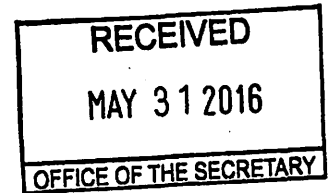


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May 23, 2016

Office of the Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

**RE: In the Matter of Timothy S. Dembski**  
**File No. 3-16311**

Ladies and Gentlemen:

I represent Timothy S. Dembski in the above-entitled proceeding.

Currently pending before the Commission is Mr. Dembski's appeal from the Initial Decision of the Administrative Law Judge.

In the Initial Decision, the Administrative Law Judge concluded – incorrectly, as we have argued on the appeal – that the testimony of the seven investors in the Prestige Wealth Fund called by the Enforcement Division was credible and persuasive. We have argued that the testimony of the investors was neither credible nor persuasive, in part (but only in part) because *all* of the seven investor-witnesses had either arbitration proceedings or lawsuits pending against Mr. Dembski.

Thomas Krajewski, one of the investor witnesses, had brought an arbitration proceeding against Mr. Dembski before the Financial Industry Regulatory Authority (“FINRA”).

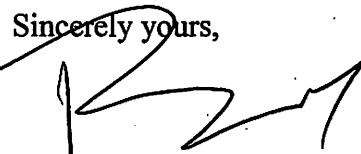
Mr. Krajewski's arbitration has been the first of the arbitration proceedings and litigations to reach a hearing or trial.

On May 19, 2016, the three-member FINRA arbitration panel – after conducting a five-day hearing at which Mr. Krajewski and Mr. Dembski, among others, testified – concluded that Mr. Krajewski was entitled to *no* relief from Mr. Dembski. The Panel dismissed Mr. Krajewski's claims against Mr. Dembski in their entirety (*see* annexed Exhibit 1, FINRA decision at 4).

Office of the Secretary  
May 23, 2016  
Page 2

\* \* \*

We request that the Commission include the enclosed FINRA decision as part of the record in connection with Mr. Dembski's appeal.

Sincerely yours,  
  
Paul Batista

PB/wg

Encl.

cc: Michael Birnbaum, Esq.

# **EXHIBIT 1**

**Award**  
**FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant  
Thomas Krajewski

Case Number: 13-03740

vs.

Respondent  
Mid Atlantic Capital Corporation  
TD Ameritrade, Inc.  
Wall Street Financial Group, Inc.  
Nancy Beth Kay  
Timothy Stephen Dembski  
Walter Francis Grenda  
Russell James Grosjean

Hearing Site: Buffalo, New York

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Nature of the Dispute: Customer vs. Members and Associated Persons

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimant Thomas Krajewski: Howard Cohen, Esq., Gross Shuman, Brizdle & Gilfillan, P.C., Buffalo, New York.

For Respondent Mid Atlantic Capital Corporation ("MACC"): Erin N. Fischer, Esq., Mid Atlantic Capital Corporation, Pittsburgh, Pennsylvania.

For Respondent TD Ameritrade, Inc. ("Ameritrade"): David S. Richan, Esq., Baritz & Colman, LLP, Baltimore, Maryland.

For Respondents Wall Street Financial Group, Inc. ("WSFG") and Nancy Beth Kay ("Kay"): Steven F. Mellen, Esq., Winget, Spadafora & Schwartzberg, LLP, New York, New York.

For Respondent Timothy Stephen Dembski ("Dembski"): Eric Soehnlein, Esq., Lippes Mathias Wexler Friedman LLP, Buffalo, New York.

For Respondent Walter Francis Grenda ("Grenda"): Joseph G. Makowski, Esq., Law Office of Joseph G. Makowski, Buffalo, New York.

Respondent Russell James Grosjean ("Grosjean") appeared pro se.

### **CASE INFORMATION**

Statement of Claim filed on or about: December 19, 2013.  
Claimant signed the Submission Agreement: October 21, 2013.

Statement of Answer filed by Respondent MACC on or about: March 5, 2014.  
MACC signed the Submission Agreement: March 3, 2014.

Statement of Answer filed by Respondent Ameritrade on or about: March 5, 2014.  
Ameritrade signed the Submission Agreement: March 31, 2014.

Joint Statement of Answer filed by Respondents WSFG and Kay on or about: March 19, 2014.  
WSFG signed the Submission Agreement: March 27, 2014.  
Kay signed the Submission Agreement: February 26, 2014.

Statement of Answer filed by Respondent Dembski on or about: March 19, 2014.  
Dembski signed the Submission Agreement: March 31, 2014.

Statement of Answer filed by Respondent Grenda on or about: March 4, 2014.  
Grenda signed the Submission Agreement: March 5, 2014.

