

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Dennis D. Brooks  
Barbara Brooks

Case Number: 02-07120  
(Master Case)

Names of the Respondents  
Ferris, Baker Watts, Inc.  
Joseph L. Owen

Hearing Site: Charlotte, NC

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In the Matter of the Arbitration Between:

Name of the Claimant  
Dennis D. Brooks

Case Number: 03-07730  
(Subordinate Case)

Names of the Respondents  
Scott & Stringfellow, Inc.  
Joseph L. Owen

Hearing Site: Charlotte, NC

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Nature of the Dispute: Customers v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Claimants, Dennis D. Brooks and Barbara Brooks, hereinafter referred to as "Claimants", did not appear at the hearing on the merits.

Respondent, Ferris, Baker Watts, Inc. ("Ferris Baker"), was represented by Dana S. Gloor, Esq., Ferris, Baker Watts, Inc., Baltimore, Maryland.

Respondent, Scott & Stringfellow, Inc. ("Scott & Stringfellow"), was represented by Mark C. Shuford, Esq., LeClair Ryan, P.C., Richmond, Virginia.

Respondent, Joseph L. Owen ("Owen"), was represented by Gary K. Shipman, Esq., Shipman & Associates, LLP, Wilmington, North Carolina.

**CASE INFORMATION**

**Brooks Case # 02-07120**

Statement of Claim filed on November 25, 2002.

Claimants signed Uniform Submission Agreements on June 29, 2002.

Statement of Answer filed by Respondent Ferris Baker on March 13, 2003.

A representative of Respondent Ferris Baker signed a Uniform Submission Agreement on March 7, 2003.

Statement of Answer filed by Respondent Owen on March 13, 2003.

Respondent Owen signed a Uniform Submission Agreement on March 13, 2003.

Respondent Owen filed a Motion to Dismiss on December 3, 2004.

Claimants filed a Response to Respondent Owen's Motion to Dismiss on December 9, 2004.

Respondent Owen filed a Reply to Claimant's Response to his Motion to Dismiss on December 17, 2004.

Respondent Owen filed a Motion to Strike and Motion to Preclude on December 22, 2004.

Respondent Ferris Baker filed a Response to Respondent Owen's Motion to Strike and Motion to Preclude on January 3, 2005.

Respondent Scott & Stringfellow filed a Response to Respondent Owen's Motion to Strike and Motion to Preclude on January 3, 2005.

**Brooks Case # 03-07730**

Statement of Claim filed on October 28, 2003.

Claimant signed Uniform Submission Agreements on October 2, 2003.

Statement of Answer filed by Respondent Scott & Stringfellow on December 23, 2003.

A representative of Respondent Scott & Stringfellow signed a Uniform Submission Agreement on December 18, 2003.

Statement of Answer filed by Respondent Owen on December 19, 2003.

Respondent Owen signed a Uniform Submission Agreement on December 15, 2003.

Motion to Consolidate filed by Respondent Owen on January 28, 2004.

Claimant filed a Response to Respondent Owen's Motion to Consolidate on February 6, 2004.

Claimant filed a Supplemental Response to Respondent Owen's Motion to Consolidate on March 17, 2004.

Respondent Ferris Baker filed a Response to Respondent Owen's Motion to Consolidate on January 30, 2004.

### **CASE SUMMARY**

In the Statements of Claim, Claimants asserted the following causes of action: negligence, failure to supervise, breach of fiduciary duty, failure to execute, suitability, misrepresentations, and omissions. The causes of action relate to the purchase and sale of various unspecified securities.

Unless specifically admitted in its Answer, Respondent Ferris Baker denied the allegations made in the Statement of Claim and asserted the following defenses: facts are not as set forth in the Statement of Claim, Claimant's claims are barred by the doctrines of laches and estoppel, and Respondent Ferris Baker is not vicariously liable to Claimants.

Unless specifically admitted in its Answer, Respondent Scott & Stringfellow denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's claims are barred by the doctrines of laches, waiver, and estoppel; failure to exercise due diligence; negligence; contributory negligence; assumption of the risk; Claimant's claims are barred by the statute of limitations; and failure to mitigate damages.

Unless specifically admitted in its Answers, Respondent Owen denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief may be granted, facts are not as set forth in the Statement of Claim, negligence, waiver, Claimants' claims are barred by the doctrines of laches and estoppel, and, failure to mitigate damages.

### **RELIEF REQUESTED**

**Brooks Case # 02-07120:**

**Claimants requested:**

Compensatory Damages	\$ 55,460.00
Punitive Damages	\$ 166,380.00
Interest	\$ 11,092.00
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondent Ferris Baker requested that the Statement of Claim be dismissed in its entirety, that it be awarded all costs and expenses in connection with the arbitration, and that the Arbitration Panel (the "Panel") order the expungement of all reference to this matter from Respondent Owen's Central Registration Depository ("CRD") record.

Respondent Owen requested that the Statement of Claim be dismissed in its entirety, that it be awarded all costs and attorney's fees in connection with the arbitration and that the Panel order the expungement of all reference to this matter from Respondent Owen's Central Registration Depository ("CRD") record.

Brooks Case # 03-07730:

Claimant requested:

Compensatory Damages	\$ 94,940.00
Punitive Damages	\$ 170,892.00
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondent Scott & Stringfellow requested that the Statement of Claim be dismissed in its entirety, and that it be awarded all costs and expenses in connection with the arbitration.

