

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

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In the Matter of the Arbitration Between:

Name of Claimant

Case No. 01-01114

Buckman, Buckman & Reid, Inc.

Names of Respondents

David G. Gunter

David G. Gunter and Craig Gunter JTWROS

Hearing Site: Atlanta, Georgia

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**REPRESENTATION OF PARTIES**

For Buckman, Buckman & Reid, Inc., hereinafter referred to as "Claimant": Mark J. Astarita, Esq., Beam & Astarita, L.L.C., Bloomfield, New Jersey.

For David G. Gunter, and David G. Gunter & Craig Gunter JTWROS, hereinafter collectively referred to as "Respondents": John G. Goselin, II, Esq., Alston & Bird, LLP, Atlanta, Georgia.

**CASE INFORMATION**

Statement of Claim filed on or about: March 6, 2001.

Claimant signed the Uniform Submission Agreement on: March 1, 2001.

Statement of Answer and Counterclaim filed on or about: May 4, 2001.

Respondent David Gunter signed the Uniform Submission Agreement on: May 1, 2001.

Respondent Craig Gunter signed the Uniform Submission Agreement on: May 21, 2001.

Response to Counterclaim filed on or about: June 4, 2001.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) delivery of a check, written on insufficient funds, 2) account stated; 3) breach of contract; and 4) misrepresentation. The causes of action relate to: 1) Respondent David Gunter's failure to satisfy payment for a dishonored check; 2) Respondent David Gunter's failure to satisfy payment of a debit balance owed for stock trading in Respondent David Gunter's account; 3) Respondents

failure to pay the debts, costs, associated fees and commissions for the trading activity in Respondents' accounts; and 4) Respondents breach of promise to pay the debts, associated fees and commissions for the trading activity in Respondents' accounts.

Respondents denied the allegations of wrongdoing in the Statement of Claim and asserted the following defenses: 1) Claimant failed to state a cause of action as a matter of law; 2) Claimant failed to state valid causes of action because they are factually inaccurate; 3) Claimant's claims are barred by the doctrines of laches and/or equitable estoppel; 4) Claimant's claims are barred in whole or in part because Claimant's alleged damages were not proximately caused by any wrongdoing of Respondents; 5) Claimant's claims are barred in whole or in part because Claimant did not exercise reasonable diligence with regard to the activities of their representative agent, Robert Lee; 6) Claimant's claims are barred in whole or in part under the doctrines of contributory or comparative negligence; 7) Claimant's claims are barred in whole or in part because Claimant failed to supervise the trading activities of their agent, Robert Lee, regarding the purchase or sale of securities about which Claimant now complains; 8) Claimant's claims are barred in whole or in part by the doctrines of waiver and/or estoppel; 9) Claimant's claims are barred in whole or in part by Claimant's failure to mitigate damages; 10) Claimant's claims are barred in whole or in part because Claimant cannot show transaction causation or loss causation; 11) Claimant's claims are barred in whole or in part because Respondents acted in good faith; 12) Claimant's claims are barred in whole or in part because Respondents relied to their detriment upon the false and misleading misrepresentations and omissions of material facts made by Claimant and its agent, Robert Lee; and 13) any recovery by Claimant against Respondents would constitute unjust enrichment.

Respondents asserted the following causes of action in their counterclaim: 1) unauthorized trading on margin; 2) misrepresentation; and 3) omissions of material fact. The causes of action relate to trading on margin in securities, including shares of stock in Audiovox.

Claimant denied the allegations of wrongdoing in the counterclaim and asserted the following defenses: 1) Claimant acted at all times in compliance with the applicable rules and regulations, acted in good faith and did not induce the alleged act or acts, if any, constituting any alleged violations of law; 2) the damages alleged by the Respondents have no casual relationship with any act committed by or legally attributable to Claimant, and it is Claimant who has been damaged by the conduct of Respondents; 3) Respondents failed to mitigate their damages, if any, and are therefore barred from recovery of such damages; 4) Respondents' damages, if any, are the proximate result of the culpable conduct of Respondents; Respondents are therefore barred from seeking recovery; 5) Respondents' damages, if any, are the proximate result of Respondents' illegal conduct, and/or their violation of the securities laws and regulations; Respondents are therefore barred from seeking recovery; 6) Respondents' damages, if any, are the proximate result of the market conditions and/or other factors beyond the control of Claimant;

Respondents are therefore barred from seeking recovery; and 7) Respondents are barred from seeking recovery of their damages, if any, by the doctrines of laches, waiver, estoppel and ratification.

