

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Andrew Garrett, Inc. f/k/a Midwest Discount Brokers, Inc.

and

Case Number: 02-06356  
Hearing Site: Houston, Texas

Name of Respondent

Texas Titan Resources, Inc.

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**NATURE OF DISPUTE**

Member Firm v. Customer

**REPRESENTATION OF PARTIES**

Andrew Garrett, Inc. f/k/a Midwest Discount Brokers, Inc. ("**Claimant**") was represented by Stephen M. Blesdoe, Esq., Berkowitz, Feldmiller, Stanton, Brandt, Williams & Shaw, LLP, Kansas City, Missouri.

Texas Titan Resources, Inc. ("**Respondent**" or "**Texas Titan**") was represented by Patrick Lanier, Esq., Austin, Texas. On or about April 5, 2004, Patrick Lanier withdrew as counsel and Respondent did not retain new counsel.

**CASE INFORMATION**

The Statement of Claim was filed on or about October 23, 2002.

The Submission Agreement of Claimant, Andrew Garrett, Inc. f/k/a Midwest Discount Brokers, Inc., was signed on or about October 17, 2002.

Statement of Answer and Claim for Offset was filed by Respondent, Texas Titan Resources, Inc., on or about January 7, 2003.

Claimant's Response to Respondent's Claim for Offset was filed on or about January 14, 2003.

Claimant's Prehearing Brief and Motion for Summary Judgment was filed on or about April 2, 2004. Respondent did not file a response to this motion.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract, fraudulent misrepresentation and unsecured margin debt balance. The causes of action related to Respondent's default on a margin debt owing in its account. Subsequent to Respondent's default, Claimant asserted that Texas Titan is one of dozens of sham corporations owned, controlled and operated by Harold Dempsey "Butch" Ballow. Claimant alleged that Ballow established numerous, undercapitalized sham corporations for the purpose of, but not limited to, the purchase, sale and manipulation of stocks. Claimant asserted that immediately after opening the account, 40,000 shares of Evans Systems, Inc. ("EVSI") were transferred into Respondent's account and the account began to actively trade EVSI. In addition, the account began heavy trading in Industrial Data Systems, Inc. ("IDS") and Applied Resources ("ARCX"), according to Claimant. Claimant asserted that by May 1999, Respondent had tapped over \$3.4 million in margin debt to finance its purchases. Also at this time, the stock in the EVSI, IDS and ARCX dropped dramatically. In light of the absence of funds and to limit margin debt, Claimant liquidated various securities in the account. Claimant asserted that to date, Respondent has failed and refused to pay Claimant for all monetary amounts due.

Unless specifically admitted in its Answer, Respondent, Texas Titan Resources, Inc., denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: No right of action exists for any alleged wrongdoing upon which Claimant now relies to support its claim to recover any alleged losses, as the claim failed to state what actions of Respondent were inconsistent with the written agreements in question; Claimant failed to account for all credits and offsets allowable under the terms of the agreements alleged to form the basis of the Statement of Claim; Claimant failed to exercise the degree of care over its affairs and management that an ordinary prudent broker/dealer would exercise and, as such, caused or contributed to any alleged damages asserted against Respondent; and Claimant's claims are barred by the doctrines of laches and or ratification.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory	\$1,927,164.21
Punitive/Exemplary	\$2,000,000.00
Interest	Unspecified
Attorney's Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent, Texas Titan Resources, Inc., did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code"), the Customer Agreement, and having answered the claim, and appeared through counsel at the first three pre-hearing conferences, is bound by the determination of the arbitration panel on all issues submitted. The Respondent did not appear at the final pre-hearing conference.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent, Texas Titan Resources, Inc., has been properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent, Texas Titan Resources, Inc., had received due notice of the pre-hearings as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

On or about September 22, 2004, the Panel granted Claimant's Motion for Summary Judgment.

