
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Douglas A. Swartz

Case Number: 02-06551

(Consolidated with 02-06778)

Names of the Respondents

Robert W. Baird & Co. Incorporated

Morris David Epstein

Glenn M. Ullmann

Hearing Site: Tampa, Florida

In the Matter of the Arbitration Between:

Names of the Claimants

Donna A. Swartz

The Guy A. Swartz Family Trust

Case Number: 02-06778

(Consolidated with 02-06551)

Names of the Respondents

Robert W. Baird & Co. Incorporated

Morris David Epstein

Glenn M. Ullmann

Hearing Site: Tampa, Florida

Nature of the Dispute: Customers vs. Member and Associated Persons.

REPRESENTATION OF PARTIES

For Douglas A. Swartz, hereinafter referred to as "Claimant Douglas Swartz", Donna A. Swartz, hereinafter referred to as "Claimant Donna Swartz", and The Guy A. Swartz Family Trust, hereinafter referred to as "Claimant Swartz Trust", and collectively referred to as "Claimants": Richard J. Lantinberg, Esq., Law Offices of Cooper Ridge & Lantinberg, Jacksonville, Florida.

For Robert W. Baird & Co. Incorporated, hereinafter referred to as "Respondent Baird" and Morris David Epstein, hereinafter referred to as "Respondent Epstein": Gregory G. Wille, Esq., Wille, Gregory & Lundeen, LLP, Milwaukee, Wisconsin.

For Glenn M. Ullmann, hereinafter referred to as "Respondent Ullmann": William W. Deem, Esq., McGuire Woods, LLP, Jacksonville, Florida. On or about April 3, 2003, Gregory G. Wille, Esq., Wille, Gregory & Lundeen, LLP, Milwaukee, Wisconsin, substituted as counsel for Respondent Ullmann.

CASE INFORMATION

The following pleadings were filed in Case Number 02-06551:

Statement of Claim filed on or about: October 30, 2002.

Amendment to Statement of Claim filed on or about: February 14, 2003.

Claimant Douglas Swartz signed the Uniform Submission Agreement: November 14, 2002.

Response to Statement of Claim filed by Respondents Baird and Epstein on or about: January 31, 2003.

Response to Statement of Claim and Request for Consolidation filed by Respondents Baird and Epstein as adopted by Respondent Ullmann on or about: April 3, 2003.

Respondent Baird signed the Uniform Submission Agreement: November 25, 2002.

Respondent Epstein signed the Uniform Submission Agreement: January 26, 2003.

Respondent Ullmann signed the Uniform Submission Agreement: April 16, 2003.

The following pleadings were filed in **Case Number 02-06778**:

Statement of Claim filed on or about: November 8, 2002.

Amendment to Statement of Claim filed on or about: February 14, 2003.

Claimants Donna Swartz and Swartz Trust signed but did not date the Uniform Submission Agreement.

Response to Statement of Claim and Request for Consolidation filed by Respondents Baird and Epstein on or about: January 31, 2003.

Response to Statement of Claim and Request for Consolidation filed by Respondents Baird and Epstein as adopted by Respondent Ullmann on or about: April 3, 2003.

Respondent Baird signed the Uniform Submission Agreement: November 25, 2002.

Respondent Epstein signed the Uniform Submission Agreement: January 26, 2003.

Respondent Ullmann signed the Uniform Submission Agreement: April 16, 2003.

CASE SUMMARY

In **Case Nos. 02-06551 and 02-06778**, Claimants alleged the following causes of action: 1) churning; 2) violation of Chapter 517, Florida Statutes; 3) violation of NYSE Rule 404; 4) breach of fiduciary duty; 5) breach of duties of loyalty, utmost honesty and good faith; and 6) failure to supervise. The causes of action relate to improper use of

margin and investments in numerous option contracts, including uncovered long term put contracts (LEAPS) for "high tech" companies, and uncovered calls, including Microsoft, Dell and Pfizer.

Unless specifically admitted in their Response, Respondents Baird, Epstein and Ullmann denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

In **Case Number 02-06551**, Claimant Douglas Swartz requested: 1) compensatory damages in excess of \$1,000,000.00; 2) compensatory damages for all commissions and fees charged in excess of \$150,000.00; 3) punitive damages; 4) interest; 5) costs; 6) attorneys' fees; and 7) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

In **Case Number 02-06778**, Claimants Donna Swartz and Swartz Trust requested: 1) compensatory damages in the approximate amount of \$500,000.00; 2) compensatory damages for all commissions and fees charged in the approximate amount of \$20,000.00; 3) punitive damages; 4) interest; 5) costs; 6) attorneys' fees; and 7) such other relief the Panel deemed just and proper.

In **Case Number 02-06551**, Respondents Baird, Epstein and Ullmann requested: 1) dismissal of the Statement of Claim in its entirety; 2) costs; and 3) attorneys' fees.

In **Case Number 02-06778**, Respondents Baird, Epstein and Ullmann requested: 1) dismissal of the Statement of Claim in its entirety; and 2) costs.

OTHER ISSUES CONSIDERED AND DECIDED

On or about January 24, 2003, Respondents Baird, Epstein and Ullmann filed their motion to consolidate Case Nos. 02-06551 and 02-06778. On or about January 29, 2003, Claimants filed their letter response in opposition to the motion to consolidate. On or about January 31, 2003, Respondents Baird, Epstein and Ullmann filed their Request for Consolidation. On or about February 11, 2003, Claimants filed their Joint Response in Opposition to Respondents Baird, Epstein and Ullmann's Request for Consolidation. On or about July 1, 2003, Respondents Baird, Epstein and Ullmann filed their Renewed Request for Consolidation of Douglas Swartz and Donna Swartz Arbitrations. On or about July 15, 2003, the Panel granted Respondents Baird, Epstein and Ullmann's motion to consolidate. The Panel ordered the consolidation of Case Nos. 02-06551 and 02-06778.

