

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

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In the Matter of the Arbitration Between:

Name of Claimant

Teresa C. Womble

Case No. 00-05125

Names of Respondents

Locust Street Securities, Inc.  
Roger John Cawiezell

Hearing Site: Raleigh, North Carolina

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**REPRESENTATION OF PARTIES**

For Teresa C. Womble, hereinafter referred to as "Claimant": Nicholas D. Thomas, Esq.,  
Raleigh, North Carolina.

For Locust Street Securities, Inc. ("Locust"): Gary S. Parsons, Esq. and Warren T. Savage,  
Esq., Bailey & Dixon, LLP, Raleigh, North Carolina.

For Roger John Cawiezell ("Cawiezell"): L. Bruce McDaniel, Esq., McDaniel, Anderson &  
Stephenson, LLP, Raleigh, North Carolina.

**CASE INFORMATION**

Statement of Claim filed on or about: November 13, 2000.

Claimant signed the Uniform Submission Agreement on: November 9, 2000.

Statement of Answer and Cross Claim filed by Respondent Locust Street on or about:  
February 22, 2001.

Respondent Locust Street signed the Uniform Submission Agreement on: February 21, 2001.

Statement of Answer to Statement of Claim filed by Respondent Cawiezell on or about:  
January 17, 2001.

Statement of Answer to Cross Claim filed by Respondent Cawiezell on or about: March 12,  
2001.

Respondent Cawiezell signed the Uniform Submission Agreement on: January 17, 2001.

### CASE SUMMARY

Claimant asserted the following causes of action: 1) violation of the anti-fraud provisions of the North Carolina Securities Act; 2) common law fraud; 3) breach of fiduciary duty; and 4) negligence and gross negligence. The causes of action relate to an investment in a pay-phone buy/lease-back, namely ETS Payphones.

Respondent Locust Street asserted the following causes of action in its Cross Claim against Respondent Cawiezell: 1) indemnification; and 2) contribution. The causes of action relate to a Registered Representative's Agreement between Respondents Locust Street and Respondent Cawiezell entered on or about September 29, 1998.

Unless specifically admitted in its Answer, Respondent Locust Street denied the allegations made in the Statement of Claim and asserted the following defenses: 1) Respondent Locust Street incorporates by reference all affirmative defenses pled by Respondent Cawiezell in response to the Statement of Claim; 2) Claimant's claims against Respondent Locust Street are barred in whole or in part because any alleged damages incurred by Claimant were the result of intervening acts of persons or entities other than Respondent Locust Street; 3) any acts or omissions of Respondent Cawiezell cannot be imputed to Respondent Locust Street because he was an independent contractor at all times relevant to the allegations made in the Statement of Claim; 4) Claimant's claims against Respondent Locust Street are barred in whole or in part because Claimant has not alleged and cannot prove that Claimant's alleged damages were proximately caused by any wrongdoing on the part of Respondent Locust Street; 5) Claimant's claims against Respondent Locust Street are barred because at all relevant times, Respondent Locust Street acted reasonably, in good faith and in compliance with all applicable securities law, regulations and industry standards of conduct; 6) Claimant's claims made in the Statement of Claim against Respondent Locust Street are barred in whole or in part by the doctrine of contributory negligence and/or comparative negligence; 7) Claimant's claims made in the Statement of Claim against Respondent Locust Street are barred in whole or in part by the doctrine of avoidable consequences or because Claimant failed to mitigate her alleged damages; and 7) upon information and belief, Claimant was a sophisticated investor, and therefore was required to exercise reasonable diligence; Claimant's claims made in the Statement of Claim against Respondent Locust Street are barred in whole or in part because of her failure to exercise reasonable diligence.

