

**AWARD**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimants

Southwest Securities, Inc.  
and SWS Financial Services, Inc.  
f/k/a Brokers Transaction Services, Inc.

and

01-00798  
Dallas, Texas

Name of Respondents

Robert D. Rogers

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**REPRESENTATION OF PARTIES**

Southwest Securities, Inc. and SWS Financial Services, Inc., f/k/a Brokers Transaction Services, Inc. ("Claimants") were represented by Corbet F. Bryant, Esq., Carrington, Coleman, Sloman & Blumenthal.

Robert D. Rogers ("Respondent") did not appear.

**CASE INFORMATION**

The Statement of Claim was filed on or about February 16, 2001. Submission Agreements of Claimants were signed on February 21, 2001.

The NASD has no record of a Statement of Answer or Submission Agreement was filed by Respondent Robert D. Rogers.

**CASE SUMMARY**

Claimant alleged that Respondent Rodgers opened an account with Claimants. In connection therewith he executed a Margin and Short Account Customer Agreement and Options Agreement. Pursuant to the margin account, which he commenced, Respondent borrowed money from Claimants. Respondent used the borrowed funds to purchase securities and sell options. Shortly thereafter, Respondent experienced adverse market movements in the stocks that he owned. That resulted in a series of margin calls. Ultimately, Respondent failed to meet a margin call, which resulted in

Claimants liquidating his account. After the liquidation was concluded and the proceeds of sales applied to the outstanding debt of Respondent, a deficiency of \$268,695.61 remained. Claimants alleged causes of action including Breach of Contract and Money Had and Received.

Respondent did not file an Answer.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$268, 695.61 in compensatory damages, pre-judgment and post-judgment interest as permitted by law, recovery of reasonable and necessary attorney's fees, filing fee, forum fee, and such other costs, including any fees as may be incurred by Claimants.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Upon review of the file and the representations made by/on behalf of the Claimants, the undersigned arbitrators have determined that Respondent Robert D. Rogers has been properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Robert D. Rogers had received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code. Further, based upon satisfactory evidence presented to the panel, the Panel finds that the NASD Dispute Resolution, Inc. served Respondent Robert D. Rogers at the address of 2431 Cambridge Drive, Irving, Texas 75061, with pleadings and notices for the arbitration, including the Statement of Claim, the Submission Agreements of the two Claimants, and a notice of his failure to file an Answer. The proof included the green card reflecting a signature of Robert D. Rogers returned after the notice of failure to file an answer was sent by certified mail. It is based upon this and other information that the panel finds that Robert D. Rogers had proper and adequate notice of the claims asserted against him and of the hearing of this matter.

Respondent Robert D. Rogers did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration. But, pursuant to the Code and the determination of the arbitrators based upon his written Customer Agreements, he is bound by the determination of the arbitration panel on all issues submitted.

In addition, the panel specifically finds that Robert D. Rogers entered into a written arbitration agreement when he opened his account requiring that he arbitrate any disputes arising from his securities account. Over the course of the account Robert D. Rogers never deposited monies but did withdraw \$1,000 on October 2, 2000. Robert D. Rogers borrowed money from Southwest

Securities, Inc. to pay for the securities that he acquired in the account. Robert D. Rogers did not meet margin calls that took place in the account and ultimately the account was liquidated, concluding in January 2001. After all credits were given for the securities liquidated, Robert D. Rogers still owed the entity that loaned him money, Southwest Securities, Inc., \$268,695.61 on January 22, 2001. Demand was made upon Robert D. Rogers in writing for payment of that debt. No payment has been made. Therefore, there is due and owing to Southwest Securities, Inc. from Robert D. Rogers the deficiency in the account plus interest and reasonable and necessary attorney's fees.

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties present at the hearing have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant Southwest Securities is hereby awarded recovery against Respondent Robert D. Rogers of \$268,695.61 compensatory damages, plus pre-judgment interest of \$17,913.04;
2. Claimant Southwest Securities is hereby awarded recovery against Respondent Robert D. Rogers of reasonable and necessary attorney's fees of \$5,000.00. In making this award of attorney's fees, the panel reviewed and considered all pleading, documents, briefs and oral argument of counsel and find that authority exists for this award of attorney's fees;
3. Claimant Southwest Securities is hereby awarded recovery against Robert D. Rogers of post judgment interest of 10% on the compensatory damages from the date of service of this award until the award is paid in full;
4. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice;

### **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 = \$1,000.00

### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firms are Southwest Securities, Inc. and SWS Financial Services, Inc.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$600.00
Hearing process fee	= \$2,500.00

### **Forum Fees and Assessments**

The Arbitration 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 25, 2001 1 session	
One (1) Hearing sessions x \$1,125.00	= \$1,125.00
Hearing Date: September 21, 2001 1 session	
Total Forum Fees	= \$2,250.00

The Arbitration Panel has assessed \$1,125.00 of the forum fees jointly and severally to Claimants Southwest Securities, Inc. and SWS Financial Services, Inc. f/k/a Brokers Transaction Services, Inc. The Arbitration Panel has assessed \$1,125.00 of the forum fees to Robert D. Rogers.

