

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

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In the Matter of the Arbitration Between

Name of Claimant

Robert E. Britt

Case No. 00-00442

Names of Respondents

Secwest Securities, Inc.  
Max International Broker/Dealer Corp.

Names of Third-Party Respondents

Nigel A. Gilbert  
Edwin Joseph Forte III  
David Scott Isolano  
Joan Karen Isolano

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**REPRESENTATION OF PARTIES**

For Robert E. Britt ("Britt") hereinafter referred to as "Claimant": William M. Rishoi, Esq. and Philip J. Snyderburn, Esq. of Snyderburn, Rishoi & Swann, Winter Park, Florida.

For Respondent Secwest Securities, Inc. ("Secwest"): Craig D. Stein, Esq. of Stein, Rosenberg & Winikoff, P.A., Fort Lauderdale, Florida.

For Respondent Max International Broker/Dealer Corp. ("Max") and Third-Party Respondents Nigel A. Gilbert ("Gilbert"), Edwin Joseph Forte III ("Forte") David Scott Isolano ("D. Isolano") and Joan Karen Isolano ("J. Isolano"): Harold I. Geringer, Esq. of Geringer & Dolan, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: January 28, 2000.

Amended Statement of Claim Amended by Interlineation filed on or about: November 17, 2000.

Claimant signed the Uniform Submission Agreement: February 15, 2000.

Statement of Answer filed by Respondent Max International Broker/Dealer Corp. on or about: May 15, 2000.

Response to Cross-Claim by Respondent Max International Broker/Dealer Corp.; Motion by Respondent Max International Broker/Dealer Corp. to Dismiss Cross-Claim; Statement of Answer by Third-Party Respondents Nigel Gilbert, Ed Forte, David Isolano and Joan Isolano; and Motion by Third-Party Respondents to Dismiss Third-Party Claim filed on or

about: June 27, 2000.

Replies by Respondent Max International Broker/Dealer Corp. to Respondent Secwest Securities, Inc.'s Response to Motion to Dismiss Cross-Claim and Third-Party Respondents to Respondent Secwest Securities, Inc.'s Response to Motion to Dismiss Third-Party Claim filed on or about: October 16, 2000.

Respondent Max signed the Uniform Submission Agreement: May 12, 2000.

Respondent Secwest Securities, Inc. Answer, Motion to Dismiss and Affirmative Defenses to Claimant's Statement of Claim and Cross-Claim and Third Party Claim filed on or about: May 16, 2000.

Letter dated September 13, 2000 from Craig D. Stein, Esq. to NASD Regulation, Inc. filed on or about: September 13, 2000.

Respondent/Third-Party Claimant/Cross-Claimant Secwest Securities, Inc.'s Response to Motion by Respondent Max International and Motion by Third-Party Respondents to Dismiss Cross-Claim and Third-Party Claim, Respectively filed on or about: September 27, 2000.

Respondent Secwest Securities, Inc. Answer to Claimant's Amended Statement of Claim Amended by Interlineation filed on or about: November 21, 2000.

Respondent Secwest signed the Uniform Submission Agreement: August 2, 2000.

Third-Party Respondent D. Isolano signed the Uniform Submission Agreement: July 20, 2000.

Third-Party Respondent Forte signed the Uniform Submission Agreement: July 21, 2000.

Third-Party Respondent Gilbert signed the Uniform Submission Agreement: July 27, 2000.

Third-Party Respondent J. Isolano signed the Uniform Submission Agreement: August 8, 2000.

### CASE SUMMARY

Claimant asserted the following: Claimant, a 65 year old investor, who had never invested before and who lost the \$126,435.00 he entrusted to Respondents and Third-Party Respondents alleged that his account was mishandled and improperly supervised during the time it was open. Claimant was cold-called by the registered representative in question and told to sign an option agreement and margin agreement so he could commence investing. Claimant's account was churned; options trading occurred on margin even though Claimant did not understand options and/or margin; most of the trades that were made "late in the game" were unauthorized trades; and, Claimant's losses were sustained rather suddenly.

Unless specifically admitted in its Answer, Respondent Secwest denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted that if Claimant has suffered any of the alleged damages from the referenced claims, which he has not, the fault is not that of Respondent Secwest but that Respondent Max, and Third-Party Respondents Gilbert, Forte, J. Isolano and D. Isolano are the sole at fault parties.

Unless specifically admitted in its Answer, Respondent Max denied the allegations made in the Statement of Claim, Amended Statement of Claim and the Cross-Claim Against Max and asserted that Claimant's account was properly handled and maintained; Claimant was aware of all trades made in his account; no transactions were executed for Claimant without his

prior approval and request; and, the claims are devoid of any merit and should be dismissed.

