

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

---

In the Matter of the Arbitration Between

Name of Claimant

Richard Kretz

Case No. 99-03389

Name of Respondent

Princeton Equity Services, Inc.  
Southern Financial Group, Inc.  
David M. Wooten  
David I. Farber

Hearing Site: Philadelphia, PA.

---

**REPRESENTATION OF PARTIES**

Claimant, Richard Kretz, referred to as "Claimant": Hal K. Haveson, Esq., Haveson and Otis, Princeton, NJ.

Respondents, Princeton Equity Services, Inc. (PES) and David I. Farber, were represented by Kenneth H. Hilton, Esq., Berryhill & Hilton LLP, New York, NY until July 15, 2001. At the September, 2001 hearings, David I. Farber appeared on behalf of Princeton Equity Services.

Respondents, Southern Financial Group, Inc. (Southern) and David M. Wooten, were represented by Russell L. Forkey, Esq., Attorney at Law, Fort Lauderdale, FL.

Respondent, Alan Farber, was represented at the September 10, 2001 hearing by Timothy P. Kebbe, Lehman & Eilen LLP, Uniondale, NY.

**CASE INFORMATION**

Among other pleadings, the following were filed:

Statement of Claim filed on: July 26, 1999.

Claimant, Kretz, signed the Uniform Submission Agreement: July 21, 1999.

Statement of Answer Cross Claim and Counterclaim filed by Respondent PES, on:  
October 4, 1999.

Statement of Answer and Cross Claim filed by Respondent Southern, on: October 12, 1999.

C. David Collins, Jr. signed the Uniform Submission Agreement on behalf of Respondent Southern on: August 23, 1999.

Respondent PES filed its Answer to Cross Claim and a Counterclaim on or about October 5, 1999.

Respondents Southern and Wooten filed their Answer to the Cross Claim of PES on: November 8, 1999.

Respondent PES filed its Response to Southern's Answer and Affirmative Defenses on: January 31, 2000.

Claimant filed his Response to Southern and Wooten's Affirmative Defenses and PES' Amended Cross Claim on: January 31, 2000.

Respondent PES filed an Amended Cross Claim Specifying Damages on: September 29, 2000.

Respondents Southern and Wooten filed their Answer and Affirmative Defenses to the Amended Cross Claim: on May 1, 2000.

Respondent PES filed a Motion to Stay the Proceedings on: April 16, 2001.

Respondents Southern and Wooten filed their Response to the Motion to Stay on: April 19, 2001.

Respondent PES filed its Answer in Support of its Motion to Stay on: May 1, 2001.

Respondents Southern and Wooten filed their Response to the Motion to Stay and a Motion for Sanctions on: May 11, 2001.

Respondent PES filed a Brief to Amend the Complaint Against Respondent Southern to Add New Causes of Action and to Name Other Respondents on: May 1, 2001.

Respondents Southern and Wooten filed their Response to PES' Request to File an Amended Complaint and Add Additional Parties on: May 4, 2001.

After the May 17, 2001 Pre-Hearing Conference call, the Panel ruled to deny the Motion to Stay, and to dismiss all cross and counterclaims, leaving only Claimant's claim against respondents PES and Southern. The Panel also granted Claimant leave to file an Amended Claim adding new parties.

Claimant filed a Motion for Leave to File an Amended Claim and to Add New Parties on: May 22, 2001.

Respondent Southern filed an Answer to the Amended Statement of Claim.

On July 3, 2001, Claimant submitted his Amended Statement of Claim.

On August 13, 2001, the Panel ordered that oral arguments on whether to accept Claimant's Amended Statement of Claim would be heard at the beginning of the hearing commencing on September 10, 2001.

On August 31, 2001, Respondent Alan Farber, filed his response to the Amended Statement of Claim.

At the hearing on September 10, 2001, Claimant voluntarily withdrew its Amended Statement of Claim without prejudice.