Unless specifically admitted in his Answer, Respondent Cawiezell denied the allegations made in the Statement of Claim and asserted the following defenses: 1) Claimant's claims are barred by the applicable statute of limitations; 2) Claimant's claims are barred by the doctrine of laches; 3) Claimant's claim for breach of fiduciary duty fails to state a cause of action because such claim would arise solely from breach of the contractual agreements between the parties; 4) Claimant's claim for negligence fails to state a cause of action where the predicate for such action lies in contract; 5) Claimant assumed the risk of making the subject investments and thus, there is no basis for any claim against Respondent Cawiezell; 6) Claimant approved, authorized, ratified and/or acquiesced in the alleged acts, omissions and misrepresentations which form the basis of the subject complaint; 7) Claimant is

estopped from recovery because she was aware of the transactions in her account, approved the type of transactions which were performed, and ratified the specific transactions which occurred; 8) Claimant is barred from recovery under the doctrine of waiver because she received timely reports of individual transactions and monthly account statements, and she waived any cause of action against Respondent Cawiezell by accepting these confirms and monthly statements without objection; 9) Claimant's causes of action are based on fraudulent conduct by Respondent Cawiezell, but Claimant is barred from recovery because she did not exercise reasonable care after discovery of the alleged wrongful conduct of Respondent Cawiezell; any losses sustained by Claimant were therefore the result in whole or in part of her own contributory negligence or comparative negligence; 10) Claimant cannot recover against Respondent Cawiezell because Respondent Cawiezell neither deceived, defrauded or intended to deceive or defraud Claimant, and did not act with "scienter" or in a reckless or negligent manner; Respondent Cawiezell acted in good faith relying upon Claimant's representations; 11) Claimant cannot recover from Respondent Cawiezell because the handling of her account was in accordance and compliance with applicable brokerage industry standards, guidelines and regulatory requirements; 12) any injury, loss or damage to Claimant was the result of superseding or intervening causes beyond the control of Respondent Cawiezell; 13) any injury, loss or damage to Claimant was the result of her own conduct and therefore may not be awarded against Respondent Cawiezell; and 14) Claimant failed to mitigate the consequences of any alleged misrepresentation, negligence or wrongdoing by Respondent Cawiezell, which could not have been mitigated.

Unless specifically admitted in his Answer, Respondent Cawiezell denied the allegations made in the Cross Claim and asserted the following defenses: 1) Respondent Locust Street's cross claims are barred by the applicable statute of limitations; 2) Respondent Locust Street's cross claims are barred by the doctrine of laches; 3) Respondent Locust Street's cross claim for negligence fails to state a cause of action against Respondent Cawiezell because the predicate for any such action lies in contract; 4) Respondent Locust Street approved, authorized, ratified and/or acquiesced in the alleged acts, omissions and misrepresentations, which form the basis of the Cross Claim; 5) Respondent Locust Street is estopped from any recovery over and against Respondent Cawiezell because it was aware of the transactions involved, approved the same and/or ratified the same; 6) Respondent Locust Street is barred from any recovery against Respondent Cawiezell under the doctrine of waiver because it received information regarding all of the transactions involved and had acquiesced in the same, and has therefore, as a matter of law, waived any cause of action over and against Respondent Cawiezell; 7) Respondent Locust Street cannot recover from Respondent Cawiezell because all of his conduct in connection with the matters involved in this case were in accordance and compliance with applicable brokerage industry standards, guidelines and regulatory requirements; and 8) any injury, loss or damage to Respondent Locust Street was the result of superseding or intervening causes beyond the control of Respondent Cawiezell.

#### **RELIEF REQUESTED**

Claimant requested: 1) compensatory damages in the amount of \$100,000.00; 2) punitive

damages; 3) interest at the statutory rate of 8.00%; 4) costs; 5) attorneys' fees; and 6) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondent Locust Street requested: 1) dismissal of the Statement of Claim; 2) costs; 3) indemnification or pro rata contribution from Respondent Cawiezell for any and all sums that may be adjudged against Respondent Locust Street in favor of Claimant; and 4) such other relief the Panel deemed just and proper.

Respondent Cawiezell requested dismissals of the Statement of Claim and the Cross Claim.

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

On October 10, 2001, Claimant filed her Release of Locust Street Securities wherein: 1) Claimant advised that she and Respondent Locust Street have entered into a finalized settlement agreement; and 2) Claimant released, with prejudice, Respondent Locust Street from the above-captioned arbitration proceeding.