The party participating in the August 4, 2004 pre-hearing conference has agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the appearing party has agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the pre-hearings, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent, Texas Titan Resources, Inc., is liable for and shall pay to Claimant, Andrew Garrett, Inc. f/k/a Midwest Discount Brokers, Inc., the sum of \$1,927,164.21 in damages;
- 2.) Respondent, Texas Titan Resources, Inc., is liable for and shall pay to Claimant, Andrew Garrett, Inc. f/k/a Midwest Discount Brokers, Inc., the sum of \$62,537.00 in attorneys' fees pursuant to the Customer Agreement;

- 3.) Respondent, Texas Titan Resources, Inc., is liable for and shall pay to Claimant, Andrew Garrett, Inc. f/k/a Midwest Discount Brokers, Inc., interest on damages (\$1,927,164.21) at the rate of 8% per annum from and including 8/4/2004, through and including the date this award is paid in full;
- 4.) Respondent, Texas Titan Resources, Inc., is liable for and shall pay to Claimant, Andrew Garrett, Inc. f/k/a Midwest Discount Brokers, Inc., the sum of \$3,200.00 in costs; and
- 5.) Any relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

### **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	= \$2,000.00
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#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is Andrew Garrett, Inc. f/k/a Midwest Discount Brokers, Inc.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

April 20-30, 2004, adjournment by Texas Titan Resources, Inc.	= \$ 1,200.00
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### **Forum Fees and Assessments**

The Arbitration Panel assesses 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:

Four (4) Pre-hearing sessions with Panel x \$1,200.00	= \$ 1,200.00
Pre-hearing conferences: July 17, 2003	1 session
July 25, 2003	1 session
July 6, 2004	1 session
August 4, 2004	1 session

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Total Forum Fees = \$ 4,800.00

The Arbitration Panel has assessed \$2,400.00 of the forum fees to Andrew Garrett, Inc. f/k/a Midwest Discount Brokers, Inc.

The Arbitration Panel has assessed \$2,400.00 of the forum fees to Texas Titan Resources, Inc.

### **FEE SUMMARY**

Claimant, Andrew Garrett, Inc. f/k/a Midwest Discount Brokers, Inc., is liable for:

Initial Filing Fee	= \$ 2,000.00
Member Fees	= \$ 8,550.00
Forum Fees	= \$ 2,400.00
Total Fees	= \$12,950.00
Less payments	= \$11,750.00
Balance Due NASD Dispute Resolution	= \$ 1,200.00

Respondent, Texas Titan Resources, Inc., is liable for:

Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$ 2,400.00
Total Fees	= \$ 3,600.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,600.00

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

**ARBITRATION PANEL**

James M. Kendrick, J.D. - Public Arbitrator, Presiding Chair  
R. Lee Britton, Jr., Esq. - Public Arbitrator  
Teresa Jensen White, CFP - Non-Public Arbitrator

Concurring Arbitrators:

/s/ James M. Kendrick, J.D.  
James M. Kendrick, J.D.  
Public Arbitrator, Presiding Chair

September 22, 2004  
Signature Date

/s/ R. Lee Britton, Jr., Esq.  
R. Lee Britton, Jr., Esq.  
Public Arbitrator

September 24, 2004  
Signature Date

/s/ Teresa Jensen White, CFP  
Teresa Jensen White, CFP  
Non-Public Arbitrator


September 24, 2004  
Signature Date

September 24, 2004  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

James M. Kendrick, J.D. - Public Arbitrator, Presiding Chair  
R. Lee Britton, Jr., Esq. - Public Arbitrator  
Teresa Jensen White, CFP - Non-Public Arbitrator

Concurring Arbitrator/s:

  
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James M. Kendrick, J.D.  
Public Arbitrator, Presiding Chair

9-22-04

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Signature Date

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R. Lee Britton, Jr., Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Teresa Jensen White, CFP  
Non-Public Arbitrator

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

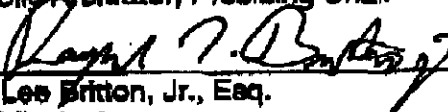
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**Concurring Arbitrators:**

James M. Kendrick, J.D.  
Public Arbitrator, Presiding Chair

  
R. Lee Britton, Jr., Esq.  
Public Arbitrator

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

09-24-04  
Signature Date

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Teresa Jensen White, CFP  
Non-Public Arbitrator

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9/24/04  
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Signature Date

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Date of Service (For NASD office use only)