

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

In the Matter of the Arbitration Between

Name of Claimant

Robert A. Foisie

Name of Respondent

Brett S. Borgersen

Case No. 99-04767

Hearing Site: Boca Raton, Florida

**REPRESENTATION OF PARTIES**

For Robert A. Foisie ("Foisie") hereinafter referred to as "Claimant": Lawrence P. Brodie, Esq., Brodie and Pawluc, Stuart, Florida.

For Brett S. Borgersen ("Borgersen") hereinafter referred to as "Respondent": Robert L. Herskovits, Law Office of Michael F. Bachner, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: October 22, 1999.

Claimant signed the Uniform Submission Agreement: October 20, 1999.

Statement of Answer filed by Respondent on or about: December 27, 1999.

Respondent signed the Uniform Submission Agreement: December 22, 1999.

**CASE SUMMARY**

Claimant asserted the following: 1) Respondent misrepresented and failed to disclose material facts concerning investments in Claimant's account; 2) Respondent charged excessive markdowns or commissions on the purchase or sale of securities in Claimant's account; 3) Respondent gave specific price predictions and agreed to share in any losses incurred in Claimant's account; 4) Respondent failed to use reasonable diligence to see that orders were executed at the best possible price given prevailing market conditions; 5) Respondent purchased or sold securities while in possession of material non-public information regarding an issuer; and 6) Respondent used manipulative, deceptive, and other fraudulent device or contrivance to effect transactions in, or induce the purchase or sale of securities in Claimant's account. The causes of action relate to the purchase and sale of shares of stock of Visual Data Corp., Equitex, Inc., Ashton Technology Group, Zapata Corp., Chromatics Color Science, Juniper Group, Inc., and Alpha Hospitality Corp.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$108,154.40, plus interest, punitive damages, attorney's fees, the costs of this proceeding and such other relief as is deemed just and proper.

Respondent requested that all claims be dismissed in their entirety and that all references to this matter be expunged from the NASD Central Registration Depository ("CRD") record of Respondent Borgersen and that all references to the arbitration be expunged from Respondent Borgersen's Form U-4. In addition, Respondent requested that the costs of arbitration be assessed against Claimant.

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

On October 8, 2001, NASD Dispute Resolution, Inc. was informed that Respondent Bluestone Capital Partners, LP had filed for protection under Chapter 7 of the United States Bankruptcy Code. Therefore, all proceedings were stayed with regard to Bluestone Capital Partners, LP and the arbitration panel made no determinations with regard to Bluestone Capital Partners, LP.

The parties agreed that the Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the undersigned arbitrators (the "Panel") has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims are denied in their entirety.

Respondent's request for attorney's fees is granted pursuant to NASD Notice to Members 99-90, Article VIII. Claimant is liable and shall pay to Respondent Borgersen attorney's fees in amount of \$1,000.00.

Claimant is liable and shall pay to Respondent the sum of \$378.87 representing reimbursement of a charge incurred for a background investigation of Claimant through Fidelifacts.

Any and all other requests for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Borgersen's registration records maintained by the NASD Central Registration Depository ("CRD") and Respondent Borgersen's Form U-4, with the

understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Borgersen must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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 = \$300.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

March 14 - 15, 2001, adjournment requested jointly by Claimant and Respondent. The adjournment fee of \$1,125.00 is assessed to Claimant.

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

One (1) Pre-hearing session with Panel x \$1,125.00 = \$1,125.00  
Pre-hearing conference: June 29, 2000 1 session

Two (2) Hearing sessions x \$1,125.00 = \$2,250.00  
Hearing Date: October 31, 2001 2 sessions

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Total Forum Fees = \$3,375.00

The panel has assessed the total forum fees of \$3,375.00 to Claimant.

#### **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.

No administrative costs were incurred during these proceedings.

**Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$1,125.00
Forum Fees	= \$3,375.00

Total Fees	= \$4,800.00
Less payments	= \$2,450.00

Balance Due NASD Dispute Resolution, Inc.	= \$2,350.00
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All balances are due and payable to NASD Dispute Resolution, Inc. immediately upon receipt of the Award by the parties pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

**Hugh N. Fryer, J.D.**

**Public Arbitrator, Presiding Chair**

**George L. Davis**

**Public Arbitrator**

**David Barth, CFA**

**Non-Public Arbitrator**

**Concurring Arbitrators' Signatures**

**Concurring Arbitrators**

**Hugh N. Fryer, J.D.**

**Signature Date**

**Public Arbitrator, Presiding Chair**

**Hugh N. Fryer, J.D.**

**/s/**

**George L. Davis**

**Signature Date**

**Public Arbitrator**

**/s/**

**David Barth, CFA**

**Signature Date**

**Non-Public Arbitrator**

**December 10, 2001**

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

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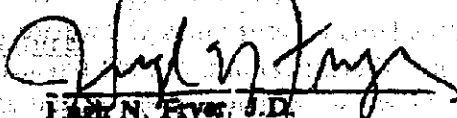
Hugh N. Fryer, J.D.  
George L. Davis  
David Barth, CFA

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

Hugh N. Fryer, J.D.  
George L. Davis  
David Barth, CFA

Concurring Arbitrators' Signatures

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Hugh N. Fryer, J.D.  
Public Arbitrator, Presiding Chair

12-6-01  
Signature Date

Hugh N. Fryer, J.D.  
Public Arbitrator, Presiding

George L. Davis  
Public Arbitrator

Signature Date

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ARBITRATION PANEL

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<i>George L. Davis</i>	-	<i>Public Arbitrator</i>
<i>David Barth, CFA</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

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Public Arbitrator, Presiding Chair

Signature Date

*George L. Davis*  
Public Arbitrator

Signature Date

*David Barth, CFA*  
Non-Public Arbitrator

Signature Date

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George L. Davis	Public Arbitrator
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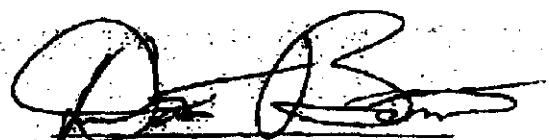
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Public Arbitrator, Presiding Chair

Signature Date Hugh N. Fryer, J.D.

George L. Davis  
Public Arbitrator

Signature Date

  
David Barth, CFA  
Non-Public Arbitrator

  
Signature Date