### **Fee Summary**

Claimant, Southwest Securities, Inc., shall be and hereby is liable for:

Member Fees	= \$4,600.00
Total Fees	= \$4,600.00
<u>Less payments</u>	<u>= \$4,600.00</u>
Zero Balance Due NASD Dispute Resolution, Inc.	= \$ .00

Claimant, SWS Financial Services, Inc. f/k/a Brokers Transaction Services, Inc., shall be and hereby is liable for:

Member Fees	= \$4,600.00
Total Fees	= \$4,600.00

<u>Less payments</u>	= \$4,600.00
Zero Balance Due NASD Dispute Resolution, Inc.	= \$ .00

Claimants, Southwest Securities, Inc. and SWS Financial Services, Inc. f/k/a Brokers Transaction Services, Inc. shall be and hereby are jointly and severally liable for:

Initial Filing Fee:	= \$1,000.00
Forum Fees	= \$1,125.00
Total Fees	= \$2,125.00
<u>Less payments</u>	= \$2,125.00
Zero Balance:	= \$00.00

Respondent, Robert D. Rogers, shall be and hereby is liable for:

<u>Forum Fees</u>	= \$1,125.00
Total Fees	= \$1,125.00
<u>Less payments</u>	= \$00.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,125.00

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Edmund R. Yates - Public, Presiding Chair  
Philip I. McConnell - Public Arbitrator  
Robert Nicoud - Non-Public Arbitrator

Concurring Arbitrators:

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Edmund R. Yates  
Public Arbitrator, Presiding Chair

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Signature Date

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Philip I. McConnell  
Public Arbitrator

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Signature Date

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Robert Nicoud  
Non-Public Arbitrator

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Signature Date

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NASD Dispute Resolution, Inc.  
Arbitration No. 01-00798  
Award Page 5 of 5

Less payments = \$4,600.00  
Zero Balance Due NASD Dispute Resolution, Inc. = \$ .00

Claimants, Southwest Securities, Inc. and SWS Financial Services, Inc. f/k/a Brokers Transaction Services, Inc. shall be and hereby are jointly and severally liable for:

Initial Filing Fee: = \$1,000.00  
Forum Fees = \$1,125.00  
Total Fees = \$2,125.00  
Less payments = \$2,125.00

Zero Balance: = \$00.00

Respondent, Robert D. Rogers, shall be and hereby is liable for:

Forum Fees = \$1,125.00  
Total Fees = \$1,125.00  
Less payments = \$00.00  
Balance Due NASD Dispute Resolution, Inc. = \$1,125.00

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Edmund R. Yates - Public, Presiding Chair  
Philip I. McConnell - Public Arbitrator  
Robert Nicoud - Non-Public Arbitrator

Concurring Arbitrators:

  
Edmund R. Yates  
Public Arbitrator, Presiding Chair

Nov. 16, 2001  
Signature Date

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Philip I. McConnell  
Public Arbitrator

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

\_\_\_\_\_  
Robert Nicoud  
Non-Public Arbitrator

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

NASD Dispute Resolution, Inc.  
 Arbitration No. 01-00798  
 Award Page 5 of 5

Less payments = \$4,600.00  
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 Forum Fees = \$1,125.00  
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Less payments = \$2,125.00

Zero Balance: = \$00.00

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Total Fees = \$1,125.00  
Less payments = \$00.00  
 Balance Due NASD Dispute Resolution, Inc. = \$1,125.00

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 Philip I. McConnell - Public Arbitrator  
 Robert Nicoud - Non-Public Arbitrator

Concurring Arbitrators:

Edmund R. Yates  
 Public Arbitrator, Presiding Chair

Philip I. McConnell  
 Philip I. McConnell  
 Public Arbitrator

Signature Date

11-15-01

Signature Date

Robert Nicoud  
 Non-Public Arbitrator

Signature Date

NASD Dispute Resolution, Inc.  
Arbitration No. 01-00798  
Award Page 5 of 5

Less payments = \$4,600.00  
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Zero Balance: = \$00.00

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Less payments = \$00.00  
Balance Due NASD Dispute Resolution, Inc. = \$1,125.00

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**ARBITRATION PANEL**

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Philip I. McConnell - Public Arbitrator  
Robert Nicoud - Non-Public Arbitrator


Concurring Arbitrators:

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Edmund R. Yates  
Public Arbitrator, Presiding Chair

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

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Philip I. McConnell  
Public Arbitrator

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Signature Date

  
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Robert Nicoud  
Non-Public Arbitrator

11/16/01  
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Signature Date *smh*