### **RELIEF REQUESTED**

Claimant requested in its Statement of Claim against Respondent David Gunter: 1) compensatory damages in the amount of \$135,625.75 for a dishonored check; 2) interest from May 16, 2000; 3) compensatory damages in the amount of \$50.00 for a processing fee for the dishonored check; 4) costs; 5) attorneys' fees; and 6) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Claimant requested in its Statement of Claim against Respondents, jointly and severally: 1) compensatory damages in the amount of \$135,625.75; 2) interest; 3) costs; and 4) attorneys' fees.

Respondents requested dismissal of the Statement of Claim.

Respondents requested in the counterclaim: 1) compensatory damages in the amount of \$198,500.00 on their counterclaim; 2) interest; 3) costs associated with the stop payment order for the check at issue and costs in defending against the Claimant's Statement of Claim; 4) attorneys' fees; and 5) such other relief to be proved at the evidentiary hearing.

Claimant requested in its Response to the counterclaim: 1) dismissal of the counterclaim; 2) costs; 3) attorneys' fees; and 4) such other relief the Panel deemed just and proper.

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

Craig Gunter did not appear at the evidentiary hearing. Upon review of the file and the representations made by/on behalf of the Claimant, the Panel determined that Respondent Craig Gunter & David G. Gunter JTWROS was properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Craig Gunter present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

The parties agreed that the Award 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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims against Respondent David G. Gunter & Craig Gunter JTWROS are denied in their entirety.
2. Respondent David G. Gunter is liable and shall pay to Claimant compensatory damages in the amount of \$40,000.00, pre-judgment interest denied. Post-judgment interest shall accrue in accordance with Rule 10330(h) of the Code until the Award is paid in full.
3. Respondents' claims are denied in their entirety.
4. All requests for attorneys' fees are denied.
5. Any and all relief not specifically addressed herein is 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	= \$1,000.00
Counterclaim 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 firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, Claimant is a member firm and a party.

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

#### **Adjournment Fees**

Adjournments requested during these proceedings:

There were no adjournments requested during these proceedings.

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

The Panel has the authority to assess 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
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Pre-hearing conference:	September 7, 2001	1 session	
Four (4) hearing sessions with Panel x \$1,125.00			= \$4,500.00
Hearing Dates:	January 14, 2002	2 sessions	
	January 15, 2002	2 sessions	
<hr/> Total Forum Fees			= \$5,625.00

The Panel has assessed \$3,750.00 of the forum fees to Claimant.

The Panel has assessed \$1,875.00 of the forum fees to Respondent David Gunter.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

### **FEE SUMMARY**

Claimant be and hereby is solely liable for:

Claim Filing Fee	= \$1,000.00
Member Fees	= \$4,600.00
Forum Fees	= \$3,750.00
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Total Fees	= \$9,350.00
<u>Less payments</u>	= \$7,325.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,025.00

Respondent David S. Gunter be and hereby is solely liable for:

Forum Fees	= \$1,875.00
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Total Fees	= \$1,875.00
<u>Less payments</u>	= \$1,125.00
Balance Due NASD Dispute Resolution, Inc.	= \$750.00

Respondents be and hereby are jointly and severally liable for:

Counterclaim filing fee	= \$ 300.00
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Total Fees	= \$ 300.00
<u>Less payments</u>	= \$ 300.00
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

NASD Dispute Resolution, Inc.

Arbitration No. 01-01114

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

**ARBITRATION PANEL**

Joseph N. Miller

Susan Kerr Lee, J.D.

E. Trice Laird

Public Arbitrator, Presiding Chair

Public Arbitrator

Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Joseph N. Miller  
Public Arbitrator, Presiding Chair

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Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Susan Kerr Lee, J.D.  
Public Arbitrator

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

\_\_\_\_\_/s/\_\_\_\_\_  
E. Trice Laird  
Non-Public Arbitrator

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

February 20, 2002

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

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Public Arbitrator  
Non-Public Arbitrator

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Joseph N. Miller  
Public Arbitrator, Presiding Chair

FEB 20, 2002

Signature Date

Susan Kerr Lee, J.D.  
Public Arbitrator

Signature Date

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NASD Dispute Resolution, Inc.  
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Public Arbitrator, Presiding Chair

  
Susan Kerr Lee, J.D.  
Public Arbitrator

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Signature Date

2/20/02  
Signature Date

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2/19/02  
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Signature Date

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