The parties at the evidentiary hearing 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:

1. Respondent Cawiezell is liable and shall pay to Claimant compensatory damages in the amount of \$80,000.00, pre-judgment interest specifically denied. Post-judgment interest shall accrue in accordance with Rule 10330(h) of the Code.
2. Respondent Cawiezell is liable and shall pay to Claimant \$225.00 which represent reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.
3. Any and all relief not specifically addressed herein, including punitive damages and attorneys' fees, 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	= \$ 225.00
Cross 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 that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

There were no adjournments requested during these proceedings.

### **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 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 Panel x \$750.00	= \$ 750.00
Pre-hearing conference: May 23, 2001	1 session
Two (2) Hearing sessions x \$750.00	= \$1,500.00
Hearing Date: October 23, 2001	2 sessions
Total Forum Fees	= \$2,250.00

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The Panel has assessed the total forum fees of \$2,250.00 to Respondent Cawiezell.

### **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 = \$225.00

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Total Fees = \$225.00

Less payments = \$225.00

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Balance Due NASD Dispute Resolution, Inc. = \$0.00

Respondent Locust Street be and hereby is solely liable for:

Cross Claim Fee = \$1,000.00

Member Fees = \$3,100.00

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Total Fees = \$4,100.00

Less payments = \$4,100.00

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Balance Due NASD Dispute Resolution, Inc. = \$0.00

Respondent Cawiezell be and hereby is solely liable for:

Forum Fees = \$2,250.00

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Total Fees = \$2,250.00

Less payments = \$ 0.00

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Balance Due NASD Dispute Resolution, Inc. = \$2,250.00

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

**ARBITRATION PANEL**

David Brooks Adcock, Esq.	-	Public Arbitrator, Presiding Chair
Michael Lloyd Weisel, Esq.	-	Non-Public Arbitrator
John F. Adcock	-	Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
David Brooks Adcock, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

**FEE SUMMARY**

Claimant be and hereby is solely liable for:

Initial Filing Fee = \$225.00

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Total Fees = \$225.00

Less payments = \$225.00

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Balance Due NASD Dispute Resolution, Inc. = \$0.00

Respondent Locust Street be and hereby is solely liable for:

Cross Claim Fee = \$1,000.00

Member Fees = \$3,100.00

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Total Fees = \$4,100.00

Less payments = \$4,100.00

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Balance Due NASD Dispute Resolution, Inc. = \$0.00

Respondent Cawiezell be and hereby is solely liable for:

Forum Fees = \$2,250.00

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Total Fees = \$2,250.00

Less payments = \$ 0.00

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Balance Due NASD Dispute Resolution, Inc. = \$2,250.00

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

**ARBITRATION PANEL**

David Brooks Adcock, Esq.

- Public Arbitrator, Presiding Chair

Michael Lloyd Weisel, Esq.

- Non-Public Arbitrator

John F. Adcock

- Public Arbitrator

**Concurring Arbitrators' Signatures**



David Brooks Adcock, Esq.  
Public Arbitrator, Presiding Chair

11.5.01

Signature Date

/s/  
Michael Lloyd Weisel, Esq.  
Non-Public Arbitrator

Signature Date

/s/  
John F. Adcock  
Public Arbitrator

Signature Date

November 8, 2001  
Date of Service





Michael Lloyd Weisel, Esq.  
Non-Public Arbitrator

11/6/01

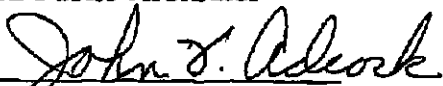
Signature Date

John F. Adcock  
Public Arbitrator

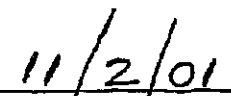
Signature Date

Date of Service

Michael Lloyd Weisel, Esq.  
Non-Public Arbitrator

  
John F. Adcock  
Public Arbitrator

Signature Date

  
Signature Date

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