

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

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In the Matter of the Arbitration Between:

Scott Quinto, (Claimant) vs. Montrose Capital Management, Ltd., Robert Winston, and John Telfer, (Respondents)

Case Number: 01-00659

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Scott Quinto, hereinafter referred to as "Claimant": David Crystal, II, Esq., Gilbride, Tusa, Last & Spellane LLC, New York, NY.

Respondent, Montrose Capital Management, Ltd. ("Montrose"), did not make an appearance in this matter.

Respondents, Robert Winston ("Winston") and John Telfer ("Telfer"): Eden L. Rohrer, Esq., Law Offices of Clayman & Rosenberg, New York, NY (Ms. Rohrer was with the law firm of Gersten, Savage & Kaplowitz, LLP, New York, NY when she first made an appearance on behalf of Winston and Telfer).

**CASE INFORMATION**

Statement of Claim filed on or about: February 7, 2001.

Claimant signed the Uniform Submission Agreement: February 7, 2001.

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

Joint Statement of Answer filed by Winston and Telfer on or about: April 9, 2001.

Winston signed the Uniform Submission Agreement: April 26, 2001.

Telfer did not sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: defamation on Form U-5 and intentional interference with business relationships.

Unless specifically admitted in their Answer, Winston and Telfer denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim and each and every cause of action therein fails to state a cause of action upon which relief can be granted; Respondents discharged their responsibilities in a professional and ethical manner and all of Respondents' actions were within the parameters of accepted brokerage procedure and all exchange and governmental regulations; Respondents acted in good faith and exercised at least that degree of care, diligence, and skill which ordinarily prudent persons would exercise in similar circumstances and like positions; Claimant's comparative fault, lack of diligence, and failure to conduct his affairs reasonably and responsibly bars any recovery of damages herein; the damages allegedly suffered by Claimant have no causal relationship with any act committed by or legally attributed to Respondent, and the purported wrongdoing on the part of Respondents were not the proximate cause of the losses for which Claimant seeks recovery; Respondents owed no fiduciary duty to Claimant; Claimant is barred by the doctrines of unclean hands, ratification, waiver, and estoppel; any statements made by Respondents to Claimant's former customers were true at the time they were made, and Respondents had no knowledge at the time that any such statements were false; and Respondents' statements were made without any intent to cause damage to Claimant and, in fact, no statement attributed to Respondents caused any damage to Claimant.

#### **RELIEF REQUESTED**

Claimant requested an Award granting the following relief:

1. Requiring Montrose to correct the Form U-5 filing to correctly reflect that Claimant voluntarily left the company;
2. Retractions by Montrose, Winston, and Telfer to all of Claimant's clients of the defamatory remarks made;
3. Actual damages against all Respondents for loss of business in the amount of \$50,000.00;
4. Actual damages for the conversion of Claimant's personal property in an amount believed to be approximately \$10,000.00;
5. Punitive damages against all Respondents in the amount of \$50,000.00; and
6. That all forum fees and reasonable attorneys' fees be assessed against Respondents.

Winston and Telfer requested that the Panel dismiss the Statement of Claim in its entirety as against them, and award them such costs as are just and proper, including attorneys' fees and the costs of this arbitration.

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

By letter dated September 5, 2001, Claimant advised NASD Dispute Resolution, Inc. that he was withdrawing his claims against Respondent Winston.

On December 7, 2001, the United States District Court for the Southern District of New York entered an Order staying all proceedings against Montrose upon the application of the Securities Investor Protection Corporation, Inc. ("SIPC") under the Securities Investor Protection Act ("SIPA").

Prior to the conclusion of the hearing, Claimant and Telfer entered into a Confidential Settlement Agreement and Mutual Release ("the Agreement"), which they executed on December 20, 2001 and December 31, 2001, respectively. The Agreement provided for the expungement of certain language from Claimant's CRD records, which is being submitted to the Panel for its consideration in the form of a Stipulated Award.

Montrose and Telfer did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and are bound by the determination of the Panel on all issues submitted.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

### **AWARD**

On December 20, 2001 and December 31, 2001, respectively, Claimant and Telfer entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for the entry of an Award, the written stipulation thereto, the Panel hereby grants the motion and enters this Award granting the following relief:

1. The Panel recommends the expungement of the following information from Claimant's registration records maintained by the NASD Central Registration Depository ("CRD") based on the defamatory nature of the information, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Claimant must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive:

*Reason for Termination: Discharge*

*Scott Quinto was discharged due to violation of firm policies. On September 25, 2000 Scott Quinto openly admitted that he had committed computer theft by extracting secured information that he was not entitled to review. While in the secured area of Montrose Capital's back office area he reviewed other brokers records of their accounts. In addition Scott Quinto failed to live up to ther (sic) agreement he made with regard to taking and passing the Series 24 exam upon his hire in May.*

2. The Panel further recommends that the foregoing language be replaced in its entirety with the following language:

*Reason for Termination: Permitted to resign*

*Clarification of prior Form U-5. Upon further investigation, it was determined that Scott Quinto was under the mistaken belief that he was authorized and directed to access certain client information. It was also determined that this access of files was immaterial and caused no damage to Montrose, its employees or its customers.*

3. 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 = \$ 300.00

**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, Montrose Capital Management, Ltd. is a party.

Member surcharge = \$1,500.00

### **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 \$1,125.00	= \$1,125.00
Pre-hearing conference: July 16, 2001	1 session
Total Forum Fees	= \$1,125.00

1. The Panel has assessed \$562.50 of the forum fees against Claimant.
2. The Panel has assessed \$562.50 of the forum fees against Telfer.

### **Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 862.50
<u>Less payments</u>	= \$1,750.00
Refund Due Claimant	= \$ 887.50
2. Montrose be and hereby is solely liable for:

<u>Member Fees</u>	= \$1,500.00
Total Fees	= \$1,500.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,500.00
3. Telfer be and hereby is solely liable for:

<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 562.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 562.50

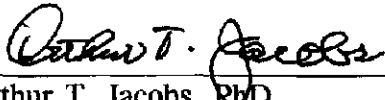
All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Arthur T. Jacobs, PhD	-	Public Arbitrator, Presiding Chair
Arthur C. Ramirez	-	Public Arbitrator
Paul M. Rosenthal	-	Industry Arbitrator

**Concurring Arbitrators' Signature**

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.

  
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Arthur T. Jacobs, PhD  
Public Arbitrator, Presiding Chair

February 21, 2002  
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Signature Date

\_\_\_\_\_  
Arthur C. Ramirez  
Public Arbitrator

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

\_\_\_\_\_  
Paul M. Rosenthal  
Industry Arbitrator

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

March 8, 2002

• Date of Service (For NASD office use only)

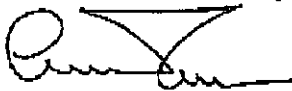
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Arthur C. Ramirez  
Public Arbitrator

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3/4/02  
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Industry Arbitrator

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Industry Arbitrator

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