

ORIGINAL

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

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In the Matter of the Arbitration Between:  
First Western Advisors, Claimant v. Steven A. Reber, Respondent

Steven A. Reber, Counterclaimant v. First Western Advisors, Counter Respondent

Steven A. Reber, Third-party Claimant v. Donaldson, Lufkin & Jenrette Securities Corp. and  
Brian Kasteler, Third-party Respondents

Case Number: 01-02668

Hearing Site: Salt Lake City, Utah

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For Claimant/Counter Respondent  
First Western Advisors ("FWA"), and  
Third-party Respondents Brian Kasteler  
and Donaldson, Lufkin & Jenrette  
Securities Corp. ("DLJ"):

Matthew K. Richards, Esq.  
Kirtan & McConkie  
Salt Lake City, Utah

For Respondent/Counterclaimant/Third-  
party Claimant Steven A. Reber:

Alexander H. Walker, III, Esq.  
Salt Lake City, Utah

**CASE INFORMATION**

Statement of Claim filed: May 18, 2001

Claimant's Uniform Submission Agreement signed: May 18, 2001

Statement of Answer, Counterclaim and Third-party Claims filed by Respondent Steven A.  
Reber: July 30, 2001

Respondent's Uniform Submission Agreement signed: July 27, 2001

Joint Statement of Answer by FWA, DLJ and Mr. Kasteler to Counterclaim/Third-party Claim  
filed: August 20, 2001

### **CASE SUMMARY**

Claimant FWA alleged breach of contract, misrepresentation, and fraud in connection with the sale of NDS Software, formerly Aurora Tech, Inc., common stock.

Respondent Reber denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and filed a Counterclaim against FWA for alleged breach of covenant of good faith and fair dealing, violation of NASD Rules, breach of fiduciary duty, failure to supervise, conversion, and negligence.

Respondent Reber filed a third-party claim against Brian Kasteler and DLJ alleging negligence and violation of NASD Rules. Third-party Claimant Reber further alleged breach of covenant of good faith and fair dealing, and breach of fiduciary duty against DLJ

Counterclaimant FWA and Third-party Respondents DLJ and Kasteler denied in their entirety the allegations of wrongdoing set forth in Respondent Reber's Counterclaim and Third-party Claims.

### **RELIEF REQUESTED**

Claimant FWA requested compensatory damages of \$8,685.36, pre-judgment interest of \$3,255.45 through May 2, 2001 plus additional pre-judgment and post-judgment interest, costs to date of \$1,600.00, attorney's fees of not less than \$3,750.00, and a declaration that its lien on Respondent Reber's IRA account is valid and may be executed. In its reply to Respondent Reber's counterclaim, Claimant withdrew its request for \$5,000.00 in punitive damages.

Respondent Reber requested dismissal of Claimant's Statement of Claim in its entirety, the transfer of his IRA account to American Express Financial Advisors, compensatory damages of \$2,326.83, punitive damages of \$6,150.00, costs of \$325.00, and attorney's fees of \$3,500.00.

Counter Respondent FWA and Third-Party Respondents DLJ and Kasteler requested dismissal of Respondent Reber's Counterclaim and Third-party Claims in their entirety.

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

Third-party Respondents Kasteler and DLJ did not file with the NASD Dispute Resolution, Inc. properly executed submission agreements but are required to submit to arbitration pursuant to the Code and having answered the claims, appeared and testified at the hearing, are bound by the determination of the Arbitrator 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, and the post-hearing submissions, if any, the Arbitrator decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Reber is liable to and shall pay Claimant FWA:
  - a) the sum of \$12,623.46 in compensatory damages;
  - b) interest thereon at the rate of 4.28% per annum from February 1, 2002 until paid;
  - c) the sum of \$13,410.00 attorney's fees pursuant to the Cash Account Agreement.
- 2) Claimant FWA's request that its lien against Respondent Reber's IRA account be declared valid and enforceable is denied.
- 3) Claimant FWA and Third-party Respondent DLJ, jointly and severally, shall take all action necessary to immediately transfer the assets of Respondent Reber's IRA account to American Express Financial Advisors.
- 4) All Claims against Third-party Respondent Kasteler are dismissed in their entirety.
- 5) Except as noted in 1) c) hereinabove, each party shall bear their respective costs, including attorney's fees.
- 6) All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 750.00
Respondent Steven A. Reber's Counterclaim/Third-Party Claim	= \$ 75.00

#### **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 FWA and DLJ are parties and the following fees are assessed:

Member Surcharge assessed to FWA	= \$ 400.00
Member Surcharge assessed to DLJ	= \$ 300.00

**Forum Fees and Assessments**

The Arbitrator 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. The following fees are assessed:

(2) Pre-hearing conference sessions with a single arbitrator @ \$ 450.00/session = \$ 900.00

Pre-hearing conference:      December 5, 2001      1 session  
   January 28, 2002      1 session

(3) Hearing sessions @ \$450.00/session = \$ 1,350.00

Hearings:                      February 4, 2002      2 sessions  
   February 5, 2002      1 session

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**Total Forum Fees** = \$ 2,250.00

The Arbitrator assessed \$ 2,250.00 of the forum fees to Third-party Respondent Brian Kasteler.

**Fee Summary**

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

Initial Filing Fee	= \$ 750.00
<u>Member Fees</u>	= \$ 400.00
Total Fees	= \$ 1,150.00
<u>Less Payments</u>	= \$(1,600.00)
Refund due FWA	= \$ ( 450.00)

2. Third-party Respondent DLJ is charged with the following fees and costs:

<u>Member Fees</u>	= \$ 300.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 300.00

3. Respondent Steven A. Reber is charged with the following fees and costs:

Counterclaim/Third-party Claim Filing Fee	= \$ 75.00
<u>Less Payments</u>	= \$( 325.00)
Refund due Respondent Steven A. Reber	= \$( 250.00)

4. Third-party Respondent Brian Kasteler is charged with the following fees and costs:

<u>Forum Fees</u>	= \$ 2,250.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,250.00

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

**ARBITRATION PANEL**

*George H. Speciale, Esq.*

*Public Arbitrator, Presiding Chair*



George H. Speciale, Esq.  
Chair, Public Arbitrator

*March 15, 2002*  
Signature Date

*3-15-02*  
Date of Service