

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

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In the Matter of the Arbitration Between:

Lawrence J. Sarkis, D.D.S. Claimant v. Naomi R. Monschein and Monschein & Associates,  
Respondents

Case Number: 01-00279

Hearing Site: San Francisco, California

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**REPRESENTATION OF PARTIES**

For Claimant:

Paul L. Warner, Esq.  
Jeffer, Mangels, Butler and Marmaro  
San Francisco, California

For Respondents Naomi R. Monschein and  
Monschein & Associates:

Gilda R. Turitz, Esq.  
Sideman & Bancroft LLP  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed on or about: January 16, 2001

Claimant's Uniform Submission Agreement signed: January 15, 2001

Joint Statement of Answer filed by Respondents, Naomi R. Monschein and Monschein & Associates ("M&A"), on or about: May 3, 2001

Respondent Naomi R. Monschein's Uniform Submission Agreement signed: April 26, 2001

**CASE SUMMARY**

Claimant alleged the following claims with respect to investments in various securities: 1) Breach of Fiduciary Duty; 2) Negligent Misrepresentation; 3) Intentional Misrepresentation; 4) Constructive Fraud; 5) Actual Fraud; 6) Breach of Contract; 7) Failure to Supervise; and 8) General Negligence.

Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents also asserted affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested an award of lost principal in the amount of \$1,289,000.00, plus fees, charges, costs, lost profits and exemplary and punitive damages according to proof at the time of hearing, but not less than \$2,000,000.

Respondents requested:

1. Dismissal with prejudice of Claimant's Statement of Claim and all causes of action therein in their entirety with prejudice as against each Respondent;
2. Costs of arbitration;
3. Assessment of all forum fees against Claimant; and
4. Such other relief as the Panel deems just and proper.

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

Prior to the hearing, Claimant dismissed without prejudice, Respondents Stanley K. Wyatt and Thomas F. White & Company, also known as Acument Securities, Inc. ("White"), and dismissed with prejudice, T.D. Waterhouse Investor Services, Inc. ("T.D. Waterhouse").

Respondent M&A did not file with the NASD Dispute Resolution, Inc. ("NASD-DR") a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Investment Management Agreement executed by the parties on August 14, 1998 and pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) All claims by Claimant, including the claims for exemplary and punitive damages, are dismissed.
- 2) Each party shall bear its own costs, including attorney's fees.
- 3) All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$600.00

#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firms, White and T.D. Waterhouse, were parties and the following fees are assessed:

Member Surcharge	= \$2,500.00
Pre-Hearing Process Fee	= \$ 600.00
<b>Total Member Fees</b>	<b>= \$3,100.00</b>

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

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

(2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$2,400.00

Pre-hearing conferences:	November 27, 2001	1 session
	May 3, 2002	1 session

(11) Hearing sessions @ \$1,200.00/session = \$13,200.00

Hearings:	May 28, 2002	2 sessions
	May 29, 2002	2 sessions
	May 30, 2002	2 sessions
	May 31, 2002	2 sessions
	June 10, 2002	3 sessions

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<b>Total Forum Fees</b>	<b>= \$15,600.00</b>
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The Panel assessed the \$15,600.00 in forum fees jointly and severally to Respondents, Monschein and M&A.

#### **Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to,

additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

The parties did not incur administrative costs.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 600.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$ 600.00
<u>Less Payments</u>	= \$(1,800.00)
Refund Due Claimant	= \$(1,200.00)

2. Respondent, T.D. Waterhouse, is charged with the following fees and costs:

Member Fees	= \$ 3,100.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$ 3,100.00
<u>Less Payments</u>	= \$(3,100.00)
Balance Due NASD-DR	= \$ 0.00

3. Respondent, White, is charged with the following fees and costs:

Member Fees	= \$ 3,100.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$ 3,100.00
<u>Less Payments</u>	= \$(2,500.00)
Balance Due NASD-DR	= \$ 600.00

4. Respondents, Monschein and M&A, are charged jointly and severally with the following fees and costs:

Forum Fees	= \$15,600.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$15,600.00
<u>Less Payments</u>	= \$ (0.00)
Balance Due NASD-DR	= \$15,600.00

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

**ARBITRATION PANEL**

Thomas H. O'Connor	-	Non-Public Arbitrator, Presiding Chair
Ralph A. Cotton, CPA	-	Public Arbitrator
Bruce T. Mitchell, Esq.	-	Public Arbitrator

**Concurring Arbitrators' Signatures**

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Thomas H. O'Connor  
Chair, Non-Public Arbitrator

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Signature Date

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Ralph A. Cotton, CPA  
Public Arbitrator

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Signature Date

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Bruce T. Mitchell, Esq.  
Public Arbitrator

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Signature Date

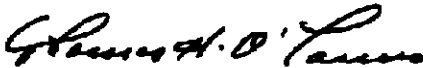
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Date of Service

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Thomas H. O'Connor	-	Non-Public Arbitrator, Presiding Chair
Ralph A. Cotton, CPA	-	Public Arbitrator
Bruce T. Mitchell, Esq.	-	Public Arbitrator

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Thomas H. O'Connor  
Chair, Non-Public Arbitrator



Signature Date

Ralph A. Cotton, CPA  
Public Arbitrator

Signature Date

Bruce T. Mitchell, Esq.  
Public Arbitrator

Signature Date

  
Date of Service

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Bruce T. Mitchell, Esq.	-	Public Arbitrator

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Thomas H. O'Connor  
Chair, Non-Public Arbitrator

Signature Date

  
Ralph A. Cotton, CPA  
Public Arbitrator

6-20-02  
Signature Date

Bruce T. Mitchell, Esq.  
Public Arbitrator

Signature Date

6/27/02 - M Campbell  
Date of Service

ARBITRATION PANEL

Thomas H. O'Connor	-	Non-Public Arbitrator, Presiding Chair
Ralph A. Cotton, CPA	-	Public Arbitrator
Bruce T. Mitchell, Esq.	-	Public Arbitrator

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Chair, Non-Public Arbitrator

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Signature Date

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Ralph A. Cotton, CPA  
Public Arbitrator

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Signature Date

  
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