Unless specifically admitted in their Answer, Third-Party Respondents Gilbert, Forte, D. Isolano and J. Isolano denied the allegations contained in the Third Party Claim and asserted that the claims are conclusory without any allegations setting forth a factual basis to support the conclusory allegations and are devoid of any merit and should be dismissed.

### **RELIEF REQUESTED**

Claimant requested an award of 126,430.00, plus interest, costs and punitive damages.

Respondent Secwest requested a dismissal of the Statement of Claim, a judgment indemnifying Respondent Secwest from Respondent Max and Third-Party Respondents, for damages against Respondent Max and the Third-Party Respondents, or an award for contribution against Respondent Max to Respondent Secwest or an award for contribution against Third-Party Respondents to Respondent Secwest in the sum of \$300,000.00, together with interest, attorneys' fees and costs and for any and all further relief the Panel deemed just and proper.

Respondent Max and Third-Party Respondents Gilbert, Forte, D. Isolano and J. Isolano requested a dismissal of all claims asserted against them in their entirety.

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

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.

Any and all motions previously pending a determination by the Panel are denied.

On or about February 19, 2001, Claimant informed the arbitration panel that he had entered into a Settlement Agreement and Mutual Release (the "Agreement") with Respondent Secwest. Pursuant to the Agreement, Respondent Secwest assigned all of the rights under its third-party claims and cross-claims to Claimant.

### **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:

Respondent Max is liable and shall pay to Claimant compensatory damages in the sum of \$66,469.27 plus interest at the rate of 12% per annum from the date of the Award until the date of payment of the Award.

Respondent Max is liable and shall pay to Claimant punitive damages in the sum of

\$66,469.27 as a result of the gross negligence of Respondent Max. Punitive damages are awarded pursuant to Chapters 517 and 768.72, Florida Statutes.

All cross-claims and third-party claims are denied in their entirety.

All other requests for relief not specifically addressed herein are 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
Cross claim/Third Party Claim filing fee	= \$1,000.00

#### **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 firms are parties.

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

#### **Adjournment Fees**

Adjournments requested during these proceedings:

There were no adjournments requested during these proceedings.

#### **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:

One Pre-hearing session with a single arbitrator x \$450.00	= \$450.00
Pre-hearing conference: January 30, 2001	1 session
Two Pre-hearing sessions with Panel x \$1,125.00	= \$2,250.00
Pre-hearing conferences: September 26, 2000	1 session
November 14, 2000	1 session
Five Hearing sessions x \$1,125.00	= <u>\$5,625.00</u>
Hearing Dates: February 19, 2001	2 sessions
February 20, 2001	2 sessions

February 21, 2001

1 session

Total Forum Fees = \$8,325.00

The Panel has assessed the total forum fees of \$8,325.00 to Respondent Max.

**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.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$300.00
Total Fees	= \$300.00
<u>Less payments</u>	<u>= \$300.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

Respondent Secwest be and hereby is solely liable for:

Cross-Claim/Third-Party Claim Filing Fee	= \$1,000.00
Member Fees	= \$4,600.00
Total Fees	= \$5,600.00
<u>Less payments</u>	<u>= \$2,125.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,475.00

Respondent Max International be and hereby is solely liable for:

Member Fees	= \$4,600.00
Forum Fees	= \$8,325.00
Total Fees	= \$12,925.00
<u>Less Payments</u>	<u>= \$128.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$12,797.00

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties.

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Ron Pekoe  
Public Arbitrator, Presiding Chair

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

February 21, 2001

1 session

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Member Fees	= \$4,600.00
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Ron Pekoe  
Public Arbitrator, Presiding Chair

3/30/01  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Hal S. Holtsinger  
Public Arbitrator

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

\_\_\_\_\_/s/\_\_\_\_\_  
John Berryman  
Industry Arbitrator

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

April 3, 2001  
Date of Service (For NASD-DR office use only)

*Hal S. Holtsinger*

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Hal S. Holtsinger  
Public Arbitrator

*4-2-2001*

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Signature Date

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John Berryman  
Industry Arbitrator

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Signature Date

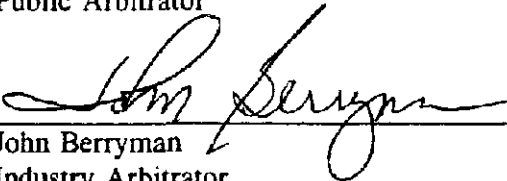
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Date of Service (For NASD-DR office use only)



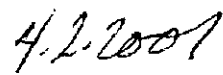
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Hal S. Holsinger  
Public Arbitrator

  
John Berryman  
Industry Arbitrator

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Signature Date

  
Signature Date

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Date of Service (For NASD-DR office use only)