Statement of Answer filed by Respondent Grosjean on or about: March 4, 2014.  
Grosjean signed the Submission Agreement: January 20, 2014.

### **CASE SUMMARY**

Claimant asserted the following causes of action: failure to conduct due diligence, negligence by unsuitable recommendations and failures to recommend, negligence by breach of FINRA Rules, failure to supervise, breach of fiduciary duty, negligent misrepresentation and failure to disclose material facts, fraud, breach of contract, breach of implied contract, respondeat superior, vicarious liability – agency by estoppel, and violation of New York Business Law §349. The causes of action relate to investment in Prestige Wealth Management Fund, LP.

Unless specifically admitted in their respective Answers, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested compensatory damages in the amount of approximately \$225,000.00, other unspecified compensatory damages, rescission, attorneys' fees, punitive damages in the amount of \$450,000.00, interest, costs, and any such other and further relief as deemed just and proper.

Respondent MACC requested that Claimant's claims be dismissed, attorneys' fees, and any further relief as deemed just and proper.

Respondent Ameritrade requested that Claimant's be dismissed and all costs assessed against Claimant.

Respondents WSFG and Kay requested that Claimant's claims be dismissed in their entirety, costs, attorneys' fees, that all forum fees be assessed to Claimant, and such further relief as deemed just and appropriate.

Respondent Dembski requested that the Statement of Claim be dismissed, attorneys' fees, and expungement of this matter from his CRD records.

Respondent Grenda requested that the Statement of Claim be dismissed, and expungement of this matter from his CRD records.

Respondent Grosjean requested that the Statement of Claim be dismissed, and expungement of this matter from his records.

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

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On December 12, 2014, FINRA Dispute Resolution received the Stipulation of Dismissal dated October 31, 2014 between Claimant and Respondent Grosjean dismissing Respondent Grosjean from this matter.

On March 3, 2015, FINRA Dispute Resolution received the Stipulation of Voluntary Dismissal dated January 30, 2015 between Claimant and Respondent Kay dismissing Respondent Kay from this matter.

On September 1, 2015, Claimant notified FINRA Dispute Resolution that his claim against Respondents WSFG and MACC for violation of New York Business Law §349 was withdrawn.

On March 1, 2016, Claimant notified FINRA Dispute Resolution that his claim against Respondent WSFG was settled.

On March 4, 2016, Claimant notified FINRA Dispute Resolution that his claim against Respondent Ameritrade was settled.

At the conclusion of the Claimant's case-in-chief, Respondents MACC, Dembski and Grenda made Motions to Dismiss. Claimant opposed the motions. After due deliberation, the Panel granted Respondents MACC and Grenda's Motions to Dismiss on the basis that Claimant failed to prove a prima facie case against Respondents MACC and Grenda. The Panel denied Respondent Dembski's Motion to Dismiss.

On March 24, 2016, Respondent Grosjean submitted a Motion for Expungement of this matter from his CRD records. Claimant did not oppose the motion.

The Panel conducted a recorded telephonic hearing on April 20, 2016 so that the parties could present oral argument on Respondent Grosjean's request for expungement.

Respondents Dembski and Grenda did not pursue the requests for expungement of their CRD records contained in their Statements of Answer and therefore their requests were not considered by the Panel.

Claimant and Respondents MACC, Dembski and Grenda did not participate in the expungement hearing. The Panel determined that the Claimant and Respondents MACC, Dembski and Grenda received due notice of the expungement hearing and that the hearing would proceed without them present.

The Panel reviewed Respondent Grosjean's BrokerCheck Report, and the Stipulation of Dismissal between Claimant and Grosjean dated October 31, 2014. The Panel noted that the Stipulation of Dismissal contained a provision that Claimant consented to the expungement of this arbitration from Grosjean's FINRA records. The Panel further noted that Claimant's consent to expungement for Respondent Grosjean did not influence their decision that Grosjean was not involved in any transaction with Claimant.

The Panel also reviewed the settlement documents between Claimant and Respondent WSFG and notes that Respondent Grosjean was not a party to the agreement and that Respondent Grosjean did not contribute to the settlement amount. Furthermore, Claimant released Respondent Grosjean from the arbitration in October, 2014, many months prior to the settlement with Respondent WSFG in March, 2016.

