**Award**
**NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Names of the Claimants
Steven and Janet Goldstein

Case Number: 05-04437

Names of the Respondents
Pacvest Associates, Inc.
Barry Michael Kornfeld
Robert K. Mann

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member and Associated Person.

## REPRESENTATION OF PARTIES

For Steven and Janet Goldstein, hereinafter collectively referred to as "Claimants": Randall Place, Esq., Blum & Silver, LLP, Coral Springs, Florida.

For Pacvest Associates, Inc., hereinafter referred to as "Respondent Pacvest": David Constantino, Esq., The Law Office of David Constantino, Worcester, Massachusetts.

Barry Kornfeld, hereinafter referred to as "Respondent Kornfeld", did not appear.

For Robert K. Mann, hereinafter referred to as "Respondent Mann": Lloyd R. Schwed, Esq., Kubicki Draper, P.A., West Palm Beach, Florida until his withdrawal as counsel on or about January 31, 2006. Thereafter, David Constantino, Esq., The Law Office of David Constantino, Worcester, Massachusetts, appeared.

## CASE INFORMATION

Statement of Claim filed on or about: August 15, 2005.
Claimants signed the Uniform Submission Agreements: August 5, 2005.
Motion to Dismiss jointly filed by Respondents Pacvest and Mann on or about: November 20, 2005.
Respondent Mann signed the Uniform Submission Agreement: November 22, 2005.
Response to Motion to Dismiss filed by Claimants on or about: December 12, 2005.
Respondent Pacvest signed the Uniform Submission Agreement: January 5, 2006.
Respondent Kornfeld did not file a Statement of Answer or executed Uniform Submission Agreement.

## CASE SUMMARY

Claimant asserted the following causes of action: 1) respondeat superior; 2) breach of contract; 3) breach of fiduciary duty; 4) unsuitability; 5) misrepresentations and omission

of material facts; 6) negligent supervision, retention and hiring of employees; and, 7) violation of industry rules, including but not limited to NYSE's "know your customer" standard (Rule 405) and NASD's customer suitability standard (Rule 2130).
The causes of action relate to Claimants' investments in Respondents' MarketShield Mutual Fund Program.

Unless specifically admitted in their Statement of Answer/ Motion to Dismiss, Respondents Pacvest and Mann denied the allegations in the Statement of Claim and asserted various defenses.

## RELIEF REQUESTED

Claimants requested: 1) compensatory damages of approximately $100,000.00; 2) interest at the legal rate from the date of purchase or reasonable market return; 3) rescission; 4) an unspecified amount of punitive damages; 5) costs of this proceeding; and, 6) such other relief as is deemed just and proper by the undersigned arbitrators ("the Panel").

Respondents Pacvest and Mann requested a dismissal of Claimants' Statement of Claim in its entirety.

## OTHER ISSUES CONSIDERED AND DECIDED

On or about July 29, 2003, Respondent Kornfeld filed for protection pursuant to Chapter 7 of the United States Bankruptcy Code. As such, all proceedings with respect to Respondent Kornfeld were stayed and the Panel made no determination with respect to this party.

Claimants named Advisors Capital Investments, Inc. ("ACI") as a respondent in the Statement of Claim. ACI is not a member of NASD and is not required to submit to arbitration before NASD Dispute Resolution. On or about November 20, 2005, Respondent ACI declined to submit to arbitration. Accordingly, the Panel made no determination with respect to ACI.

On or about December 20, 2005, Respondents Pacvest and Mann filed a notice with NASD Dispute Resolution which designated their Motion to Dismiss as their formal Answer to the Statement of Claim.

On or about January 31, 2006, the Panel issued an order which denied Respondents Pacvest and Mann's Motion to Dismiss.

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

Respondents Pacvest and Mann are jointly and severally liable on the claims of breach of fiduciary duty, unsuitability, misrepresentation and failure to supervise and shall pay to Claimants compensatory damages in the amount of $73,336.30, pre-judgment interest specifically excluded.

Any and all claims for relief not specifically addressed herein, including Claimants' requests for punitive damages, are denied.

## FEES

Pursuant to the Code, the following fees are assessed:

**Filing Fees**
NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

| | |
|---|---|
| Initial claim filing fee | = $ 225.00 |

**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, the member firm Pacvest Associates, Inc. is a party.

| | |
|---|---|
| Member surcharge | = $ 1,100.00 |
| Pre-hearing process fee | = $ 750.00 |
| Hearing process fee | = $ 1,700.00 |
| Total Member Fees | = $ 3,550.00 |

**Adjournment Fees**
Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

**Three-Day Cancellation Fees**
Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A 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:

| | | | |
|---|---|---|---|
| Two (2) pre-hearing sessions with a single arbitrator @ $450.00/session | | | =$ 900.00 |
| Pre-hearing conferences: | June 22, 2006 | 1 session | |
| | July 21, 2006 | 1 session | |
| One (1) Pre-hearing session with the Panel @ $750.00/ session | | | =$ 750.00 |
| Pre-hearing conference: | January 31, 2006 | 1 session | |
| Four (4) Hearing sessions @ $750.00/ session | | | = $3,000.00 |
| Hearing Dates: | September 11, 2006 | 2 sessions | |
| | September 12, 2006 | 2 sessions | |
| Total Forum Fees | | | =$4,650.00 |

The Panel has assessed $2,325.00 of the forum fees jointly and severally to Claimants. The Panel has assessed $2,325.00 of the forum fees jointly and severally to Respondents Pacvest and Mann.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to: additional copies of arbitrator awards; copies of audio transcripts; retrieval of documents from archives; interpreters; and, security.

There were no administrative costs incurred during these proceedings.

## Fee Summary

Claimants are jointly and severally liable for:

| | |
|---|---|
| Initial Filing Fee | = $ 225.00 |
| Forum Fees | = $ 2,325.00 |
| Total Fees | = $ 2,550.00 |
| Less payments | = $ 975.00 |
| Balance Due NASD Dispute Resolution | = $ 1,575.00 |

Respondent Pacvest is solely liable for:

| | |
|---|---|
| Member Fees | = $ 3,550.00 |
| Total Fees | = $ 3,550.00 |
| Less payments | = $ 3,550.00 |
| Balance Due NASD Dispute Resolution | = $ 0.00 |

Respondents Pacvest and Mann are jointly and severally liable for:

| | |
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| Forum Fees | = $ 2,325.00 |
| Total Fees | = $ 2,325.00 |
| Less payments | = $ 0.00 |
| Balance Due NASD Dispute Resolution | = $ 2,325.00 |

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

## ARBITRATION PANEL

| | | |
|---|---|---|
| Ilisa J. Smukler, Esq. | - | Public Arbitrator, Presiding Chairperson |
| Iris Marilyn Bass, Esq. | - | Public Arbitrator |
| James G. Gertz | - | Non-Public Arbitrator |

## Concurring Arbitrators' Signatures

/s/ 09/15/2006

Ilisa J. Smukler, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

/s/ 09/14/2006

Iris Marilyn Bass, Esq.
Public Arbitrator

Signature Date

/s/ 09/14/06

James G. Gertz
Non-Public Arbitrator

Signature Date

September 15, 2006

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

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Ilisa J. Smukler, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

I. M. Bass
Iris Marilyn Bass, Esq.
Public Arbitrator

9/14/06
Signature Date

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