

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

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In the Matter of the Arbitration Between:

Ira Furman and Alyce Furman, (Claimants) vs. J.W. Barclay & Co., Inc., Dexter Cube, Patrick Leahy, Joshua Chaffey, Michael J. Wills, Theo Basis, Joseph Cordi, John Cioffoletti, and John A. Bruno, (Respondents)

Case Number: 00-05338

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimants, Ira Furman ("I. Furman") and Alyce Furman ("A. Furman"), hereinafter collectively referred to as "Claimants": Thomas J. Romans, Esq., Law Offices of Thomas J. Romans, Hackensack, NJ.

Respondents, J.W. Barclay & Co., Inc. ("Barclay") and Michael J. Wills ("Wills"), did not appear at the hearing in this matter. Previously represented by: Charles Lake, Compliance Consultant on behalf of J.W. Barclay & Co., Inc., Woodbridge, NJ and Steven D. Toskes, Esq., Klayman, Lazarus & Toskes, P.A., Boca Raton, FL, respectively.

Respondents, Dexter Cube ("Cube") and Patrick Leahy ("Leahy"), did not appear at the hearing in this matter. Previously represented by: Charles Lake, Compliance Consultant on behalf of J.W. Barclay & Co., Inc., Woodbridge, NJ.

Respondent, Theo Basis ("Basis"), did not appear at the hearing in this matter. Mr. Basis originally appeared *pro se*.

Respondents, Joshua Chaffey ("Chaffey"), Joseph Cordi ("Cordi"), and John Cioffoletti ("Cioffoletti"), did not make appearances in this matter.

Respondent, John A. Bruno ("Bruno"), did not appear at the hearing in this matter. Previously represented by: Lester Morse, Esq., Lester Morse, P.C., Great Neck, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: November 30, 2000.

First Amended Statement of Claim filed on or about: March 14, 2001.

I. Furman signed the Uniform Submission Agreement: November 2, 2000.

A. Furman signed the Uniform Submission Agreement: November 2, 2000.

Statement of Answer filed by Barclay, Cube, Leahy, and Wills on or about: January 24, 2001.

Barclay did not sign a Uniform Submission Agreement.

Cube did not sign a Uniform Submission Agreement.

Leahy did not sign a Uniform Submission Agreement.

Wills did not sign a Uniform Submission Agreement.

Statement of Answer filed by Basis on or about: January 19, 2001.

Basis signed the Uniform Submission Agreement: January 25, 2001.

Chaffey did not file a Statement of Answer or sign a Uniform Submission Agreement.

Cordi did not file a Statement of Answer or sign a Uniform Submission Agreement.

Cioffoletti did not file a Statement of Answer or sign a Uniform Submission Agreement.

Statement of Answer filed by Bruno on or about: May 4, 2001.

Bruno did not sign a Uniform Submission Agreement.

### CASE SUMMARY

Claimants asserted the following causes of action: material misrepresentations; fraud; violations of the NASD Rules of Fair Practice and New York Stock Exchange Rule 405; unsuitability; violations of the Securities and Exchange Commission's Penny Stock Rules; breach of fiduciary duty; unauthorized trades; violations of the Exchange Acts of 1933 and 1934; excessive trading; negligence; and failure to properly supervise. Claimants' claim involved a variety of stocks and warrants.

Unless specifically admitted in their Answer, Barclay, Cube, Leahy, and Wills denied the allegations made in the Statement of Claim and asserted the following defenses: the securities purchased in Claimants' accounts were consistent with their investment objectives; none of the securities purchased by Claimants were penny stocks, therefore no violations of the Securities and Exchange Commission's Penny Stock Rules occurred; all of the transactions in Claimants' accounts were executed with their prior knowledge and authorization; Claimants never complained to Barclay that unauthorized or unsuitable transactions occurred in their account; and any losses incurred in Claimants' account were caused by fluctuations and downturns that are inherently associated with all common stock purchases.

### **RELIEF REQUESTED**

Claimants requested:

- a. Trading losses aggregating \$99,515.00;
- b. All commissions, remunerations, or fees paid to Respondents on the accounts, known to date to total no less than \$35,530.00 (or other undisclosed remunerations such as sales credits, spreads, or order flow received by Respondents as a result of trading in Claimants' accounts);
- c. Disgorgement of undisclosed insider trading profits realized from Respondents' sale of securities to Claimants at inflated prices and which were obtained by Respondents at nominal prices;
- d. A reasonable rate of return as if amounts invested in the accounts had been prudently invested in accordance with the needs and stated objectives of Claimants;
- e. Punitive damages approximately ten (10) times the trading losses, or \$900,000.00, by reason of Respondents' unconscionable fraud, callous disregard for the interests of their customers, and furtherance of Respondents' own monetary interest at the expense of Claimants; and
- f. Attorneys' fees, costs, and such other and further relief as the Panel deems fair and equitable.