On or about December 3, 2003, Claimants Donna Swartz and Swartz Trust and Respondents Baird, Epstein and Ullmann reached a settlement of the claims filed in NASD Case No. 02-06778. Therefore, the Panel made no determination with respect to the claims filed in NASD Case No. 02-06778.

At the evidentiary hearing, the Panel granted Respondent Ullmann's motion to dismiss and the Panel dismissed, with prejudice, all claims against Respondent Ullmann.

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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Baird and Epstein are jointly and severally liable and shall pay to Claimant Douglas Swartz compensatory damages in the amount of \$353,986.00, plus interest at the Florida statutory rate from October 31, 2001 until the date the Award is paid in full. The Panel finds Respondents Baird and Epstein liable for breach of fiduciary duty. The Panel does not find Respondents Baird and Epstein liable on all other claims, including Chapter 517, Florida Statutes.
2. The Panel dismissed, with prejudice, all claims against Respondent Ullmann.
3. Claimant Douglas Swartz's request for punitive damages is denied.
4. Claimant Douglas Swartz's request for attorneys' fees is denied.
5. Respondents Baird, Epstein and Ullmann's requests for attorneys' fees are denied.
6. Any and all claims or relief not specifically addressed herein are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed in Case No. 02-06551:

Filing Fees

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

Initial claim filing fee	= \$ 500.00
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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. Accordingly, Respondent Baird is a member firm and a party.

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed in Case No. 02-06551.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings in Case No. 02-06551.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00 per session	= \$ 900.00
Pre-hearing conferences: July 8, 2003	1 session
December 29, 2003	1 session
Two (2) Pre-hearing sessions with Panel @ \$1,200.00 per session	= \$ 2,400.00
Pre-hearing conferences: June 18, 2003	1 session
July 15, 2003	1 session
Fourteen (14) Hearing sessions @ \$1,200.00 per session	= \$16,800.00
Hearing Dates: February 17, 2004	2 sessions
February 18, 2004	2 sessions
February 19, 2004	2 sessions
February 20, 2004	2 sessions
February 23, 2004	2 sessions
February 24, 2004	2 sessions
February 25, 2004	2 sessions
Total Forum Fees	= \$20,100.00

The Panel has assessed the total forum fees in the amount of \$20,100.00 jointly and severally to Respondents Baird and Epstein.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings in Case No. 02-06551.

Pursuant to the Code, the following fees are assessed in **Case No. 02-06778**:

Filing Fees

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

Initial claim filing fee = \$ 375.00

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. Accordingly, Respondent Baird is a member firm and a party.

Member surcharge = \$2,250.00

Pre-hearing process fee = \$ 750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed in Case No. 02-06778.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed in Case No. 02-06778.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

There were no forum fees assessed in Case No. 02-06778.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred in Case No. 02-06778.

Fee Summary

In Case No. 02-06551, Claimant Douglas Swartz is solely liable for:

<u>Initial Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less payments</u>	= \$ 500.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

In Case No. 02-06551, Respondents Baird and Epstein are jointly and severally liable for:

<u>Forum Fees</u>	= \$20,100.00
<u>Total Fees</u>	= \$20,100.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$20,100.00

In Case No. 02-06551, Respondent Baird is solely liable for:

<u>Member Fees</u>	= \$ 8,550.00
<u>Total Fees</u>	= \$ 8,550.00
<u>Less payments</u>	= \$ 8,550.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

In Case No. 02-06778, Claimants Donna Swartz and Swartz Trust are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 375.00
<u>Total Fees</u>	= \$ 375.00
<u>Less payments</u>	= \$ 375.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

In Case No. 02-06778, Respondent Baird is solely liable for:

<u>Member Fees</u>	= \$ 3,000.00
<u>Total Fees</u>	= \$ 3,000.00
<u>Less payments</u>	= \$ 2,450.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 550.00

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

ARBITRATION PANEL

<i>Horace A. Andrews</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Muriel Desloovere, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Roderic A. Johnson</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
Horace A. Andrews
Public Arbitrator, Presiding Chairperson

March 1, 2004
Signature Date

/s/
Muriel Desloovere, Esq.
Public Arbitrator

March 1, 2004
Signature Date

/s/
Roderic A. Johnson
Non-Public Arbitrator

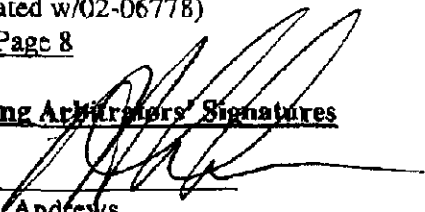
March 1, 2004
Signature Date

March 2, 2004
Date of Service (For NASD Dispute Resolution office use only)

MAR 1 2004 12:00PM NASD

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Concurring Arbitrators' Signatures



Horace A. Andrews
Public Arbitrator, Presiding Chairperson

3/1/04

Signature Date

Muriel Desloovere, Esq.
Public Arbitrator

Signature Date

Roderic A. Johnson
Non-Public Arbitrator

Signature Date

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

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Public Arbitrator, Presiding Chairperson

Muriel Desloovere, Esq.
Public Arbitrator

Roderic A. Johnson
Non-Public Arbitrator

Signature Date

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Concurring Arbitrators' Signatures

Horace A. Andrews
Public Arbitrator, Presiding Chairperson

Signature Date

Muriel Desloovere, Esq.
Public Arbitrator

Signature Date


Roderic A. Johnson
Non-Public Arbitrator

March 1, 2004
Signature Date

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