

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

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**In the Matter of the Arbitration Between**

**Name of Claimant**

**Michelle Ann Miller**

**and**

**Case Number: 02-07493**  
**Hearing Site: Houston, Texas**

**Names of Respondents**

**Westcott Securities, LLC**  
**Aegis Asset Management, Inc.**  
**Thomas Layng Guerriero**  
**Lotte S. Optekamp and**  
**John D. Brudner**

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**NATURE OF DISPUTE**

**Customer v. Member Firm, Non-Member Firm and Associated Persons**

**REPRESENTATION OF PARTIES**

Michelle Ann Miller ("Claimant") was represented by Harley Hampton, Esq., of Fibich, Hampton, Leebron & Grath, LLP in Houston, Texas.

Westcott Securities, LLC ("Westcott"), Aegis Asset Management, Inc. ("Aegis"), Thomas Layng Guerriero ("Guerriero"), and Lotte S. Optekamp ("Optekamp") were represented by Robert L. Ketchand, Esq., of Boyer & Ketchand, in Houston, Texas.

John D. Brudner ("Brudner") appeared in pro per.

**CASE INFORMATION**

The Statement of Claim was filed on or about December 12, 2002.

The Submission Agreement of Claimant Michelle Ann Miller was signed on or about December 5, 2002.

The Joint Statement of Answer was filed by Respondents Westcott Securities, LLC, Aegis Asset Management, Inc., Thomas Layng Guerriero and Lotte Optekamp on or about April 11, 2003.

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The Submission Agreements of Respondents Westcott Securities, LLC, Aegis Asset Management, Inc., Thomas Layng Guerriero and Lotte Oplekamp were signed on or about April 4, 2003.

Statement of Answer was filed by Respondent John D. Brudner on or about April 17, 2003.

Respondent Brudner did not file a Submission Agreement.

### **CASE SUMMARY**

Claimant asserted the following causes of action: negligence, breach of fiduciary duty and suitability. The causes of action related to Respondents' purchase of J.C. Penney shares in Claimant's money market accounts.

Unless specifically admitted in their Answer, Respondents Westcott Securities, LLC, Aegis Asset Management, Inc., Thomas Layng Guerriero and Lotte Oplekamp denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: because of the conduct of the Claimant in receiving statements and benefits and never making any complaint regarding the purchase of J.C. Penney's stock in the money market fund this claim is waived, and is barred by the doctrines of waiver, estoppel, laches and ratification; all fees, trades, and commissions in the discretionary account held by Aegis were authorized, approved, ratified and waived, and any claim would be barred by laches or estoppel; Claimant's claims are barred by the applicable statute of limitations; any alleged statements made to Claimant which are the alleged basis of misrepresentation or fraud were true and did not cause any damage to Claimant; the handling of Claimant's account was in accordance and in compliance with applicable brokerage industry standards, guidelines and regulatory requirements; and Claimant failed to mitigate damages as a result of any alleged misrepresentation.

Unless specifically admitted in his Answer, Respondent Brudner denied the allegations made in the Statement of Claim and asserted the following defenses: Brudner has never met Claimant; Brudner never provided any investment advice to Claimant; and Brudner was listed as Claimant's advisor on her account statements as a formality.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	in excess of \$320,000.00
Punitive/Exemplary Damages	\$1,000,000.00
Interest	Unspecified
Attorney's Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

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Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

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

Respondent John Brudner was voluntarily dismissed with prejudice by Claimant at the first scheduled hearing session, July 6, 2004. The panel did not adjudicate any claims against Respondent Brudner.

Respondent Brudner 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") and having answered the claim, is bound by the determination of the arbitration panel on all issues submitted.

The parties have 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 parties have 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 hearing the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondents, Westcott Securities, LLC, Aegis Asset Management, Inc., and Thomas Layng Guerriero, are jointly and severally liable for and shall pay to Claimant, Michelle Ann Miller, the sum of \$71,600.00 in compensatory damages;
- 2.) Claimant's claims against Respondent Lotte Optekamp are denied and dismissed with prejudice;
- 3.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) That any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

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### Filing Fees

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

Initial claim filing fee = \$500.00

### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firm is Westcott Securities, LLC.