### **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:

1. Claimant's claims against Respondents MACC and Grenda are dismissed in their entirety.
2. Claimant's claim against Respondent Dembski is denied in its entirety.
3. The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Russell James Grosjean's (CRD # 1218349) registration records maintained by the Central Registration Depository ("CRD"), with the understanding that, pursuant to Notice to Members 04-16, Respondent Russell James Grosjean must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code, the arbitration Panel has made the following Rule 2080 affirmative finding of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The arbitration Panel has made the above Rule 2080 finding based on the following reasons:

Claimant discontinued the claim against Respondent Grosjean, stipulated that he did not cause Claimant's loss and consented to expungement of this matter from Respondent Grosjean's CRD record. Respondent Grosjean never met Claimant and had no involvement with his account.

4. Any and all relief not specifically addressed herein, including punitive damages and attorneys' fees, is denied.

#### **FEES**

Pursuant to the Code, the following fees are assessed:

##### **Filing Fees**

FINRA Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim Filing Fee = \$ 1,575.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

##### **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 persons at the time of the event giving rise to the dispute. Accordingly, as parties, Mid Atlantic Capital Corporation, Wall Street Financial Group, Inc., and TD Ameritrade, Inc. are each assessed the following:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 4,000.00

##### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

April 6 - 10, 2015 adjournment by Respondents Dembski and Grenda WAIVED



**Discovery-Related Motion Fees**

Fees apply for each decision rendered on a discovery-related motion.

Three (3) Decisions on discovery-related motions on the papers  
with (1) one arbitrator @ \$200.00 = \$ 600.00  
Claimant submitted (3) discovery-related motions  
Total Discovery-Related Motion Fees = \$ 600.00

1. The Panel has assessed \$200.00 of the discovery-related motion fees to Respondent WSFG.
2. The Panel has assessed \$200.00 of the discovery-related motion fees to Respondent Ameritrade.
3. The Panel has assessed \$200.00 of the discovery-related motion fees to Respondent Grenda.

**Contested Motion for Issuance of a Subpoena Fees**

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) Decision on a contested motion for the issuance of a subpoena  
with (3) three arbitrators @ \$600.00 = \$600.00  
Total Contested Motion for Issuance of Subpoenas Fees = \$600.00

1. The Panel has assessed \$300.00 of the contested motion for issuance of subpoenas fees to Claimant.
2. The Panel has assessed \$300.00 of the contested motion for issuance of subpoenas fees jointly and severally to Respondents MACC, Dembski and Grenda.

**Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each session conducted. 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:

Three (3) Pre-hearing sessions with the Panel @ \$1,200.00/session = \$3,600.00  
Pre-hearing conferences: September 24, 2014 1 session  
April 28, 2015 1 session  
October 20, 2015 1 session

Ten (10) Hearing sessions @ \$1,200.00/session = \$12,000.00  
Hearing Dates: March 7, 2016 2 sessions  
March 8, 2016 2 sessions  
March 9, 2016 2 sessions  
March 10, 2016 2 sessions  
March 11, 2016 2 sessions

One (1) Hearing session on expungement request @ \$1,200.00/session	
<u>Hearing Date: April 20, 2016 1 session</u>	<u>=\$ 1,200.00</u>
Total Hearing Session Fees	=\$16,800.00

1. The Panel has assessed \$7,800.00 of the hearing session fees to Claimant.
2. The Panel has assessed \$7,800.00 of the hearing session fees jointly and severally to Respondents MACC, Dembski and Grenda.
3. The Panel has assessed the \$1,200.00 hearing session fee for the April 20, 2016 expungement hearing to Respondent Grosjean.

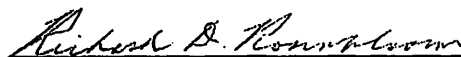
All balances are payable to FINRA Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

Richard D. Rosenbloom	-	Public Arbitrator, Presiding Chairperson
Thomas E. Webb, Jr.	-	Public Arbitrator
Michael Edward Rourke	-	Public Arbitrator

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.

Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Richard D. Rosenbloom  
Public Arbitrator, Presiding Chairperson

5-17-16  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Thomas E. Webb, Jr.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Michael Edward Rourke  
Public Arbitrator

\_\_\_\_\_  
Signature Date

**May 19, 2016**  
\_\_\_\_\_  
Date of Service (For FINRA Dispute Resolution office use only)

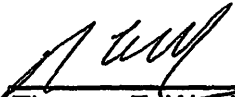
**ARBITRATION PANEL**

Richard D. Rosenbloom	-	Public Arbitrator, Presiding Chairperson
Thomas E. Webb, Jr.	-	Public Arbitrator
Michael Edward Rourke	-	Public Arbitrator

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.

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Richard D. Rosenbloom  
Public Arbitrator, Presiding Chairperson

  
\_\_\_\_\_  
Thomas E. Webb, Jr.  
Public Arbitrator

\_\_\_\_\_  
Michael Edward Rourke  
Public Arbitrator

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

May 19, 2016

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