

**AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant,  
Robert W. Baird & Co. Incorporated

and

Case Number: 00-05004

Respondents,  
Patrick Hundley  
Wendy Hundley

Hearing Site: Troy, Michigan

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Counterclaimant,  
Wendy Hundley

and

Counterrespondent,  
Robert W. Baird & Co. Incorporated

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Third Party Claimant,  
Wendy Hundley

and

Third Party Respondent,  
Bernard Anderson

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**REPRESENTATION OF PARTIES**

Claimant/Counterrespondent, Robert W. Baird & Co. Incorporated ("RWB") and Third Party Respondent, Bernard Anderson ("Anderson") were represented by Gregory G. Wille, Esq., Wille, Gregory, Lundeen, Milwaukee, Wisconsin.

Respondents, Patrick Hundley and Wendy Hundley hereinafter referred to as "Respondents", were represented by James M. DeZelar, Esq., Robbins, Salomon & Patt, Ltd. Chicago, Illinois. Mr. DeZelar appeared for Claimants on or about October 30, 2001.

**CASE INFORMATION**

The Statement of Claim was filed on or about November 6, 2000. The Submission Agreement of RWB was signed on or about November 2, 2001, by Thomas M. Weibel.

Statement of Answer filed by Patrick Hundley and Wendy Hundley on or about December 13, 2001. The Submission Agreement of Patrick Hundley was signed on or about November 2, 2000.

The Counterclaim (and Third Party Claim) of Wendy Hundley was filed on or about December 13, 2001. RWB and Anderson filed their Reply to the Counterclaim (Third Party Claim) on or about December 27, 2001.

### **CASE SUMMARY**

Claimant RWB asserted the following legal theories: breach of contract, breach of margin agreement, unjust enrichment, and constructive trust. The causes of action relate to Respondents failure to repay the debit balance in their margin account.

Unless specifically admitted in their Answer, Respondents Patrick Hundley and Wendy Hundley denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: estoppel, RWB is barred by its own breach of contract from obtaining any monetary recovery, and setoff.

Wendy Hundley asserted the following causes of action in her Counterclaim (Third Party Claim): breach of fiduciary duty, fraud, negligence, unauthorized trading, unsuitable trading, churning and failure to supervise.

### **RELIEF REQUESTED**

Claimant RWB requested an award from Respondents, jointly and severally, in the amount of \$338,247.78, plus interest accrued on the debit balance since the account closing, and Order imposing a constructive trust on the real estate venture which Patrick Hundley invested in utilizing the cash he withdrew from the RWB account, costs, expenses, attorney fees, and any further relief that the Panel deems appropriate.

In her Counterclaim, Wendy Hundley requested an award of compensatory damages in the amount of \$1,930,000.00, punitive damages of \$200,000.00, rescissory damages of \$146,714.05 plus interest, interest at the rate of 9% from March 31, 2000, to date of award, plus, attorneys' fees and costs.

Patrick Hundley and Wendy Hundley requested that the Statement of Claim be dismissed and that they be awarded attorneys' fees and other legal expenses.

RWB and Anderson requested that the Counterclaim be dismissed and that the Hundleys pay all costs and forum fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent Wendy Hundley did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code"), and the Margin Agreement, and having answered the claim, filed a Counterclaim (and Third Party Claim), appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

Respondent Anderson did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration 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. In either case, the parties

have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondents, Patrick Hundley and Wendy Hundley, are jointly and severally liable for and shall pay to Claimant, Robert W. Baird & Co. Incorporated, the sum of \$305,489.78.00 in compensatory damages;
- 2.) Each and all of Wendy Hundley's claims against Robert W. Baird & Co. Incorporated and Bernard Anderson are dismissed with prejudice;
- 3.) That other than Forum Fees, which are specified below, the parties, shall each bear their own costs and expenses incurred in this matter;
- 4.) That any relief not specifically enumerated, including punitive damages, and attorney fees, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 1,000.00
Counterclaim (Third Party Claim) filing fee	= \$ 500.00

#### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Robert W. Baird & Co. Incorporated.

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

#### **Forum Fees and Assessments**

The Arbitration 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:

Two (2) Pre-hearing session with Panel x \$1,200.00	= \$ 2,400.00
Pre-hearing conference: October 1, 2001	1 session
March 11, 2002	1 session

Seven (7) Hearing sessions x \$1,200.00		= \$ 8,400.00
Hearing Dates:	September 17, 2002	2 sessions
	September 18, 2002	2 sessions
	September 19, 2002	3 sessions
Total Forum Fees		= \$10,800.00

The Arbitration Panel has assessed \$10,800.00 of the forum fees to Claimant RWB.

**Fee Summary**

Claimant, Robert W. Baird & Company Inc., is liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 6,600.00
Forum Fees	= \$10,800.00
Total Fees	= \$18,400.00
Less payments	= \$ 8,725.00
Balance Due NASD Dispute Resolution	= \$ 9,675.00

Respondent, Wendy Hundley is liable for:

Counter Claim Filing Fee	= \$ 500.00
Total Fees	= \$ 500.00
Less payments	= \$ 500.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

Martin I. Reisig, JD - Public Arbitrator, Presiding Chair  
Harvey Frank - Public Arbitrator  
Raymond W. Henney, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Martin I. Reisig	10/30/02
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Martin I. Reisig, JD Public Arbitrator, Presiding Chair	Signature Date
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/s/ Harvey Frank	10/28/02
Harvey Frank Public Arbitrator	Signature Date

/s/ Raymond W. Henney	10/26/02
Raymond W. Henney, Esq. Non-Public Arbitrator	Signature Date

Date of Service (For NASD office use only)

BAIRD &amp; HUNDLEY NASD 00-05004

NASD Dispute Resolution  
 Arbitration No. 01-05004  
 Award Page 4 of 4

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Respondent, Wendy Hundley is liable for:

<u>Counter Claim Filing Fee</u>	<u>= \$ 500.00</u>
<u>Total Fees</u>	<u>= \$ 500.00</u>
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Raymond W. Henney, Esq. - Non-Public Arbitrator

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 Martin I. Reisig, JD  
 Public Arbitrator, Presiding Chair

10/30/02  
 Signature Date

Harvey Frank  
 Public Arbitrator

                      
 Signature Date

Raymond W. Henney, Esq.  
 Non-Public Arbitrator

                      
 Signature Date

                      
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NASD Dispute Resolution, Inc.  
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NASD Dispute Resolution  
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 Public Arbitrator, Presiding Chair

*Harvey Frank*  
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 Public Arbitrator

Raymond W. Henney, Esq.  
 Non-Public Arbitrator

Signature Date

*10/28/02*  
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NASD Dispute Resolution  
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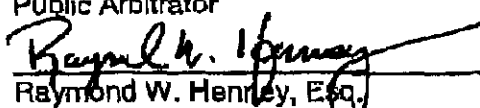
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