

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

---

In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 00-00628

Steven A. Diorio

Name of the Respondents

Hearing Site: Philadelphia, Pennsylvania

Baxter Banks & Smith, Ltd.,  
Fiserv Clearing, Inc.,  
Fiserv Correspondent Services, Inc.,  
Elliott G. Downs, Daniel J. Phillips,  
Francis M. McDermott, Charles Masi,  
Maurizio V. Grammatica, Robert J. Ogilvie,  
and John McGowan, III.

Name of Third-Party Respondents

First Union Securities Financial Network,  
JW Genesis Financial Corporation, and  
JW Genesis Financial Services, Inc.

---

REPRESENTATION OF PARTIES

Claimant Steven A. Diorio, hereinafter referred to as "Claimant", was represented by Richard W. Groner, Esq., Groner & Schieb, Bradenton, Florida.

Respondent Elliott G. Downs ("Downs") was not represented by counsel and did not attend the hearing.

Respondent Daniel J. Phillips ("Phillips") was not represented by counsel and did not attend the hearing.

Respondent Baxter Banks & Smith, Ltd. ("Baxter") was not represented by counsel and did not attend the hearing.

Respondent Francis M. McDermott ("McDermott") was not represented by counsel and did not attend the hearing.

Respondent Charles Masi ("Masi") was not represented by counsel and did not attend the hearing.

Respondents Maurizio V. Grammatica ("Grammatica") and Robert J. Ogilvie ("Ogilvie"), were represented by David J. Feingold, Esq., Feingold & Kam, Palm Beach Garden, Florida.

Respondent John McGowan, III ("McGowan") was not represented by counsel and did not attend the hearing.

Respondent/Third-Party Claimant Fiserv Clearing, Inc. ("Fiserv Clearing") and Respondent Fiserv Correspondent Services, Inc. ("Fiserv Correspondent") were represented by David A. Zisser, Esq., Berliner Zisser, Walter & Gallegos, Denver, Colorado and settled prior to the hearing.

Third-Party Respondents JW Genesis Financial Services, Inc. ("JW Services"), JW Genesis Financial Corporation ("JW Corp.") and First Union Securities Financial Network ("First Union") were represented by Howard A. Tescher, Esq., Kipnis Tescher, Lippman & Valinsky, Fort Lauderdale, Florida and settled prior to the hearing.

#### CASE INFORMATION

Statement of Claim filed on or about February 7, 2000.

Amended Statement of Claim filed on or about March 7, 2001.

Second Amended Statement of Claim filed on or about March 27, 2002.

Claimant signed the Uniform Submission Agreement on March 31, 2001.

Statement of Answer filed by Respondents Ogilvie and Grammatica on or about May 15, 2001.  
Respondents Ogilvie and Grammatica did not file Uniform Submission Agreements with NASD Dispute Resolution.

Statement of Answer filed by Respondent Downs on or about September 4, 2000.  
Respondent Downs did not file a Uniform Submission Agreement with NASD Dispute Resolution.

Respondents Masi and McGowan did not file Answers.  
Respondents Masi and McGowan did not file Uniform Submission Agreements with NASD Dispute Resolution.  
Request to Dismiss Masi and McGowan as Respondents filed on or about April 18, 2001.

Statement of Answer filed by Respondents Baxter and McDermott on or about July 5, 2000.  
Respondents Baxter and McDermott did not file Uniform Submission Agreements with NASD Dispute Resolution.

Respondent Phillips did not file an Answer.  
Respondent Phillips did not file a Uniform Submission Agreement with NASD Dispute Resolution.

### CASE SUMMARY

Claimant asserted the following causes of action, among others: respondeat superior; failure to supervise; failure to establish proper supervisory procedures; misrepresentation; failure to disclose; suitability; and, violation of Florida state security law. The causes of action relate to the purchase and sale of the following stocks: First Union; Pfizer, Inc.; Republic Security Financial Corporation; Lifekeepers International, Inc.; and, Biz Holding, Inc.

Unless specifically admitted in his Answer, Respondent Downs denied the allegations made in the Statements of Claim and asserted the following defenses: Claimant was informed of and understood the risks of all transactions; Claimant requested and/or authorized all transactions; and, failure to mitigate.

Unless specifically admitted in their Answer, Respondents Ogilvie and Grammatica denied the allegations made in the Statements of Claim.

