

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Chloe Kerns Edge TRS/Chloe Edge TR, Claimant v. Miller & Schroeder Financial, Inc. and
Scott T. Penwarden, Respondents

Scott T. Penwarden, Third-Party Claimant v. MM&S Financial, Inc., James E. Iverson, Jerome A. Tabolich, Edward J. Hentges, Kenneth R. Larsen, Steven W. Erickson, Paul R. Ekholm, James F. Dlugosch, Joseph K. Halloran, Kenneth E. Dawkins, Thomas S. Nelson, James M. Clarey, Jr., Victor P. Dhoogie, Mary Jo Brenden, and Daniel E. Dill, Third-Party Respondents

Case Number: 01-03099

Hearing Site: San Diego, California

REPRESENTATION OF PARTIES

For Claimant Chloe Kerns Edge TRS/Chloe Edge TR:

Franklin Geerdes, Esq.
Mary E. Geerdes, Esq.
Geerdes & Geerdes
Valley Center, California

For Respondent Miller & Schroeder Financial, Inc.:

Julia M. Hader
Securities Resolution
Corporation
Minneapolis, Minnesota

For Respondent/Third-Party Claimant
Scott T. Penwarden:

Steven M. Green, Esq.
Law Firm of Steven M. Green
San Diego, California

For Third-Party Respondent MM&S Financial, Inc.:

John S. Jagiela, Esq.
Marshall Financial, Inc.
Minneapolis, Minnesota

For Third-Party Respondent James E. Iverson:

Richard D. Gluck, Esq.
Fairbank & Vincent
Los Angeles, California

For Third-Party Respondents Jerome A. Tabolich,
Edward J. Hentges, Kenneth R. Larsen, Steven W. Erickson,
Paul R. Ekholm, and Mary Jo Brenden:

Mitchell W. Granberg, Esq.
Dorsey & Whitney LLP
Minneapolis, Minnesota

For Third-Party Respondents James F. Dlugosch,
Joseph K. Halloran, Kenneth E. Dawkins, and
James M. Clarey, Jr.:

Kevin W. Alexander, Esq.
Gordon & Rees, LLP
San Diego, California

For Third-Party Respondent Thomas S. Nelson:

Thomas S. Nelson
In Pro Per
Great Falls, Montana

For Third-Party Respondent Victor P. Dhoogie:

Jane Hahn, Esq.
G. Patrick Connors, III, Esq.
Hahn & Adema
San Diego, California

For Third-Party Respondent Daniel E. Dill:

Garrett K. Craig, Esq.
Sidley Austin Brown &
Wood LLP
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: June 7, 2001

Claimant's Uniform Submission Agreement signed: June 6, 2001

Claimant's Motion for Severance/Bifurcation filed: October 2, 2002

Joint Statement of Answer filed by Respondent Miller & Schroeder Financial, Inc. and
Respondent/Third-Party Claimant Scott T. Penwarden: October 9, 2001

Third-Party Claim filed by Respondent/Third-Party Claimant Scott T. Penwarden: June 6, 2002

Respondent/Third-Party Claimant Scott T. Penwarden's Response to Various Motions filed by
Various Parties filed: October 21, 2002

Respondent/Third-Party Claimant Scott T. Penwarden's Supplement to Response to Various Motions filed by Various Parties filed: October 29, 2002

Third-Party Respondent MM&S Financial, Inc.'s Statement of Answer to Third-Party Claim Denying Jurisdiction and Arbitrability filed: September 9, 2002

Third-Party Respondent James E. Iverson's Statement of Answer to Third-Party Claim filed: September 9, 2002

Third-Party Respondent James E. Iverson's Opposition and Objection to Respondent/Third-Party Claimant Scott T. Penwarden's Third-Party Claim filed: October 7, 2002

Third-Party Respondent Edward J. Hentges' Statement of Answer to Third-Party Claim filed: September 9, 2002

Third-Party Respondent Edward J. Hentges' Amended Statement of Answer to Third-Party Claim filed: October 7, 2002

Third-Party Respondent Kenneth R. Larsen's Statement of Answer to Third-Party Claim filed: September 9, 2002

Third-Party Respondent Kenneth R. Larsen's Amended Statement of Answer to Third-Party Claim filed: October 7, 2002

Third-Party Respondent Steven W. Erickson's Statement of Answer to Third-Party Claim filed: September 9, 2002

Third-Party Respondent Steven W. Erickson's Amended Statement of Answer to Third-Party Claim filed: October 7, 2002

Third-Party Respondent Paul R. Ekholm's Statement of Answer to Third-Party Claim filed: September 9, 2002

Third-Party Respondent Paul R. Ekholm's Amended Statement of Answer to Third-Party Claim filed: October 7, 2002

