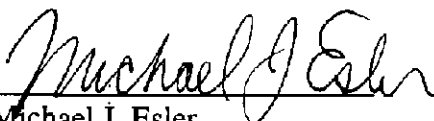
Forum Fees	= \$4,200.00
<u>Adjournment Fees</u>	<u>= \$2,400.00</u>
Total Fees	= \$6,600.00
<u>Less Payments</u>	<u>= \$(600.00)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$6,000.00

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

ARBITRATION PANEL

Michael J. Esler	-	Public Arbitrator, Presiding Chair
Sterling N. Frost	-	Public Arbitrator
Daniel Dunnington	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Michael J. Esler
Public Arbitrator, Presiding Chair

November 9, 2001

Signature Date

Sterling N. Frost
Public Arbitrator

Signature Date

Daniel Dunnington
Non-Public Arbitrator

Signature Date

Date Served:

NOV 14 2001

Date of Service

ARBITRATION PANEL

Michael J. Esler	-	Public Arbitrator, Presiding Chair
Sterling N. Frost	-	Public Arbitrator
Daniel Dunnington	-	Non-Public Arbitrator

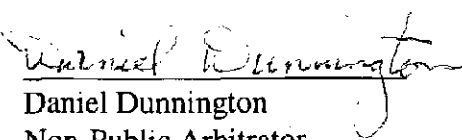
Concurring Arbitrators' Signatures

Michael J. Esler
Public Arbitrator, Presiding Chair

Signature Date

Sterling N. Frost
Public Arbitrator

Signature Date


Daniel Dunnington
Non-Public Arbitrator


Signature Date

Date Served:

NOV 14 2001

Date of Service