Respondent Owen requested that the Statement of Claim be dismissed in its entirety, that it be awarded all costs and attorney's fees in connection with the arbitration and that the Panel order the expungement of all reference to this matter from Respondent Owen's Central Registration Depository ("CRD") record.

**OTHER ISSUES CONSIDERED AND DECIDED**

On January 28, 2004, Respondent Owen requested that these matters be consolidated pursuant to Rule 10314 (d)(1) of the NASD Code of Arbitration Procedure (the "Code") as the matters arise out of the same transaction or occurrence and have questions of law and fact common to all Claimants. On March 25, 2004, the Panel granted the request.

On December 30, 2004, the Panel denied Respondent Owen's Motion to Dismiss.

The Panel did not rule on Respondent Owen's Motion to Strike and Motion to Preclude.

Claimants were not present at the hearing on the merits. Upon review of the file and the representations made by Respondents, the Panel determined that Claimants received due notice of the hearing, and that arbitration of the matter would proceed without Claimants present, in accordance with the Code.

At the hearing on the merits, Respondents Ferris Baker, Scott & Stringfellow and Owen moved the Panel to dismiss Claimants' claims in their entirety. The Panel granted the motions.

**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. Claimants' claims are dismissed in their entirety;

2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Owen's registration records maintained by the CRD with the understanding that, pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Owen must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
3. 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:

##### Brooks Case # 02-07120

Initial claim filing fee = \$ 300.00

##### Brooks Case # 03-07730

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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondents Ferris Baker and Scott & Stringfellow are parties.

##### Brooks Case # 02-07120, Respondent Ferris Baker

Member surcharge = \$ 1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,750.00

##### Brooks Case # 03-07730, Respondent Scott & Stringfellow

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

**Brooks Case # 02-07120**

One (1) Pre-hearing session with a single arbitrator @ \$ 450.00 = \$ 450.00  
Pre-hearing conference: October 25, 2004 1 session

Two (2) Pre-hearing session with Panel @ \$ 1,125.00 = \$2,250.00  
Pre-hearing conference: August 11, 2003 1 session  
May 3, 2004 1 session

One (1) Hearing session @ \$ 1,125.00 = \$1,125.00

Hearing Date: January 6, 2005 1 session

Total Forum Fees = \$ 3,825.00

The Panel has assessed \$ 3,825.00 of the forum fees to Claimants.

**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.

Administrative cost assessed to Claimants = \$ 15.00

**Fee Summary**

**Brooks Case # 02-07120**

1. Claimants are jointly and severally assessed and shall pay the following fees:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 3,825.00
Total Fees	= \$ 4,125.00
Less transfer of payments from Case # 03-07730	= \$ 1,125.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 1,575.00

2. Respondent Ferris Baker is assessed and shall pay the following fees:

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

**Brooks Case # 03-07730**

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 300.00
<u>Administrative Costs</u>	= \$ 15.00
Total Fees	= \$ 315.00
<u>Less payments</u>	= \$ 315.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent Scott & Stringfellow is assessed and shall pay the following fees:

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

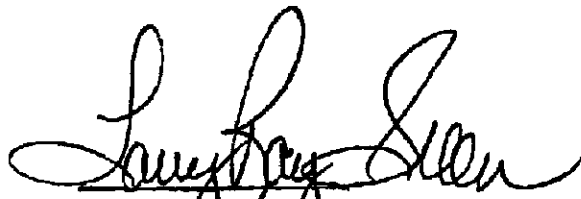
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Larry Ray Green, JD, CPA  
John A. Baynes, III  
Robert Shiffra, Esq.

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator, Panelist
- Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

  
Larry Ray Green, III, CPA  
Public Arbitrator, Presiding Chairperson

1/13/05  
Signature Date

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John A. Baynes, III  
Public Arbitrator, Panelist

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Signature Date:

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Robert Shiffra, Esq.  
Non-Public Arbitrator, Panelist

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Signature Date:

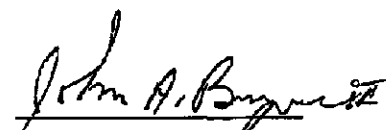
January 14, 2005  
Date of Service (For NASD Dispute Resolution office use only)



Concurring Arbitrators' Signatures

\_\_\_\_\_  
Larry Ray Green, JD, CPA  
Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
John A. Baynes, III  
Public Arbitrator, Panelist

1/12/05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Robert Shifra, Esq.  
Non-Public Arbitrator, Panelist

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

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NASD Dispute Resolution  
Arbitration No. 02-07120  
Award Page 8

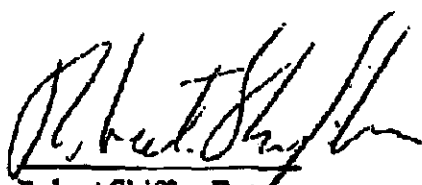
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Public Arbitrator, Presiding Chairperson

Signature Date

John A. Baynes, III  
Public Arbitrator, Panelist

Signature Date

  
Robert Shiffra, Esq.  
Non-Public Arbitrator, Panelist

1-13-05  
Signature Date

January 14, 2005  
Date of Service (For NASD Dispute Resolution office use only)