Third-Party Respondents Edward J. Hentges, Kenneth R. Larsen, Steven W. Erickson, and Paul R. Ekholm's Opposition to Claimant's Motion for Severance/Bifurcation filed: October 21, 2002

Third-Party Respondents Edward J. Hentges, Kenneth R. Larsen, Steven W. Erickson, and Paul R. Ekholm's Memorandum in Support of Third Party Respondents' Motions to Dismiss Third Party Claim filed: October 21, 2002

Third-Party Respondents Edward J. Hentges, Kenneth R. Larsen, Steven W. Erickson, and Paul R. Ekholm's Reply Memorandum to Respondent/Third-Party Claimant Scott T. Penwarden's Response to Various Motions filed: October 28, 2002

Third-Party Respondents Edward J. Hentges, Kenneth R. Larsen, Steven W. Erickson, and Paul R. Ekholm's Motion to Dismiss Third-Party Claim filed: October 7, 2002

Third-Party Respondent James F. Dlugosch's Statement of Answer and Motion to Dismiss Third-Party Claim filed: September 11, 2002

Third-Party Respondent Joseph K. Halloran's Statement of Answer and Motion to Dismiss Third-Party Claim filed: September 11, 2002

Third-Party Respondent Kenneth E. Dawkins' Statement of Answer and Motion to Dismiss Third-Party Claim filed: September 11, 2002

Third-Party Respondent James M. Clarey, Jr.'s Statement of Answer and Motion to Dismiss Third-Party Claim filed: September 11, 2002

Third-Party Respondent Victor P. Dhooge's Statement of Answer to Third-Party Claim filed: October 7, 2002

Third-Party Respondent Daniel E. Dill's Statement of Answer to Third-Party Claim filed: September 9, 2002

Third-Party Respondent Daniel E. Dill's Motion to Dismiss Third-Party Claim filed: October 7, 2002

Third-Party Respondent Daniel E. Dill's Reply in Support of Motion to Dismiss Third-Party Claim filed: October 28, 2002

Third-Party Respondent Daniel E. Dill's Uniform Submission Agreement signed: September 6, 2002

CASE SUMMARY

Claimant alleged common law fraud, misrepresentation, fraud, breach of fiduciary duty, negligence, unsuitability, failure to supervise, and omission. The dispute involved non-rated tax free municipal bonds.

Respondent Miller & Schroeder Financial, Inc. and Respondent/Third-Party Claimant Scott T. Penwarden denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

In his Third-Party Claim, Respondent/Third-Party Claimant Scott T. Penwarden alleged conspiracy to defraud Claimant through the offer and sale of Heritage Bonds and various other bonds, fraudulent conveyance, misrepresentation, and omission.

Third-Party Respondents James E. Iverson, Edward J. Hentges, Kenneth R. Larsen, Steven W. Erickson, Paul R. Ekholm, James F. Dlugosch, Joseph K. Halloran, Kenneth E. Dawkins, James M. Clarey, Jr., Victor P. Dhoogie, and Daniel E. Dill denied the allegations of wrongdoing set forth in the Respondent/Third-Party Claimant Scott T. Penwarden's Third-Party Claim.

Third-Party Respondents Jerome A. Tabolich, Thomas S. Nelson, and Mary Jo Brenden did not file a Statement of Answer to Respondent/Third-Party Claimant Scott T. Penwarden's Third-Party Claim.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$447,576.00, punitive and exemplary damages not to exceed \$50,000.00, a reasonable rate of return on the sum of \$447,576.00, from and after the date of February 1, 2001 to the date of the Award, and interest.

Respondent Miller & Schroeder Financial, Inc. and Respondent/Third-Party Claimant Scott T. Penwarden requested dismissal of the Claimant's Statement of Claim in its entirety, attorney's fees, and arbitration costs.

In his Third-Party Claim, Respondent/Third-Party Claimant Scott T. Penwarden requested indemnification, declaratory relief, and contribution.

Third-Party Respondents James E. Iverson, Edward J. Hentges, Kenneth R. Larsen, Steven W. Erickson, Paul R. Ekholm, James F. Dlugosch, Joseph K. Halloran, Kenneth E. Dawkins, James M. Clarey, Jr., Victor P. Dhoogie, and Daniel E. Dill requested dismissal of the Claimant's Statement of Claim in its entirety, attorney's fees, and arbitration costs.

OTHER ISSUES CONSIDERED AND DECIDED

On January 11, 2002, NASD Dispute Resolution received notice that Respondent Miller & Schroeder Financial, Inc. filed for bankruptcy.

On October 7, 2002, Third-Party Respondents Jerome A. Tabolich and Mary Jo Brendan filed a Refusal to Submit to Arbitration Due to Lack of Jurisdiction and Arbitrability.

