

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Nancy Taylor Smith

Case Number: 02-05926

Name of the Respondents  
J.C. Bradford & Co.  
n/k/a UBS Financial Services, Inc.  
Morgan Keegan & Company, Inc.  
Russ N. Britton

Hearing Site: Raleigh, NC

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Nature of the Dispute: Customer v. Members and Associated Person.

**REPRESENTATION OF PARTIES**

Claimant, Nancy Taylor Smith, hereinafter referred to as "Claimant", was represented by Sarah G. Anderson, Esq., Clawson & Staubes, LLC, Charleston, South Carolina.

Respondents, J.C. Bradford & Co., n/k/a UBS Financial Services, Inc. ("J.C. Bradford") and Russ N. Britton ("Britton"), were represented by Cory Hohnbaum, Esq., Kennedy Covington Lobdell & Hickman, LLP, Charlotte, North Carolina.

Respondent, Morgan Keegan & Company, Inc ("Morgan Keegan"), was represented by Neil Prosser, Esq., Morgan Keegan & Company, Inc., Memphis, Tennessee. Neil Prosser, Esq. also represented Respondent Britton for alleged bad acts that occurred during the time period when he was a representative of Respondent Morgan Keegan.

**CASE INFORMATION**

Statement of Claim filed on October 3, 2002.

Claimant signed the Uniform Submission Agreement on September 30, 2002.

Statement of Answer filed by Respondents J.C. Bradford and Britton on December 19, 2002.

Statement of Answer and Motion to Dismiss filed by Respondents Morgan Keegan and Britton on December 19, 2002.

A representative of Respondent J.C. Bradford signed the Uniform Submission Agreement on December 19, 2002.

A representative of Morgan Keegan signed the Uniform Submission Agreement on December 17, 2002.

Respondent Britton signed the Uniform Submission Agreement on December 12, 2002.

Motion for Summary Judgment or In the Alternative for Dismissal filed by Respondents Morgan Keegan and Britton on July 31, 2003.

Claimant filed a Memorandum in Opposition to Motion to Dismiss on August 28, 2003.

Respondents Morgan Keegan and Britton filed a Reply in Further Support of Their Motion to

Dismiss on September 5, 2003.

Motion to Dismiss filed by Respondents J.C. Bradford and Britton on January 30, 2004.

### **CASE SUMMARY**

Claimant asserted the following causes of action, among others: suitability, violation of section 10(b) and Rule 10b-5 of the 1934 Act, churning, breach of fiduciary duty, negligence, recklessness, breach of contract, failure to supervise, and fraud. The causes of action relate to the purchase and sale of mutual funds and various other securities.

Unless specifically admitted in their Answer, Respondents J.C. Bradford and Britton denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimant's claims are barred by the doctrines of estoppel, waiver and ratification; authorization; failure to mitigate damages; Claimant's claims are barred by the statute of limitations; and, failure to state a claim upon which relief may be granted.

Unless specifically admitted in their Answer, Respondents Morgan Keegan and Britton denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimant's claims are barred by the doctrines of ratification, waiver, estoppel, contributory/comparative negligence, laches and assumption of the risk; Claimant's claims are barred by the statutes of limitations, failure to mitigate damages; and failure to state a claim upon which relief may be granted.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in an amount to be proved at trial that is more than \$100,000 but less than \$500,000; punitive damages; interest; attorneys' fees; and other costs.

Respondents J.C. Bradford and Britton requested that the Statement of Claim be dismissed and that the Arbitration Panel (the "Panel") order the expungement of all reference to this matter from Respondent Britton's Central Registration Depository ("CRD") record.

Respondents Morgan Keegan and Britton requested that the Statement of Claim be dismissed with prejudice and that they be awarded all their costs, attorneys' fees and expenses.

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

On September 11, 2003, the Panel granted Respondents Morgan Keegan and Britton's Motion to Dismiss as to Respondent Morgan Keegan and Respondent Britton for the time period when he was a Morgan Keegan representative.

