

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Ralph & Betsy Woodhouse Trust, Claimant v. Miller & Schroeder Financial, Inc., Joseph K. Halloran, John M. Clarey, Jr., Thomas S. Nelson, James F. Dlugosch, Kenneth E. Dawkins, MI Acquisition Corp., and Mark F. Augusta, Respondents

Case Number: 01-03228

Hearing Site: Los Angeles, California

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Nature of the Dispute: Customer v. Member, Non-Member and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimant:

Robert A. Uhl, Esq.  
Keith D. Fraser, Esq.  
Aidikoff & Uhl  
Beverly Hills, California

For Respondents:

Miller & Schroeder Financial, Inc.

David Reinhart  
Securities Resolution Corporation  
Minneapolis, Minnesota

Joseph K. Halloran  
John M. Clarey, Jr.  
Kenneth E. Dawkins

Lindsay Arthur, Esq.  
Eugene C. Shermoen Jr., Esq.  
Arthur, Chapman, Kettering,  
Smetak & Pikala, P.A.  
Minneapolis, Minnesota

Thomas S. Nelson

*In propria persona*  
Great Falls, Montana

James F. Dlugosch

*In propria persona*  
St. Louis Park, Minnesota

MI Acquisition Corp.

Harry Dyson  
MI Acquisition Corp.  
Providence, Rhode Island

Mark F. Augusta

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

**CASE INFORMATION**

Statement of Claim filed: June 15, 2001

First Amended Statement of Claim filed: February 7, 2002

Second Amended Statement of Claim filed: March 29, 2002

Claimant's Uniform Submission Agreement signed: June 15, 2001

Statement of Answer filed by Respondent Miller & Schroeder Financial, Inc.: October 22, 2001

Respondent Miller & Schroeder Financial, Inc.'s Uniform Submission Agreement signed:  
September 25, 2001

Statement of Answer filed by Respondent Joseph K. Halloran: November 7, 2003

Statement of Answer filed by Respondent John M. Clarey, Jr.: November 7, 2003

Statement of Answer filed by Respondent Kenneth E. Dawkins: November 7, 2003

Statement of Answer filed by Respondent James F. Dlugosch: November 7, 2003

Statement of Answer to Second Amended Statement of Claim filed by Respondent Mark F. Augusta: May 31, 2002

Submission Agreement signed by Respondent Mark F. Augusta: May 30, 2002

**CASE SUMMARY**

Claimant's Initial Statement of Claim alleged wrongful conduct, breach of fiduciary duty, constructive fraud, failure to supervise, and violation of federal and state securities laws, violation of NASD rules of fair practice. Claimant's allegations involved Desert Hot Springs Bonds and Tarrant County Bonds, as well as municipal bonds from Security Pacific National Bank, Sutro & Co., MuniCorp.

On February 7, 2002, Claimant filed a First Amended Statement of Claim pursuant to the NASD

Code of Arbitration Procedure ("the Code") Rule 10328(a). Claimant's First Amended Statement of Claim alleged the same claims and involved the same municipal bonds as the original Statement of Claim, but added Respondents Joseph K. Halloran, John M. Clarey, Jr., Thomas S. Nelson, James F. Dlugosch, Kenneth E. Dawkins and MI Acquisition Corp.

On March 29, 2002, Claimant filed a Second Amended Statement of Claim pursuant to the NASD Code Rule 10328(a). Claimant's Second Amended Statement of Claim alleged the same claims and involved the same municipal bonds as the original Statement of Claim, but added Respondent Mark F. Augusta.

Respondents Miller & Schroeder Financial, Inc. denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

Respondents Joseph K. Halloran, John M. Clarey, Jr., Thomas S. Nelson, James F. Dlugosch and Kenneth E. Dawkins each denied the allegations of wrongdoing set forth in Claimant's First Amended Statement of Claim.

Respondent Mark F. Augusta denied the allegations of wrongdoing set forth in Claimant's Second Amended Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested \$861,005.02 in compensatory damages, unspecified punitive damages, all profits generated by each of the Respondents, lost opportunity cost of the value of the bonds if invested properly, post-judgment interest and costs, including attorney's fees.

Respondents Miller & Schroeder Financial, Inc., Joseph K. Halloran, John M. Clarey, Jr., Thomas S. Nelson, James F. Dlugosch, Kenneth E. Dawkins and Mark F. Augusta requested dismissal of the Claimant's Statement of Claims in its entirety.

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

Respondents Joseph K. Halloran, John M. Clarey, Jr., Thomas S. Nelson, James F. Dlugosch and Kenneth E. Dawkins did not file with NASD Dispute Resolution properly executed submission agreements. However, Respondents Joseph K. Halloran, John M. Clarey, Jr., Thomas S. Nelson, James F. Dlugosch, Kenneth E. Dawkins are required to submit to arbitration and, having answered the claim, all said Respondents are bound by the determination of the Panel on all issues submitted.