At the hearing on September 10, 2001, Respondent PES initially moved that the entire Panel recuse itself, however, PES withdrew this motion.

At the hearing on September 10, 2001, Respondent PES moved for a postponement, which was denied.

Respondent PES, through its representative David I. Farber, failed to comply with the Panel's order to remain present at the hearing and to participate, and left the proceedings.

Respondent Southern made a Motion to Strike all of David Farber's testimony previously given, as he was no longer present for cross-examination, which was granted.

Claimant and Respondent Southern settled their dispute on September 10, 2001, leaving only the claim between Claimant and Respondent PES.

#### CASE SUMMARY

Claimant asserted the following causes of action: Respondents owed Claimant commissions for securities orders placed by Claimant; that Respondents entered into an agreement related to the merger of Respondents PES and Southern; detrimental reliance; and, unjust enrichment.

Unless specifically admitted in its Answer, Respondent PES denied the allegations made in the Statement of Claim and asserted the a Counter Claim against Claimant, asserting that: Respondent PES was in compliance with its contract with Claimant and sought an award against Claimant seeking the costs of defending this arbitration and any other relief deemed equitable and just. Respondent PES also asserted a Cross Claim against Respondents Southern and Wooten, asserting that Respondents Southern and Wooten were responsible for any monetary judgment for Claimant.

Unless specifically admitted in its Answer, Respondents Southern denied the allegations made in the Statement of Claim and the Cross Claim asserted by Respondent PES and asserted the following defenses: Respondent Southern denied that it entered a merger agreement with Respondent PES or that it ever issued checks to Claimant. Respondent Southern also asserted in its Cross Claim against Respondent PES a claim for indemnification, and that Respondent PES was in default of a promissory note, and asserted the following defenses: Respondents Southern and Wooten denied breaching any fiduciary duty or misappropriating funds; Respondents Southern and Wooten asserted compliance with applicable brokerage industry standards and guidance and all regulatory requirements; that they acted with due diligence, in good faith and with the degree of care required; that any damages suffered by Respondent PES were contributed to by conditions or events beyond the control of Respondents Southern and Wooten; and,

failure to state a claim upon which relief could be granted.

### **RELIEF REQUESTED**

Claimant requested as against Respondents PES and Southern:

Compensatory Damages	\$55,104.42
Interest	amount unspecified
Other Costs	amount unspecified

Respondent PES requested as against Claimant:

Compensatory Damages	amount unspecified
Other Costs	amount unspecified

Respondent PES requested as against Respondents Southern and Wooten:

Compensatory Damages	\$417,403.00
Punitive Damages	amount unspecified
Other costs	amount unspecified

Respondent Southern requested as against Respondents PES and David Farber:

Compensatory Damages	\$99,104.42
Interest	amount unspecified
Costs	amount unspecified

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

Respondent PES and David I. Farber did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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

1. Respondent PES is liable to and shall pay to Claimant the sum of \$47,879.98, plus the legal rate of interest in Pennsylvania on that amount, accruing from September 10, 2001 through the date the Award is paid in full;
2. The parties shall bear their respective costs and expenses, including attorney's fees, except as Fees are specifically addressed below;

3. Respondent PES' request for punitive damages is denied in its entirety; and,
4. Any request for relief not specifically addressed herein is denied in its entirety.

### **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	= \$ 225
Respondent PES' Cross Claim filing fee	= \$1,000
Respondent Southern's Cross Claim filing fee	= \$1,000

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firms are Respondents PES and Southern.

