

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Harold Post

Case Number: 01-05344

Name of the Respondents  
Linsco Private Ledger Corp. and Terry L. Gourley

Hearing Site: Chicago, Illinois

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**REPRESENTATION OF PARTIES**

Claimant Harold Post ("Claimant") was represented by Andrew J. Stoltzman, Esq. of the firm Maddox Koeller Hargett & Caruso with offices located in Chicago, Illinois.

Respondent Linsco Private Ledger Corp. ("Linsco") was represented by Ted S. Helwig, Esq. of the firm Katten Muchin & Zavis located in Chicago, Illinois.

Respondent Terry L. Gourley ("Gourley") was *pro se*.

**CASE INFORMATION**

Statement of Claim filed on or about: October 09, 2001

Claimant Post signed the Uniform Submission Agreement: September 28, 2001

Statement of Answer filed by Respondent Linsco, on or about: January 15, 2002

Respondent Linsco signed the Uniform Submission Agreement: January 04, 2002

Statement of Answer filed by Respondent Gourley on or about: October 30, 2002

**CASE SUMMARY**

Claimant Post asserted the following causes of action:

- Fraud;
- Negligence;
- Unsuitability;
- Failure to Supervise;
- Violations of the Illinois Securities Act and NASD Conduct Rules;
- Breach of Contract;
- Constructive Fraud/breach of fiduciary duty; and
- Common Law Fraud.

The causes of action relate to the purchase of 3dshopping.com and of viaticals.

Unless specifically admitted in its Answer, Respondent Linsco denied the allegations made in the Statement of Claim and asserted the following defenses:

- Failure to state a claim upon which relief can be granted against Linsco.
- The claim is barred by the applicable statute(s) of limitation.
- The claim is barred by equity, including, but not limited to, the doctrines of waiver, estoppel, and ratification.
- Post assumed the risks associated with his investments.
- At all relevant times, Linsco acted in good faith and at no time acted either intentionally, recklessly, or negligently with respect to any matter alleged.
- Post had full knowledge of all material facts and did not rely on any act or omission alleged.
- Any loss Post may have incurred was caused by his own negligence or the negligence of other third parties. As a result, Post is barred from recovering any amount that is attributable to his own negligence or to the negligence of such other third parties.
- Post failed to mitigate.
- Post's losses, if any, have resulted solely from economic and market forces and not from any act or omission of Respondents.

At hearing Respondent Gourley denied the allegations made in the Statement of Claim.

**RELIEF REQUESTED**

Claimant Post requested:

Compensatory Damages	\$330,441.00
Punitive Damages	unspecified in the statement of claim
Interest	lost interest at the statutory rate of 10% annually, and pre and post award at the statutory rate
Attorneys' Fees	unspecified in the statement of claim
Other Costs	unspecified in the statement of claim

Respondent Linsco requested:

Attorneys' Fees	reasonable
Other Costs	unspecified in the statement of answer
Other Monetary/Non-Monetary Relief if any:	dismissal or denial of the statement of claim

Respondent Gourley requested:

Other Monetary/Non-Monetary Relief if any:	dismissal or denial of the statement of claim
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**OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Terry L. Gourley did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code

and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

### **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. Respondents Linsco Private Ledger Corp. and Terry L. Gourley are jointly and severally liable for and shall pay to Claimant Harold Post the sum of \$94,800.00 as compensatory damages, plus interest on said amount at 10% per annum. The interest began accruing on June 11, 1997 and ceased accruing on October 31, 2002.
2. Additionally, Respondents Linsco Private Ledger Corp. and Terry L. Gourley are jointly and severally liable for and shall pay to Claimant Harold Post the sum of \$172,200.00 as compensatory damages, plus interest on said amount at 10% per annum. The interest began accruing on October 11, 1999 and ceased accruing on October 31, 2002.
3. Respondents Linsco Private Ledger Corp. and Terry L. Gourley are also jointly and severally liable for and shall pay to Claimant Harold Post the sum of \$122,328.00 as attorney's fees. The panel finds authority to award attorney's fees pursuant to Section 13 of the Illinois Securities Act of 1953.
4. Pursuant to Rule 10332 of the NASD Code of Arbitration Procedure, Respondents Linsco Private Ledger Corp. and Terry L. Gourley are jointly and severally liable for and shall pay to Claimant Harold Post the sum of \$300.00 as reimbursement of the NASD's non-refundable filing fee.
5. Parties shall bear their own costs, except as specified herein.
6. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **FEES**

Pursuant to 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

#### **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 person at the time of the events giving rise to the dispute. Linsco Private Ledger Corp. is a party.

Member surcharge = \$1,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$2,500.00

**Forum Fees and Assessments**

The Panel has assessed forum 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:

One (1) Pre-hearing session with one arbitrator			= \$ 450.00
Pre-hearing conference:	October 09, 2002	1 session	
One (1) Pre-hearing session with Panel at \$1,125.00			= \$1,125.00
Pre-hearing conference:	July 25, 2002	1 session	
Five (5) Hearing sessions at \$1,125.00			= \$5,625.00
Hearing Dates:	October 30, 2002	2 sessions	
	October 31, 2002	2 sessions	
	November 01, 2002	1 session	
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Total Forum Fees			= \$7,200.00

The Panel has assessed \$7,200.00 of the forum fees jointly and severally to Linsco Private Ledger Corp. and Terry L. Gourley.

**EEE SUMMARY**

1. Claimant Harold Post is solely liable for:
 

Initial Filing Fee	= \$ 300.00
<u>Less payments</u>	= \$ 1,425.00
Refund Due from NASD Dispute Resolution, Inc.	= \$ 1,125.00
  
2. Respondent Linsco Private Ledger Corp. is solely liable for:
 

Member Fees	= \$ 4,600.00
<u>Less payments</u>	= \$ 4,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00
  
3. Respondents Linsco Private Ledger Corp. and Terry L. Gourley, are jointly and severally liable for:
 

Forum Fees	= \$7,200.00
<u>Less payments</u>	= \$ 150.00
Balance Due NASD Dispute Resolution, Inc.	= \$7,050.00

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

**ARBITRATION PANEL**

- |                         |   |  |
|-------------------------|---|--|
| John N. Chapin, Jr.     | - | Public Arbitrator, Presiding Chairperson |
| John S. Burke, Esq.     | - | Public Arbitrator                        |
| William J. Nissen, Esq. | - | Non-Public Arbitrator                    |

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Concurring Arbitrators' Signatures



John N. Chapin, Sr.  
Public Arbitrator, Presiding Chairperson

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Signature Date

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John S. Burke, Esq.  
Public Arbitrator

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Signature Date

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William J. Nissen, Esq.  
Non-Public Arbitrator

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Signature Date

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