On February 21, 2002, NASD Dispute Resolution received notice that Respondent Miller & Schroeder Financial, Inc. filed Chapter 7 Bankruptcy Proceedings. Accordingly, this matter is stayed as to Respondent Miller & Schroeder Financial, Inc.

On October 15, 2002, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On November 7, 2002, Respondent Thomas S. Nelson signed a Waiver Agreement on expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On November 14, 2002, Respondent Joseph K. Halloran signed a Waiver Agreement on expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On June 19, 2002, NASD Dispute Resolution received notice that Respondent Mark F. Augusta filed Chapter 7 Bankruptcy Proceedings. Accordingly, this matter is stayed as to Respondent Mark F. Augusta.

On August 11, 2003, Claimant dismissed with prejudice Respondent Thomas S. Nelson.

On August 25, 2003, Claimant dismissed without prejudice Respondent MI Acquisition Corp.

On December 11, 2003, NASD Dispute Resolution received notice that Respondent James F. Dlugosch filed Chapter 7 Bankruptcy Proceedings. Accordingly, this matter is stayed as to Respondent James F. Dlugosch.

On February 17, 2004, the Panel heard oral argument on Respondents Joseph K. Halloran, John M. Clarey, Jr., and Kenneth E. Dawkins' Motion to Dismiss Claimant's Statement of Claim. Keith D. Fraser, Esq. of Aidikoff & Uhl for Claimant, Eugene C. Shermoen Jr., Esq. for Respondents Joseph K. Halloran, John M. Clarey, Jr., and Kenneth E. Dawkins, and the Panel attended the telephonic pre-hearing conference. After due deliberation in an executive session, the Panel granted the Motion to Dismiss.

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 pre-hearing conference, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents Joseph K. Halloran, John M. Clarey, Jr., and Kenneth E. Dawkins' Motion to Dismiss Claimant's Statement of Claim is granted.
- 2) Claimant Ralph & Betsy Woodhouse Trust's claims are dismissed with prejudice in their entirety.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) 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	= \$ 375.00
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#### **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 that lasts four (4) hours or less between the parties and the Chair or between the parties and the Panel. The following fees are assessed:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences: November 3, 2003	1 session
February 17, 2004	1 session

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<b>Total Forum Fees</b>	<b>= \$ 2,400.00</b>
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1. The Panel assessed \$1,200.00 of the forum fees to Claimant Ralph & Betsy Woodhouse Trust.
2. The Panel assessed \$1,200.00 of the forum fees jointly and severally to Respondents Joseph K. Halloran, John M. Clarey, Jr., and Kenneth E. Dawkins.

**Fee Summary**

1. Claimant Ralph & Betsy Woodhouse Trust is charged with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 1,200.00
Total Fees	= \$ 1,575.00
Less payments	= \$(1,575.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondents Joseph K. Halloran, John M. Clarey, Jr., and Kenneth E. Dawkins are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 1,200.00
Less payments	= \$ (0.00)
Balance Due NASD Dispute Resolution	= \$ 1,200.00

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**

<i>Howard N. Hamel, J.D.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>James T. Capretz, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Luther Delano Prater</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

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Howard N. Hamel, J.D.  
Chair, Public Arbitrator

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Signature Date

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James T. Capretz, Esq.  
Public Arbitrator

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Signature Date

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Luther Delano Prater  
Non-Public Arbitrator

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Signature Date

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Date of Service

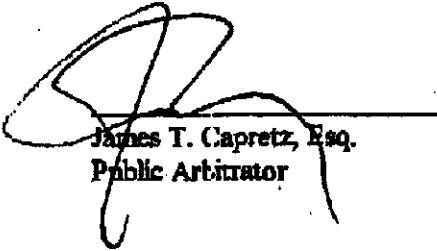
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<i>James T. Capretz, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Luther Delano Prater</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

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Howard N. Hamel, J.D.  
Chair, Public Arbitrator

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Signature Date

  
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James T. Capretz, Esq.  
Public Arbitrator

*March 4, 2004*  
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Signature Date

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Luther Delano Prater  
Non-Public Arbitrator

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

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Date of Service



NASD Dispute Resolution  
 Arbitration No. 01-03228  
 Award Page 7 of 7

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**Concurring Arbitrators' Signatures**

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 Howard N. Hamel, J.D.  
 Chair, Public Arbitrator

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

\_\_\_\_\_  
 James T. Capretz, Esq.  
 Public Arbitrator

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

*Luther Delano Prater*  
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 Luther Delano Prater  
 Non-Public Arbitrator

3/5/04  
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 Signature Date

3/8/04  
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 Date of Service