

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

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In the Matter of the Arbitration Between

**Names of Claimants**

The Estate of Halliet J. Danel  
Shirley C. Danel  
Halliet J. Danel, III,

Case No. 00-00058

**Names of Respondents**

Investec Ernst & Company, successor  
of Stuart, Coleman & Co., Inc.  
Michael C. Brescia  
B'Tween Us

**Hearing Site:** New Orleans, LA

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**REPRESENTATION OF PARTIES**

For The Estate of Halliet J. Danel (the "Estate"), Shirley C. Danel ("Shirley"), and Halliet J. Danel, III ("Halliet"), hereinafter collectively referred to as "Claimants": Joseph N. Mole, Esq. of Frilot, Partridge, Kohnke & Clements, LC, New Orleans, LA.

For Respondent Investec Ernst & Company, successor of Stuart, Coleman & Co., Inc. ("Investec"): Edward L. Rose, Esq., Investec, Woodbury, NY.

For Respondents Michael C. Brescia ("Brescia") and B'Tween Us: Mark J. Astarita, Esq. of Beam & Astarita, Bloomfield, NJ.

**CASE INFORMATION**

Statement of Claim and Request for Arbitration filed on or about: January 7, 2000.  
Amended and Supplemental Statement of Claim filed on or about: May 10, 2001.  
Claimant the Estate signed the Uniform Submission Agreement: December 27, 1999.  
Claimant Shirley signed the Uniform Submission Agreement: December 28, 1999.  
Claimant Halliet signed the Uniform Submission Agreement.  
Statement of Answer filed by Respondent Investec on or about: April 3, 2000.  
Respondent Investec signed the Uniform Submission Agreement: March 30, 2000.  
Statement of Answer filed by Respondent Brescia on or about: March 21, 2000.  
Respondent Brescia did not file an executed Uniform Submission Agreement.  
Respondent B'Tween Us did not file a Statement of Answer.  
Respondent B'Tween Us did not file an executed Uniform Submission Agreement.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty; fraud; churning; and, unauthorized margin trading. The causes of action relate to the purchase and sale of various unspecified securities products.

Unless specifically admitted in its Answer, Respondent Investec denied the allegations made in the Statement of Claim and asserted various affirmative defenses including: failure to state a claim upon which relief can be granted; ratification; and, waiver.

Unless specifically admitted in his Answer, Respondent Brescia denied the allegations made in the Statement of Claim and asserted various affirmative defenses including: failure to state a claim upon which relief can be granted; ratification; and, waiver.

### **RELIEF REQUESTED**

Claimants requested compensatory damages of \$2,000,000.00 plus interest, costs, attorneys' fees, and punitive damages of \$2,000,000.00.

Respondent Investec requested dismissal of the Statement of Claim, costs, and such other and further relief as is just and proper.

Respondent Brescia requested dismissal of the Statement of Claim, costs, and such other and further relief as the Panel deemed appropriate.

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

During the evidentiary hearing, the Panel granted Claimants' ore tenus motion to amend and substitute Denise Danel as party representative for Halliet J. Danel, III, a minor.

Respondent B'Tween Us is not a member firm of the NASD and did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but, in correspondence addressed to NASD Dispute Resolution, Inc. dated July 31, 2000, voluntarily submitted to the jurisdiction of the NASD and the Arbitration Panel herein, and having appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

Respondent Brescia did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the Statement of Claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

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

Respondents Brescia and B'Tween Us are liable, jointly and severally, and shall pay to Claimants compensatory damages in the sum of \$1,025,000.00 plus interest at the rate of 6% per annum accruing from February 23, 2002 until the date of payment of the Award.

Respondents Brescia and B'Tween Us are liable, jointly and severally, and shall pay to Claimants punitive damages in the sum of \$2,000,000.00 pursuant to Mastrobuono v. Shearson, et al, 514 U.S. 52 (1995).

Claimants' claims against Respondent Investec are dismissed, with prejudice.

The parties shall each bear their own costs.

Any and all relief requests not specifically addressed herein are denied.

### **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	= \$600.00
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#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$600.00
Hearing process fee	= \$4,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

No requests for adjournment were filed in this matter.

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

Two (2) Pre-hearing sessions with Panel x \$1,200.00	= \$2,400.00
Pre-hearing conferences:	
July 31, 2000	1 session
April 6, 2001	1 session
Twenty-five (25) Hearing sessions x \$1,200.00	= \$30,000.00
Hearing Dates:	
April 23, 2001	2 sessions
April 24, 2001	2 sessions
April 25, 2001	2 sessions
April 26, 2001	2 sessions
April 27, 2001	2 sessions
August 1, 2001	2 sessions
August 2, 2001	2 sessions
August 3, 2001	2 sessions
September 5, 2001	2 sessions
September 6, 2001	2 sessions
January 21, 2002	2 sessions
January 22, 2002	2 sessions
January 23, 2002	1 session
Total Forum Fees	= \$32,400.00

The Panel has assessed \$10,800.00 of the forum fees jointly and severally to Claimants the Estate, Shirley, and Halliet.

The Panel has assessed \$10,800.00 of the forum fees jointly and severally to Respondents Brescia and B'Tween Us.

The Panel has assessed \$10,800.00 of the forum fees to Respondent Investec.

### 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.

Claimants requested additional copies of arbitrator awards beyond those provided without charge = \$20.00

### FEE SUMMARY

Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$600.00
Forum Fees	= \$10,800.00
Administrative Costs	= \$20.00

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Total Fees	= \$11,420.00
Less payments	= \$1,800.00

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Balance Due NASD Dispute Resolution, Inc.	= \$9,620.00
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Respondent Investec be and hereby is solely liable for:

Member Fees	= \$7,600.00
Forum Fees	= \$10,800.00

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Total Fees	= \$18,400.00
Less payments	= \$7,600.00

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Balance Due NASD Dispute Resolution, Inc.	= \$10,800.00
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Respondents Brescia and B'Tween Us be and hereby are jointly and severally liable for:

Forum Fees	= \$10,800.00
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Total Fees	= \$10,800.00
Less payments	= \$0.00

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Balance Due NASD Dispute Resolution, Inc.	= \$10,800.00
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All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Len R. Brignac, Esq.	-	Public Arbitrator, Presiding Chair
John C. Blackman, Esq.	-	Public Arbitrator
Troy C. Sumrall, CFP	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

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Len R. Brignac, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

/s/

\_\_\_\_\_  
John C. Blackman, Esq.  
Public Arbitrator

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

/s/

\_\_\_\_\_  
Troy C. Sumrall, CFP  
Non-Public Arbitrator

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

March 8, 2002

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

NASD Dispute Resolution, Inc.

Arbitration No. 00-00058

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Len R. Brignac, Esq.

John C. Blackman, Esq.

Troy C. Sumrall, CFP

Public Arbitrator, Presiding Chair

Public Arbitrator

Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
 Len R. Brignac, Esq.  
 Public Arbitrator, Presiding Chair

3/7/02  
 Signature Date

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NASD DISPUTE RESOLUT

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John C. Blackman, Esq.  
Public Arbitrator

3/8/03  
Signature Date

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Troy C. Sumrall, CFP  
Non-Public Arbitrator

Signature Date

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John C. Blackman, Esq.  
Public Arbitrator

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Signature Date

  
Troy C. Sumrall, CFP  
Non-Public Arbitrator

3/7/02  
Signature Date

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Received Time Mar. 6. 5:29PM