

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

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In the Matter of the Arbitration Between:

FRANK J. SPADAFORE AND  
CAROL A. HESS,

Claimants,

v.

RICHARD W. BOURGON, PARTNERS SECURITIES, INC.,  
MARINER FINANCIAL SERVICES, INC.,  
RICHARD BOURGON,  
J. WILL PAULL, CLARK F. COLTON, WILLIAM GREGG,  
DENNIS BROWN, ROBERT BOONE, and  
KENNETH D. WARNICK,

Respondents.

Case Number: 99-04909      Hearing Site: Detroit, Michigan

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**REPRESENTATION OF PARTIES**

Claimants, Frank J. Spadafore and Carol A. Hess ("Claimants"): Anthony V. Trogan, Esq., 7031 Orchard Lake Road, Suite 203, West Bloomfield, MI 48322

Respondent Partners Securities, Inc.: Ellen L. Flannigan, Esq., Kovitz, Shiffrin & Waitzman, 55 West Monroe Street, Suite 600, Chicago, IL 60603.

Respondent Richard Bourgon: Patrick D. Filbin, Esq., Maddin, Hauser, Wartell, Roth, Heller, and Pesses, 28400 Northwestern Highway, Third Floor, Southfield, MI 48034-8004.

Respondents J. Will Paull, Clark F. Colton, William Gregg, Dennis Brown, Robert Boone, and Kenneth D. Warnick: Matthew W. Schlegel, Esq., Kupelian Ormond and Magy, PC, 25800 Northwestern Highway, Suite 950, Southfield, MI 48075

Respondent Mariner Financial Services, Inc.: Thomas R. Cox, Esq., Miller Canfield, 150 West Jefferson, Suite 2500, Detroit, Michigan 48226

**CASE INFORMATION**

Statement of Claim filed on or about October 26, 1999, and First Amended Statement of Claim filed on or about February 21, 2000. Respondents Paull, Colton, Gregg, Brown, Boone, and Warnick all filed responses on or about July 27, 2000, Respondent Richard Bourgon filed a

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response on or about March 15, 2000, and Respondent Partners Securities, Inc., filed a response on or about February 14, 2000. Claimants withdrew their claims against all Respondents with prejudice on or about August 13, 2001.

### CASE SUMMARY

Claimant Frank J. Spadafore's claims were only against Respondents Richard Bourgon, Mariner Financial Services, Inc., J. Will Paull, Clark F. Colton, William Gregg, Dennis Brown, Robert Boone and Kenneth D. Warnick, whereas Claimant Carol A. Hess' claims were only against Respondents Richard Bourgon and Partners Securities, Inc. Claimants asserted the following legal theories in support of their recovery: breach of contract, fraud, conspiracy, promissory estoppel, conversion, negligence, malpractice, breach of fiduciary duty, breach of Michigan securities law, and violation of Michigan Consumer's Protection Law.

Respondents denied the allegations made in the Statement of Claim and asserted legal and factual defenses to the claims. During the course of discovery, Claimant Frank J. Spadafore stipulated to dismiss all of his claims against Respondents William Gregg, Dennis Brown and Kenneth D. Warnick.

### RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$234,500 by Claimant Spadafore, and \$72,500 by Claimant Hess
Punitive Damages	Unspecified
Interest	6%
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary/Non-Monetary Relief if any:	Unspecified

Respondents requested dismissal of Claimants' claims, costs and attorneys' fees.

### OTHER ISSUES CONSIDERED AND DECIDED

Claimants, having had an opportunity to review the records and documents produced in prehearing discovery and discuss the contents thereof with their counsel, stipulate and agree with Respondents to the expungement of all reference to the above-captioned arbitration from all registration records of Respondents RICHARD BOURGON, J. WILL PAULL, CLARK F. COLTON, WILLIAM GREGG, DENNIS BROWN, ROBERT BOONE, and KENNETH D. WARNICK maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondents must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and

Claimants have agreed to withdraw and dismiss all claims in the above-entitled case against RICHARD BOURGON, J. WILL PAULL, CLARK F. COLTON, WILLIAM GREGG,

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DENNIS BROWN, ROBERT BOONE, KENNETH D. WARNICK, MARINER FINANCIAL SERVICES, INC., and PARTNERS SECURITIES, INC. with prejudice and without costs.

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

### AWARD

After considering the parties' submissions, representations and stipulations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

- 1) All claims having been withdrawn, the same are hereby dismissed with prejudice and without costs, except as specified hereinafter.
- 2) The panel recommends the expungement of any and all references to the above captioned arbitration from Respondents RICHARD BOURGON, J. WILL PAULL, CLARK F. COLTON, WILLIAM GREGG, DENNIS BROWN, ROBERT BOONE, and KENNETH D. WARNICK's registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 99-09, Respondents must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3) That any relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

NASD Dispute Resolution, Inc. will retain the non-refundable filing fees for each claim:

Initial claim filing fee = \$300.00

#### 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 persons at the time of the events giving rise to the dispute. In this matter, the member firms, Partners Securities, Inc., and Mariner Financial Services, Inc., are parties.

Member surcharge = \$1,500.00  
Pre-hearing process fee = \$ 600.00  
Hearing process fee = \$2,500.00

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

Three (3) Pre-hearing sessions with Panel x \$1,125.00 = \$3,375.00

Pre-hearing conferences: July 26, 2000 1 session

December 6, 2000 1 session

February 26, 2001 1 session

Total Forum Fees = \$3,375.00

The Panel has assessed \$375.00 of the forum fees solely to Respondent Mariner Financial Services, Inc.

