

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Brian Krause

Case Number: 00-05543

Name of the Respondents  
Signal Securities, Inc., and Southwest Securities, Inc.

Hearing Site: Houston, Texas

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**REPRESENTATION OF PARTIES**

Claimant Brian Krause hereinafter referred to as "Claimant": Michael Stanley, Esq. of Berine, Maynard & Parsons, L.L.P. located in Houston Texas.

Respondent Signal Securities, Inc., ("Signal"): Gilbert W. Boyce Esq., Kutack Rock L.L.P. Washington, D.C.

Respondent Southwest Securities, Inc., ("Southwest"): Will S. Montgomery, Esq., Jenkins & Gilchrist, A Professional Corporation, located in Dallas, Texas.

**CASE INFORMATION**

Statement of Claim filed by Brian Krause: December 22, 2002  
Claimant signed a Uniform Submission Agreement on December 21, 2000.

Statement of Answer filed by Southwest Securities, Inc.,: February 13, 2001.  
Southwest did not sign a Uniform Submission Agreement.

Statement of Answer filed by Signal Inc.,: March 15, 2001.  
Signal did not sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action:

1. repondeat superior;
2. fraud;

3. negligence;
4. failure to supervise;
5. breach of fiduciary duty;
6. breach of contract;
7. violations of the Deceptive Trade Practices and Consumer Protection Act.

All cause of action relate to Claimant's attempt to roll-over his retirement account from his former employer's profit sharing plan to a new account.

Unless specifically admitted in its answer Respondent Signal denied the allegations made in the Statement of Claim and asserted the following defenses:

1. claims are barred by the applicable statute of limitations;
2. laches;
3. good faith;
4. lack of causation;
5. failure to mitigate; and,
6. in pari delicto; and, comparative negligence.

Unless specifically admitted in its Answer Respondent Southwest denied the allegations made in the statement of claim and set forth the following affirmative defenses: Southwest is not the principal of co-respondents and therefore cannot be held liable under a principal-agent theory or respondeat superior; Southwest is not a "controlling person".

#### **RELIEF REQUESTED**

Claimants requested:

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

Respondents Signal requested that the Claims filed against them be dismissed in their entirety. Respondent Southwest filed a motion to dismiss along with their answer on February 12, 2001

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

On March 9, 2001 Claimant dismissed Respondent Southwest Securities.

During the hearing on the merits, Respondent Signal's Motion in Limine was denied by the Panel.

During the hearing on the merits, Claimant's Motion to Compel and for Sanctions was denied.

Respondents Signal and Southwest did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code, and having answered the Statement of Claim are bound by the determination of the Panel on all issues submitted.

### 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. Signal Securities Inc., is liable and shall pay to Brian Krause compensatory damages in the sum of \$35,000.00. Pre-award interest shall be included in this Award;
2. Signal Securities Inc., is liable and shall pay to Brian Krause attorneys' fees in the amount of \$10,000.00. The authority for the award of attorneys' fees is based upon the representations of the parties, the papers submitted herein and Texas State Statutes;
3. Any and all relief not specifically addressed herein, is denied;
4. Signal Securities Inc., is liable and shall pay to Brian Krause \$250.00 as reimbursement for Claimant's filing fees;
5. Any and all costs, including attorneys' fees not specifically enumerated herein shall be borne by the parties who incurred them.

### 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	= \$ 250.00
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#### **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. Accordingly, Southwest and Signal are Respondents.

Southwest:

Member surcharge	= \$1,200.00
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Signal:

Member surcharge	= \$1,200.00
Pre-hearing process fee	= \$ 600.00

Hearing process fee = \$2,000.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

April 16, 2002- April 19, 2002 adjournment by Claimant and Respondent Signal = \$ 1000.00  
(Fees were assessed 50% to Claimant and 50% to Respondent Signal.)

**Forum Fees and Assessments**

The Arbitrator 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:

One (1) Pre-hearing sessions with Panel @ \$ 1,000.00 = \$ 1,000.00  
Pre-hearing conference: August 20, 2001 1 session

One (1) Pre-hearing session with a Single Arbitrator @ &450.00  
Pre-hearing conference April 11, 2002 1 session = \$ 450.00

Seven (7) Hearing sessions @ \$1,000.00 = \$ 7,000.00  
Hearing Dates: October 7, 2002 1 session  
October 8, 2002 2 sessions  
October 9, 2002 2 sessions  
October 10, 2002 2 sessions

Total Forum Fees = \$ 8,450.00

1. The Panel has assessed \$8,450.00 of the forum fees to Signal Securities Inc.

**Fee Summary**

1. Claimant Brian Krause is solely liable for:

Initial Filing Fee	= \$ 250.00
Adjournment Fee	= \$ 500.00
<u>Total Fees</u>	<u>= \$ 750.00</u>
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Refunded by NASD Dispute Resolution	= \$ 675.00

2. Respondent Southwest is solely liable for:

Member Fees	= \$ 1,200.00
<u>Total Fees</u>	<u>= \$ 1,200.00</u>
<u>Less payments</u>	<u>= \$ 3,800.00</u>
Balance refunded by NASD Dispute Resolution	= \$ 2,600.00

3. Respondent Signal Securities is solely liable for:

Member Fees	= \$ 3,800.00
Forum Fees	= \$ 8,450.00
Adjournment Fees	= \$ 500.00
Total Fees	= \$12,750.00
Less payments	= \$ 3,800.00
Balance Due to NASD Dispute Resolution	= \$ 8,950.00

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

ARBITRATION PANEL

Jack Chapline Vaughn, Esq.	- Public Arbitrator, Presiding Chairperson
Steve R. Neuman	- Public Arbitrator
Robert N. Mackey	- Non-Public Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Jack Chapline Vaughn, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Steve R. Neuman  
Non-Public Arbitrator

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

\_\_\_\_\_  
Robert N. Mackey  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)

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## 3. Respondent Signal Securities is solely liable for:

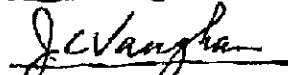
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Steve R. Neuman  
Robert N. Mackey

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures

Jack Chapline Vaughn, Esq.  
Public Arbitrator, Presiding Chair

11/20/2002  
Signature Date

Steve R. Neuman  
Non-Public Arbitrator

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

Robert N. Mackey  
Non-Public Arbitrator

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

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 Association, Inc.  
 Arbitration No. 00-05543  
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NASD REGULATION

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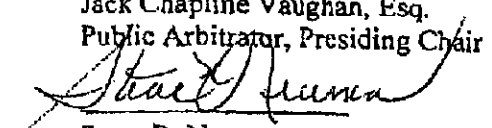
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 Steve R. Neuman  
 Robert N. Mackey

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures

Jack Chapline Vaughn, Esq.  
 Public Arbitrator, Presiding Chair

Signature Date

  
 Steve R. Neuman  
 Non-Public Arbitrator

11-21-02  
 Signature Date

Robert N. Mackey  
 Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution, Inc.

Arbitration No. 00-05543

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Jack Chapline Vaughn, Esq.

Public Arbitrator, Presiding Chair

Signature Date

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Non-Public Arbitrator

Signature Date

Robert N. Mackey

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Signature Date

11-21-02

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