At the hearing on the merits, the Panel denied Respondents J.C. Bradford and Britton's 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, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents J.C. Bradford and Britton are jointly and severally liable to and shall pay to Claimant the sum of \$20,100.00 in compensatory damages, plus simple interest at a rate of 5% per annum accruing from November 10, 1998 until the award is paid in full.
2. Respondents J.C. Bradford and Britton are jointly and severally liable to and shall pay to Claimant the sum of \$10,000.00 in attorney's fees, pursuant to SC Code Ann § 35-1-1490;
3. Respondents J.C. Bradford and Britton are jointly and severally liable to and shall pay to Claimant the sum of \$2,000.00 in costs;
4. Respondents J.C. Bradford and Britton are jointly and severally liable to and shall pay to Claimant the sum of \$1,800.00 in witness fees;
5. Respondents J.C. Bradford and Britton are jointly and severally liable to and shall pay to Claimant the sum of \$300.00 in reimbursement for the initial-claim filing fee;
6. The parties shall bear their respective costs, except as Fees are specifically addressed herein; and
7. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim 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 firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent J.C. Bradford and Respondent Morgan Keegan are parties.

J.C. Bradford  
Member surcharge

= \$ 1,700.00

Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

<u>Morgan Keegan</u>	
Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing session with Panel @ \$ 1,125.00	= \$ 2,250.00
Pre-hearing conference: July 1, 2003 1 session	
September 10, 2003 1 session	

Five (5) Hearing sessions @ \$ 1,125.00	= \$ 5,625.00
Hearing Dates: February 3, 2004 2 sessions	
February 4, 2004 2 sessions	
February 5, 2004 1 session	

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Total Forum Fees	= \$ 7,875.00
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The Panel has assessed \$ 7,875.00 of the forum fees jointly and severally to Respondents J.C. Bradford and Britton.

**Fee Summary**

1. Claimant is assessed and shall pay:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 1,425.00
Refund owed Claimant	= \$ 1,125.00

2. Respondent J.C. Bradford is assessed and shall pay:

<u>Member Fees</u>	= \$ 5,200.00
<u>Total Fees</u>	= \$ 5,200.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondent Morgan Keegan is assessed and shall pay:

<u>Member Fees</u>	= \$ 5,200.00
<u>Total Fees</u>	= \$ 5,200.00
<u>Less payments</u>	= \$ 5,200.00

Balance Due NASD Dispute Resolution = \$ 0.00

4. Respondents J.C. Bradford and Britton are jointly and severally assessed and shall pay:

Forum Fees = \$ 7,875.00

Total Fees = \$ 7,875.00

Less Payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$ 7,875.00

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

ARBITRATION PANEL

Seymour Freed	-	Public Arbitrator, Presiding Chairperson
Wayne Parker	-	Public Arbitrator, Panelist
James W. A. Black	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

*Seymour Freed*

Seymour Freed  
Public Arbitrator, Presiding Chairperson

*February 17, 2004*

Signature Date

Wayne Parker  
Public Arbitrator, Panelist

Signature Date

James W. A. Black  
Non-Public Arbitrator, Panelist

Signature Date

*February 18, 2004*  
Date of Service (For NASD Dispute Resolution office use only)


**Concurring Arbitrators' Signatures**

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Seymour Freed  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
Wayne Parker  
Public Arbitrator, Panelist

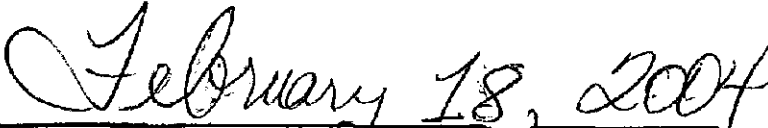
  
Signature Date

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James W. A. Black  
Non-Public Arbitrator, Panelist

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Signature Date

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

Concurring Arbitrators' Signatures

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Seymour Freed  
Public Arbitrator, Presiding Chairperson

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Signature Date

\_\_\_\_\_  
Wayne Parker  
Public Arbitrator, Panelist

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

James W. A. Black  
James W. A. Black  
Non-Public Arbitrator, Panelist

13 Feb 2004  
Signature Date

February 18, 2004  
Date of Service (For NASD Dispute Resolution office use only)