Unless specifically admitted in their Answer, Respondents Baxter and McDermott denied the allegations made in the Statements of Claim.

### RELIEF REQUESTED

Claimant in his Statement of Claim requested:

Compensatory Damages	\$500,001.00
Punitive Damages	unspecified
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified

Respondents Baxter and McDermott requested entry of an award in their favor.

### OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing on this matter, Fiserv Clearing, Fiserv Correspondent, JW Services, JW Corp., and First Union settled all matters in controversy in this matter.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned Panel determined that Respondents Downs, Phillips, Baxter, McDermott, Masi, and McGowan have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents Ogilvie, Grammatica, Downs, Masi, McGowan, Baxter, McDermott, and Phillips did not file with NASD Dispute Resolution, a properly executed submission to arbitration but are

required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

The Panel denied the Request to Dismiss Masi and McGowan as Respondents.

The Panel denied Respondent McDermott's motion to appear at the hearing telephonically. Respondent McDermott filed a Motion to Reconsider the Panel's ruling and the Panel again denied his request to appear at the hearing telephonically.

### 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 Phillips, Masi, McGowan, Baxter, Downs, and McDermott are jointly and severally liable to and shall pay to Claimant compensatory damages of \$204,000.00, plus simple interest at a rate of 5% per annum from the date this Award is served until the date of payment in full;
2. Respondents Grammatica, Phillips, Masi, McGowan, Baxter, Downs, and McDermott are jointly and severally liable to and shall pay to Claimant compensatory damages of \$25,000.00, plus simple interest at a rate of 5% per annum from the date this Award is served until the date of payment in full;
3. Respondent Baxter, Downs, and McDermott are jointly and severally liable to and shall pay to Claimant punitive damages of \$100,000.00;
4. All claims against Respondent Ogilvie are denied in their entirety;
5. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and,
6. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

### 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 = \$ 375.00

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:

Two (2) Pre-hearing sessions with Panel @ \$ 1,200.00 = \$ 2,400.00

Pre-hearing conferences:      January 9, 2002      1 session  
   April 8, 2002      1 session

Three (3) Hearing sessions @ \$ 1,200.00 = \$ 3,600.00

Hearing Dates:              September 24, 2002    2 sessions  
   September 25, 2002    1 session

---

Total Forum Fees = \$ 6,000.00

1. The Panel has assessed \$6,000.00 of the forum fees jointly and severally to Respondents Phillips, Masi, McGowan, Baxter, Downs, and McDermott.

EEE SUMMARY

1. Claimant is assessed the following fees:

<u>Initial Filing Fee</u>	= \$ 375.00
Total Fees	= \$ 375.00
<u>Less payments</u>	= \$ 1,575.00
Refund Owed Claimant from NASD Dispute Resolution	= \$ 1,200.00

2. Respondents Phillips, Masi, McGowan, Baxter, Downs, and McDermott are jointly and severally assessed the following fees:

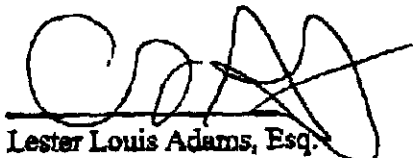
<u>Forum Fees</u>	= \$ 6,000.00
Balance Due NASD Dispute Resolution	= \$ 6,000.00

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

ARBITRATION PANEL

Lester Louis Adams, Esq.	-	Public Arbitrator, Presiding Chairperson
Julian F. Santos	-	Public Arbitrator, Panelist
Phillip S. Cottone, Esq.	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Lester Louis Adams, Esq.  
Public Arbitrator, Presiding Chairperson

10/5/2002

Signature Date

\_\_\_\_\_  
Julian F. Santos  
Public Arbitrator, Panelist

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

\_\_\_\_\_  
Phillip S. Cortone, Esq.  
Non-Public Arbitrator, Panelist

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

November 6, 2002  
Date of Service (For NASD Dispute Resolution office use only)

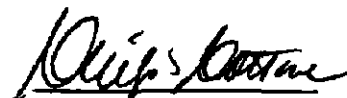
Concurring Arbitrators' Signatures

\_\_\_\_\_  
Lester Louis Adams, Esq.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Julian F. Santos  
Public Arbitrator, Panelist

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

  
\_\_\_\_\_  
Phillip S. Cottone, Esq.  
Non-Public Arbitrator, Panelist

11/6/02  
\_\_\_\_\_  
Signature Date

November 6, 2002  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)