

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

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In the Matter of the Arbitration Between:

David Goldberg, Claimant v. Bethany Financial Advisory, Inc. and David Cook, Respondents

Case Number: 99-04518

Hearing Site: Los Angeles, California

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**REPRESENTATION OF PARTIES**

For Claimant:

Timothy N. Will, Esq.  
Albert & Will, LLP  
Torrance, California

For Respondents:

Steve Wasserman, Esq.  
Korman, Jackson & Krantz, PLL  
Cleveland, Ohio

**CASE INFORMATION**

Statement of Claim filed: September 28, 1999

Claimant's Uniform Submission Agreement signed: September 24, 1999

Joint Statement of Answer filed by Respondents: January 6, 2000

Respondent Bethany Financial Advisory Inc's Uniform Submission Agreement signed: January 6, 2000

Respondent David E. Cook's Uniform Submission Agreement signed: January 6, 2000

**CASE SUMMARY**

Claimant alleged negligence, breach of fiduciary duty and unauthorized trading. The allegations involved transactions in Metricom and R & B Falcon securities.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$400,000.00.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, and sought reimbursement for costs of arbitration and attorney's fees.

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

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

- 1) Respondents Bethany Financial Advisory, Inc. and David Cook are jointly and severally liable to and shall pay Claimant \$13,762.00 in damages.
- 2) Each party shall bear its own costs, including attorney's fees.
- 3) 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	= \$ 300.00
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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 which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Bethany Financial Advisory, Inc. is a party and the following fees are assessed:

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 Panel. The following fees are assessed:

1 Pre-hearing conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: April 2, 2001 1 session	
1 Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: November 6, 2000 1 session	
4 Hearing sessions @ \$1,125.00/session	= \$ 4,500.00
Hearings: April 10, 2001 2 sessions	
April 11, 2001 2 sessions	
<b>Total Forum Fees</b>	<b>= \$6,075.00</b>

1. The Panel assessed \$3,037.50 of the forum fees to Claimant David Goldberg.
2. The Panel assessed \$3,037.50 of the forum fees jointly and severally to Respondents Bethany Financial Advisory, Inc. and David Cook.

### **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 other requests.

Party Bethany Financial Services, Inc., requested 30 copies @ \$.50 = \$ 15.00

**Fee Summary**

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

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 3,037.50
Total Fees	= \$ 3,337.50
Less Payments	= \$(1,425.00)
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 1,912.50</b>

2. Respondent Bethany Financial Advisory, Inc. is charged with the following fees and costs:

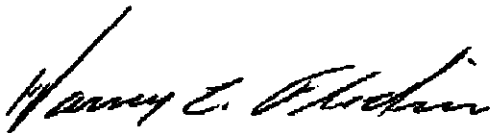
Member Fees	= \$ 4,600.00
Administrative Costs	= \$ 15.00
Total Fees	= \$ 4,615.00
Less Payments	= \$(3,800.00)
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 815.00</b>

3. Respondents Bethany Financial Advisory, Inc. and David Cook are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 3,037.50
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 3,037.50</b>

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

Concurring Arbitrators' Signatures



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Harvey C. Flodin, Esq.  
Chair, Public Arbitrator

4-17-01  
Signature Date

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Thomas M. Adams, Esq.  
Public Arbitrator

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Signature Date

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William L. Hildeburn, Jr.  
Non-Public Arbitrator

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Signature Date

4-19-01  
Date of Service

**Concurring Arbitrators' Signatures**

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Chair, Public Arbitrator

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Signature Date

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