

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

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In the Matter of the Arbitration Between:

Philip Gottlieb and Helene Gottlieb, (Claimants) vs. National Securities Corporation and Jacob Wonsover, (Respondents)

Case Number: 99-04214

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimants, Philip Gottlieb ("P. Gottlieb") and Helene Gottlieb ("H. Gottlieb"), hereinafter collectively referred to as "Claimants": Brian W. Shaughnessy, Esq., Shaughnessy, Volzer & Gagner, P.C., Washington, DC. Previously represented by: Irwin Borowski, Esq., Law Offices of Irwin Borowski, Washington, DC.

Respondents, National Securities Corporation ("NSC") and Jacob Wonsover ("Wonsover"), hereinafter collectively referred to as "Respondents": Michael Schwartzberg, Esq., Winget, Spadafora & Schwartzberg, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: September 10, 1999.

Amended Statement of Claim filed on or about: December 6, 1999.

P. Gottlieb signed the Uniform Submission Agreement: September 1, 1999.

H. Gottlieb signed the Uniform Submission Agreement: September 1, 1999.

Joint Statement of Answer filed by Respondents on or about: November 24, 1999.

NSC signed the Uniform Submission Agreement: December 29, 1999.

Wonsover signed the Uniform Submission Agreement: December 20, 1999.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract; breach of fiduciary duties; failure to exercise due care; negligence; negligent misrepresentation; violation of Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder; control person liability; common law fraud; violation of N.Y. Gen. Business Law Section 349; violation of Illinois law 815 ILCS Section 505/2; and violation of Washington law RCW 19.86.020. Claimant's claim involved the stock of First Plus Financial Group Inc.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Respondents did not guarantee Claimants' return on any investments; Claimants contributed to and/or assumed the risk of their alleged losses; any losses sustained by Claimants resulted solely from the vagaries and volatilities of the securities markets, and not from any purported wrongdoing by Respondents; Respondents complied fully with all applicable rules and regulations regarding the supervision of Claimants' account; Claimants' investment portfolio must be considered in its entirety, and not just with respect to selected investments with which they might be unhappy; Claimants failed to mitigate their alleged damages; Claimants have approved, authorized, and ratified the acts complained of and, accordingly, are precluded from asserting claims based on those decisions as a basis for recovery; Claimants' claims are barred by the doctrines of estoppel, waiver, and ratification; all risks concerning Claimants' investments purchased through Respondents were properly disclosed to Claimants; and Claimants cannot assert claims based upon alleged violations of the Rules of the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc. or any other self-regulatory organization because there is no private right of action for such alleged violations as a matter of law.

#### **RELIEF REQUESTED**

Claimants requested:

- a. Compensatory damages in the amount of \$90,000.00;
- b. Interest from April 28, 1999; and
- c. Costs of this arbitration, including reasonable attorneys' fees.

Respondents requested that the Statement of Claim be dismissed, and that they be awarded their costs, including attorneys' fees, incurred in having to defend Claimants' claims.

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

During the hearings in this matter, Respondents made a Motion to Dismiss. The Panel denied said Motion.

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

1. NSC be and hereby is solely liable for and shall pay to Claimant the sum of \$15,750.00 as compensatory damages.
2. All claims against Wonsover are hereby dismissed.
3. All other requests for relief are hereby denied.

### **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	= \$ 225.00
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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 that employed the associated person at the time of the events giving rise to the dispute. In this matter, National Securities Corporation is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

Apr. 3, 4 & 5, 2001, adjournment by Claimants	= \$ 750.00
Jul. 23, 24 & 25, 2001, adjournment by Claimants	= \$1,000.00

**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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) Pre-hearing sessions with Panel x \$750.00 = \$3,000.00

Pre-hearing conferences:      November 16, 2000      1 session  
   May 24, 2001      1 session  
   July 23, 2001      1 session  
   July 25, 2001      1 session

Six (6) Hearing sessions x \$750.00 = \$4,500.00

Hearing Dates:      January 29, 2002      2 sessions  
   January 30, 2002      2 sessions  
   January 31, 2002      2 sessions

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Total Forum Fees = \$7,500.00

1. The Panel has assessed \$3,750.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$3,750.00 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Adjournment Fees	= \$1,750.00
Forum Fees	= \$3,750.00
Total Fees	= \$5,725.00
Less payments	= \$1,725.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,000.00

2. NSC be and hereby is solely liable for:

Member Fees	= \$3,100.00
Total Fees	= \$3,100.00
Less payments	= \$3,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

3. Respondents be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$3,750.00
Total Fees	= \$3,750.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,750.00

All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Thomas D. Giordano, Esq.	-	Public Arbitrator, Presiding Chair
Lincoln W. Craighead	-	Public Arbitrator
Michael Todd Clements	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

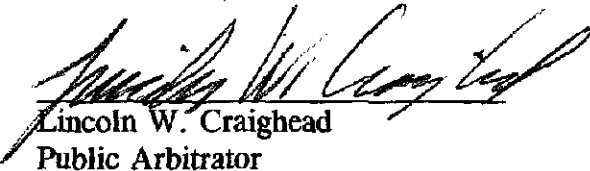
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

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Thomas D. Giordano, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date



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Lincoln W. Craighead  
Public Arbitrator

3/4/02  
Signature Date

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Michael Todd Clements  
Industry Arbitrator

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Signature Date

March 8, 2002

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Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Thomas D. Giordano, Esq.	-	Public Arbitrator, Presiding Chair
Lincoln W. Craighead	-	Public Arbitrator
Michael Todd Clements	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Thomas D. Giordano, Esq.  
Public Arbitrator, Presiding Chair

March 5, 2002  
Signature Date

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Lincoln W. Craighead  
Public Arbitrator

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Signature Date

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Michael Todd Clements  
Industry Arbitrator

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Signature Date

March 8, 2002

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Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Thomas D. Giordano, Esq.	-	Public Arbitrator, Presiding Chair
Lincoln W. Craighead	-	Public Arbitrator
Michael Todd Clements	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

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Thomas D. Giordano, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Lincoln W. Craighead  
Public Arbitrator

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Signature Date



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Michael Todd Clements  
Industry Arbitrator

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Signature Date

March 8, 2002

Date of Service (For NASD office use only)