Member surcharge	= \$1,000
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$2,500

#### **Adjournment Fees**

Adjournments requested during these proceedings:

January 29-31, 2001, adjournment assessed to Respondent PES	= \$1,125
February 19-21, 2001 adjournment assessed to Respondent Southern	= \$1,125

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

The panel has the authority to assess 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:

Two (2) Pre-hearing sessions with a single arbitrator x \$450	= \$ 900
Pre-hearing conferences: October 23, 2000      1 session	
January 5, 2001      1 session	
Four (4) Pre-hearing sessions with Panel x \$1,125	= \$ 4,500

Pre-hearing conferences:	June 5, 2000	1 session
	May 17, 2001	1 session
	June 15, 2001	1 session
	July 31, 2001	1 session

Fourteen (14) Hearing sessions x \$1,125 = \$15,750

Hearing Dates:	November 6, 2000	2 sessions
	November 7, 2000	2 sessions
	January 22, 2001	2 sessions
	January 23, 2001	2 sessions
	January 24, 2001	2 sessions
	April 23, 2001	2 sessions
	September 10, 2001	2 sessions

---

Total Forum Fees = \$21,150

The panel has assessed \$15,862.50 of the forum fees to Respondent PES.

The panel has assessed \$5,287.50 of the forum fees to Respondent Southern.

#### 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.

Respondent PES	tape duplication	\$240
Respondent Southern	tape duplication	\$195

#### Fee Summary

Claimant, Kretz, is assessed and shall pay:

Initial Filing Fee	= \$ 225
--------------------	----------

---

Total Fees	= \$ 225
------------	----------

Less payments	= \$ 975
---------------	----------

---

Refund owed to Claimant	= \$ 750
-------------------------	----------

Respondent, PES, is assessed and shall pay:

Filing Fee	= \$ 1,000
------------	------------

Member Fees	= \$ 4,100
Adjournment Fee	= \$ 1,125
Forum Fees	= \$15,862.50
Administrative Costs	= \$ 240

---

Total Fees	= \$22,327.50
Less payments	= \$ 6,225

---

Balance Due NASD Dispute Resolution, Inc.	= \$16,102.50
---	---------------

Respondent, Southern, is assessed and shall pay:

Filing Fee	= \$ 1,000
Member Fees	= \$ 4,100
Adjournment Fee	= \$ 1,125
Forum Fees	= \$ 5287.50
Administrative Costs	= \$ 195

---

Total Fees	= \$ 11,707.50
Less payments	= \$ 7,045

---

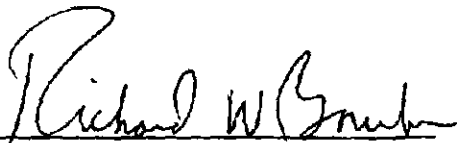
Balance Due NASD Dispute Resolution, Inc.	= \$ 4,662.50
---	---------------

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Richard W. Bourbon, Esq.	-	Public Arbitrator, Presiding Chairman
Sheldon Kapustin, Esq.	-	Public Arbitrator, Panelist
David M. Panko	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Richard W. Bourbon, Esq.  
Public Arbitrator, Presiding Chairman

10/15/01  
Signature Date

---

Sheldon Kapustin, Esq.  
Public Arbitrator, Panelist

---

Signature Date

---

David M. Panko  
Non-Public Arbitrator, Panelist

---

Signature Date

October 19, 2001

Date of Service (For NASD-Dispute Resolution office use only)



Concurring Arbitrators' Signatures

\_\_\_\_\_  
Richard W. Bourbon, Esq.  
Public Arbitrator, Presiding Chairman

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

Sheldon Kapustin  
Sheldon Kapustin, Esq.  
Public Arbitrator, Panelist

10/10/01  
Signature Date

\_\_\_\_\_  
David M. Panko  
Non-Public Arbitrator, Panelist

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

October 19, 2001  
Date of Service (For NASD-Dispute Resolution office use only)

NASD Dispute Resolution, Inc.

Arbitration No. 99-03389

Award Page 8

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Richard W. Bourbon, Esq.

Public Arbitrator, Presiding Chairman

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

\_\_\_\_\_  
Sheldon Kapustin, Esq.

Public Arbitrator, Panelist

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



\_\_\_\_\_  
David M. Panko

Non-Public Arbitrator, Panelist

OCTOBER 18, 2001

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

October 19, 2001

Date of Service (For NASD-Dispute Resolution office use only)