The Panel has assessed \$562.50 of the forum fees solely to Respondent Partners Securities, Inc.

The Panel has assessed \$375.00 of the forum fees jointly to Respondents Paull, Boone and Colton.

The Panel has assessed \$937.50 of the forum fees solely to Respondent Richard Bourgon.

The Panel has assessed \$1,125.00 of the forum fees jointly and severally to Claimants, Frank J. Spadafore and Carol A. Hess, pursuant to NASD Regulation, Inc. Code of Arbitration Procedure Rule 10332(f).

### Fee Summary

Claimants, Frank J. Spadafore and Carol A. Hess are jointly and severally liable for:

Initial Filing Fee	=	\$ 300.00
Forum Fees	=	\$1,125.00
Total Fees	=	\$1,425.00
Less payments	=	\$1,425.00
Balance due NASD Dispute Resolution, Inc.	=	\$ 0.00

Respondent, Mariner Financial Services, Inc. is solely liable for:

Member Fees	=	\$4,600.00*
Forum Fees	=	\$ 375.00
Total Fees	=	\$4,975.00
Less payments	=	\$ 0.00
Balance due NASD Dispute Resolution, Inc.	=	\$4,975.00

Respondent, Partners Securities, Inc is solely liable for:

Member Fees	=	\$4,600.00
Forum Fees	=	\$ 562.00
Total Fees	=	\$5,262.50
Less payments	=	\$5,262.50
Balance due NASD Dispute Resolution, Inc.	=	\$ 0.00

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Respondents Paull, Boone and Colton are jointly and severally liable for:

<u>Forum Fees</u>	=	\$ 375.00
<u>Total Fees</u>	=	\$ 375.00
<u>Less payments</u>	=	\$ 375.00
Balance due NASD Dispute Resolution, Inc.	=	\$ 0.00

Respondent Richard Bourgon is solely liable for:

<u>Forum Fees</u>	=	\$ 937.50
<u>Total Fees</u>	=	\$ 937.50
<u>Less payments</u>	=	\$ 937.50
Balance due NASD Dispute Resolution, Inc.	=	\$ 0.00

All balances are due to NASD Dispute Resolution, Inc.

### ARBITRATION PANEL

George H. Zinn, Jr., Esq. - Public Arbitrator, Presiding Chair  
 Karl Fava - Public Arbitrator  
 Sharon Paul - Non-Public Arbitrator

#### Concurring Arbitrators:

/s/ George H. Zinn, Jr., Esq.  
 George H. Zinn, Jr., Esq.  
 Public Arbitrator, Presiding Chair

05/06/02  
 Signature Date

/s/ Karl Fava  
 Karl Fava  
 Public Arbitrator

05/03/02  
 Signature Date

/s/ Sharon Paul  
 Sharon Paul  
 Non-Public Arbitrator

05/02/02  
 Signature Date

05/08/02  
 Date of Service (For NASD office use only)

\*Mariner submits that it has not been a member of the National Association of Securities Dealers ("NASD") since November 25, 1997, dissolved as a corporation on November 5, 1999, and consequently is not obligated to pay this amount. NASD Dispute Resolution, Inc. has nonetheless insisted on making this assessment.

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NASD REGULATION

007

NASD Dispute Resolution, Inc.  
 Arbitration # 99-04909  
 Award Page 2 of 3

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Karl Fava - Public Arbitrator

Sharon Paul - Non-Public Arbitrator

#### Concurring Arbitrators:

George H. Zinn, Jr., Esq.  
 Public Arbitrator, Presiding Chair

Signature Date

Karl Fava  
 Public Arbitrator

Signature Date

Sharon Paul  
 Non-Public Arbitrator

5/02/02  
 Signature Date

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NASD REGULATION

0007

NASD Dispute Resolution, Inc.  
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### ARBITRATION PANEL

George H. Zinn, Jr., Esq. - Public Arbitrator, Presiding Chair

Karl Fava - Public Arbitrator

Sharon Paul - Non-Public Arbitrator

#### Concurring Arbitrators:

George H. Zinn, Jr., Esq.  
Public Arbitrator, Presiding Chair

Karl Fava  
Public Arbitrator

Sharon Paul  
Non-Public Arbitrator

Signature Date

Signature Date

Signature Date

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NASD REGULATION

NASD Dispute Resolution, Inc.  
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Respondents Paull, Boone and Colton are jointly and severally liable for:

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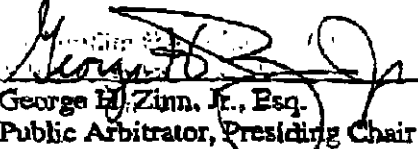
### ARBITRATION PANEL

George H. Zinn, Jr., Esq. - Public Arbitrator, Presiding Chair

Karl Fava - Public Arbitrator

Sharon Paul - Non-Public Arbitrator

#### Concurring Arbitrators:

  
 George H. Zinn, Jr., Esq.  
 Public Arbitrator, Presiding Chair

6 May 2002  
 Signature Date

Karl Fava  
 Public Arbitrator

Signature Date

Sharon Paul  
 Non-Public Arbitrator

Signature Date

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