Barclay, Cube, Leahy, and Wills requested dismissal of the claims made against them, and reimbursement of all fees associated with defending this claim.

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

Prior to the hearing in this matter, Claimants voluntarily dismissed their claims against Respondents Chaffey, Basis, and Cordi.

By letter dated November 16, 2001, Claimants informed NASD Dispute Resolution, Inc. that they had entered into settlement agreements with Respondents Cube, Wills, and Bruno.

Claimants also entered into a settlement agreement with Respondent Leahy prior to the hearing in this matter.

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Barclay and Cioffoletti 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 Barclay and Cioffoletti present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Barclay, Cube, Leahy, Chaffey, Wills, Cordi, Cioffoletti, and Bruno did not file with NASD Dispute Resolution, Inc. properly executed submissions 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 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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Barclay and Cioffoletti be and hereby are jointly and severally liable for and shall pay to Claimants the sum of \$24,100.00 as compensatory damages, with interest at the rate of 6% for the period of January 1, 1998 through November 19, 2001, plus interest on this total amount at the rate of 9% accruing from November 19, 2001 until paid.
2. Claimants' request for punitive damages is hereby denied.
3. Barclay and Cioffoletti be and hereby are jointly and severally liable for and shall pay to Claimants the sum of \$500.00, to reimburse Claimants for the filing fee previously paid to NASD Dispute Resolution, Inc.
4. All other requests for relief are hereby 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 = \$ 500.00

### **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 persons at the time of the events giving rise to the dispute. In this matter, J.W. Barclay & Co., Inc. is a party.

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

### **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 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 \$1,200.00	= \$1,200.00
Pre-hearing conference: June 18, 2001	1 session

One (1) Hearing session x \$1,200.00	= \$1,200.00
Hearing Date: November 19, 2001	1 session

Total Forum Fees	= \$2,400.00
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The Panel has assessed all of the forum fees jointly and severally against Barclay and Cioffoletti.

### **Fee Summary**

1. Claimants be and hereby are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 500.00
Total Fees	= \$ 500.00
<u>Less payments</u>	= \$1,700.00
Refund Due Claimants	= \$1,200.00

*As stated in the "Award" section above, Barclay and Cioffoletti are jointly and severally liable and shall reimburse Claimants for the \$500.00 filing fee.*

2. Barclay be and hereby is solely liable for:

<u>Member Fees</u>	= \$7,600.00
Total Fees	= \$7,600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$7,600.00

3. Barclay and Cioffoletti be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$2,400.00
<u>Total Fees</u>	= \$2,400.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,400.00

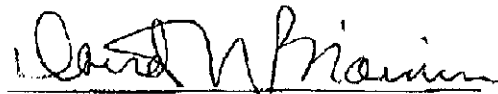
All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

David N. Brainin, Esq.	-	Public Arbitrator, Presiding Chair
Anne Cugliani	-	Public Arbitrator
Barry Quint	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



David N. Brainin, Esq.  
Public Arbitrator, Presiding Chair

12/5/01  
Signature Date

\_\_\_\_\_  
Anne Cugliani  
Public Arbitrator

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

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Barry Quint  
Industry Arbitrator

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

December 12, 2001

Date of Service (For NASD office use only)

**ARBITRATION PANEL**

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Anne Cugliani	-	Public Arbitrator
Barry Quint	-	Industry Arbitrator

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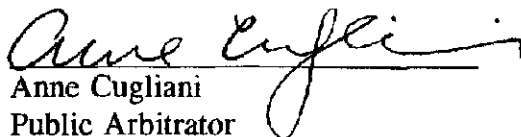
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David N. Brainin, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

  
Anne Cugliani  
Public Arbitrator

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Signature Date

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Barry Quint  
Industry Arbitrator

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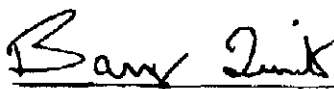
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Public Arbitrator

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Signature Date

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Barry Quint  
Industry Arbitrator

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Signature Date

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