Member surcharge = \$2800.00  
 Pre-hearing process fee = \$750.00  
 Hearing process fee = \$5000.00

### 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:

One (1) Pre-hearing session with Panel x \$1200.00	= \$1200.00
Pre-hearing conference: June 11, 2003 1 session	
Five (5) Hearing sessions x \$1200.00	= \$6000.00
Hearing Dates: February 24, 2004 1 session	
July 6, 2004 2 sessions	
July 7, 2004 2 sessions	
<b>Total Forum Fees</b>	<b>= \$7200.00</b>

The Arbitration Panel has assessed \$1800.00 of the forum fees to Michelle Ann Miller. The Arbitration Panel has assessed \$5400.00 of the forum fees to Westcott Securities, LLC., Aegis Asset Management, Inc. and Thomas Layng Guerriero.

### Fee Summary

Claimant, Michelle Ann Miller, is liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$1800.00
<b>Total Fees</b>	<b>= \$2300.00</b>
<b>Less payments</b>	<b>= \$1700.00</b>

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Balance Due NASD Dispute Resolution = \$ 600.00

Respondent, Westcott Securities, LLC, is liable for:

Member Fees	= \$8550.00
Total Fees	= \$8550.00
Less payments	= \$8550.00
Balance Due NASD Dispute Resolution	= \$ .00

Respondents, Westcott Securities, LLC Aegis Asset Management, Inc. and Thomas Layng Guerriero, are jointly and severally liable for:

Forum Fees	= \$5400.00
Total Fees	= \$5400.00
Less payments	= \$ .00
Balance Due NASD Dispute Resolution	= \$ 5400.00

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

### ARBITRATION PANEL

Walton Huff - Public Arbitrator, Presiding Chair  
 Robert Dan Sherrill - Public Arbitrator  
 Nick Sacaris - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Walton Huff  
 Walton Huff  
 Public Arbitrator, Presiding Chair

July 12, 2004  
 Signature Date

/s/ Robert Dan Sherrill  
 Robert Dan Sherrill  
 Public Arbitrator

July 12, 2004  
 Signature Date

/s/ Nick Sacaris  
 Nick Sacaris  
 Non-Public Arbitrator

July 10, 2004  
 Signature Date

July 14, 2004  
 Date of Service (For NASD office use only)

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Balance Due NASD Dispute Resolution = \$ 600.00

Respondent, Westcott Securities, LLC, is liable for:

Member Fees	= \$8550.00
Total Fees	= \$8550.00
Less payments	= \$8550.00
Balance Due NASD Dispute Resolution	= \$ .00

Respondents, Westcott Securities, LLC Aegis Asset Management, Inc. and Thomas Layng Gueriere, are jointly and severally liable for:

Forum Fees	= \$5400.00
Total Fees	= \$5400.00
Less payments	= \$ .00
Balance Due NASD Dispute Resolution	= \$ 5400.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10930(g) of the Code.

#### ARBITRATION PANEL

Walton Huff - Public Arbitrator, Presiding Chair  
Robert Dan Sherrill - Public Arbitrator  
Nick Sacaris - Non-Public Arbitrator

Concurring Arbitrators:

  
Walton Huff  
Public Arbitrator, Presiding Chair

2/12/04  
Signature Date

  
Robert Dan Sherrill  
Public Arbitrator

Signature Date

  
Nick Sacaris  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 02-07493  
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Nick Sacaris - Non-Public Arbitrator

Concurring Arbitrators:

Walton Huff  
Public Arbitrator, Presiding Chair

  
Robert Dan Sherrill  
Public Arbitrator

Signature Date

7/12/2004  
Signature Date

Nick Sacaris  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD Dispute Resolution  
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**ARBITRATION PANEL**

Walton Huff - Public Arbitrator, Presiding Chair  
Robert Dan Sherrill - Public Arbitrator  
Nick Sacaris - Non-Public Arbitrator

Concurring Arbitrators:

Walton Huff  
Public Arbitrator, Presiding Chair

Signature Date

Robert Dan Sherrill  
Public Arbitrator

Signature Date

  
Nick Sacaris  
Non-Public Arbitrator

7-10-04  
Signature Date

Date of Service (For NASD office use only)