On November 11, 2002, the Arbitration Panel granted Claimant's Renewed Motion to Bifurcate the Initial Statement of Claim (Chloe Kerns Edge TRS/Chloe Edge TR v. Miller & Schroeder Financial, Inc. and Scott T. Penwarden) from Respondent/Third-Party Claimant Scott T. Penwarden's Third-Party Claim (Scott T. Penwarden, Third-Party Claimant v. MM&S Financial, Inc., James E. Iverson, Jerome A. Tabolich, Edward J. Hentges, Kenneth R. Larsen, Steven W. Erickson, Paul R. Ekholm, James F. Dlugosch, Joseph K. Halloran, Kenneth E. Dawkins, Thomas S. Nelson, James M. Clarey, Jr., Victor P. Dhoogie, Mary Jo Brenden, and Daniel E. Dill).

Third-Party Respondents James E. Iverson, Edward J. Hentges, Kenneth R. Larsen, Steven W. Erickson, Paul R. Ekholm, James F. Dlugosch, Joseph K. Halloran, Kenneth E. Dawkins, James M. Clarey, Jr., and Victor P. Dhoogie did not file with the NASD Dispute Resolution properly executed submission agreements but are required to submit to arbitration pursuant to the Code, and having answered the Third-Party Claim are bound by the determination of the Panel on all issues submitted.

Third-Party Respondents MM&S Financial, Inc., Thomas S. Nelson, and Mary Jo Brendan did not file with the NASD Dispute Resolution properly executed submission agreements but are required to submit to arbitration pursuant to the Code and are 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) Respondent Scott T. Penwarden is liable to and shall pay Claimant Chloe Kerns Edge TRS/Chloe Edge TR \$125,000.00 in compensatory damages.
- 2) Respondent Scott T. Penwarden is liable to and shall pay Claimant Chloe Kerns Edge TRS/Chloe Edge TR interest on the sum of \$125,000.00 at the rate of 10% per annum simple interest from sixty (60) days after the date of the Award until paid in full.
- 3) Claimant's request for punitive damages is denied.
- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 300.00
Respondent/Third-Party Claimant Scott T. Penwarden's Third-Party Claim filing fee	= \$ 300.00

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 that gave rise to the dispute, claim, or controversy. Accordingly, the member firm MM&S Financial, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$ 2,500.00
Total Member Fees	= \$ 4,600.00

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 Panel. The following fees are assessed:

3 Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 3,375.00
Pre-hearing conferences:	
July 13, 2002	1 session
September 20, 2002	1 session
November 4, 2002	1 session
9 Hearing sessions @ \$1,125.00/session	= \$10,125.00
Hearings:	
February 10, 2003	2 sessions
February 11, 2003	2 sessions
February 12, 2003	1 session
February 13, 2003	2 sessions
February 24, 2003	2 sessions
Total Forum Fees	= \$13,500.00

1. The Panel assessed \$6,750.00 of the forum fees to Claimant Chloe Kerns Edge TRS/Chloe Edge TR.
2. The Panel assessed \$6,750.00 of the forum fees to Respondent/Third-Party Claimant Scott T. Penwarden.

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 sundry other requests.

Claimant Chloe Kerns Edge TRS/Chloe Edge TR
requested copies of Arbitrator's past Awards:

= \$ 70.00

Fee Summary

1. Claimant Chloe Kerns Edge TRS/Chloe Edge TR is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 6,750.00
<u>Administrative Costs</u>	= \$ 70.00
Total Fees	= \$ 7,120.00
<u>Less payments</u>	= \$(1,495.00)
Balance Due NASD Dispute Resolution	= \$ 5,625.00

2. Respondent MM&S Financial, Inc. is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
<u>Less payments</u>	= \$(4,600.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondent/Third-Party Claimant Scott T. Penwarden is charged with the following fees and costs:


Forum Fees	= \$ 6,750.00
<u>Third-Party Claim Filing Fee</u>	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 7,050.00

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

ARBITRATION PANEL

Joseph Winter	-	Public Arbitrator, Presiding Chair
Cheryl M. Ruffier	-	Public Arbitrator
James B. Guillou, Sr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Joseph Winter
Chair, Public Arbitrator

March 6, 2003
Signature Date

Cheryl M. Ruffier
Public Arbitrator

Signature Date

James B. Guillou, Sr.
Non-Public Arbitrator

Signature Date

3/7/02
Date of Service

ARBITRATION PANEL

Joseph Winter	-	Public Arbitrator, Presiding Chair
Cheryl M. Ruffier	-	Public Arbitrator
James B. Guillou, Sr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

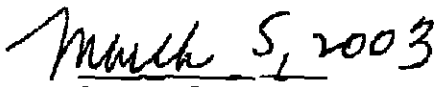
Joseph Winter
Chair, Public Arbitrator

Signature Date

Cheryl M. Ruffier
Public Arbitrator

Signature Date


James B. Guillou, Sr.
Non-Public Arbitrator


Signature Date

3/7/03
Date of Service