

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

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In the Matter of the Arbitration Between

Name of Claimant

Suzanne Spenner-Hupy

and

03-00559 +  
Milwaukee, Wisconsin

Name of Respondents

Robert W. Baird & Co. Incorporated  
David S. Epstein

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

Suzanne Spenner-Hupy ("**Claimant**") was represented by Stephen E. Kravit, Esq., Kravit Gass Hovel & Leitner, S.C., Milwaukee, Wisconsin.

Robert W. Baird & Co. Incorporated ("**Respondent Baird**") and David S. Epstein ("**Respondent Epstein**") (collectively as "**Respondents**") were represented by Gregory G. Wille, Esq., Wille, Gregory & Lundeen LLP, Milwaukee, Wisconsin.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 24, 2003. Amended Statement of Claim was filed on or about May 29, 2003. Submission Agreement of Claimant Suzanne Spenner-Hupy was signed on January 23, 2003.

Response to Statement of Claim was filed by Respondents Robert W. Baird & Co. Incorporated and David S. Epstein on or about May 13, 2003. Response to Amended Statement of Claim was filed by Respondents Robert W. Baird & Co. Incorporated and David S. Epstein on or about June 11, 2003. Submission Agreement of Respondent Robert W. Baird & Co. Incorporated was signed on February 27, 2003 by Brian D. Rexell. Submission Agreement of Respondent David S. Epstein was signed on April 15, 2003.

### CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; intentional misrepresentation; strict responsibility misrepresentation; negligent misrepresentation; negligence; and violation of Chapter 551.41 of the Wisconsin Statutes. In her Pre-Arbitration Submission, Claimant stated:

In permitting stock in ADC Telecommunications to balloon to nearly 50 percent of the value in her portfolio and then crash back to nearly nothing without capturing the gains, Epstein and Baird breached that trust and lost substantial assets belonging to Mrs. Hupy. Along the way, Epstein and Baird repeatedly assured Mrs. Hupy that they were looking out for her best interests. Yet when push came to shove, Mr. Epstein and Baird were more concerned about their own interests in maintaining the price of ADC Telecommunications stock, abused the trust generated during Mrs. Hupy's nearly thirty-year relationship with Baird, and used threats and intimidation to get Mrs. Hupy to go along.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated in their Response to Amended Statement of Claim:

As it relates to Mrs. Hupy's account, the second-guessing that ultimately led to the filing of this arbitration is based on the hindsight regret that one particular stock, ADC Telecommunications ("ADCT"), acquired by Mrs. Hupy and her mother in 1990 at a split adjusted cost of less than \$1 a share, was not sold at or near its peak split adjusted price of more than \$40 a share in the summer of 2000. Claimant faults Mr. Epstein not for any recommendation he made, but for a recommendation he did not make – the failure to have recommended that ADCT be sold in the summer of 2000. Similarly, Claimant seeks to recover damages based not on any out of pocket loss actually sustained – even treating the cost of the ADCT transferred into Mrs. Hupy's account as its value on the date of transfer rather than Mrs. Spenner's lower purchase price, there was a gain of nearly \$80,000 on a \$16,500 investment – but on the larger gain that could have been realized had she sold at the stock's historic high. In short, rather than setting forth a claim that Mrs. Hupy lost money on an investment in ADCT that was induced by some form of misrepresentation or inappropriate recommendation, the Statement of Claim is nothing more than an expression of her understandable regret, fueled by the clarity of hindsight, that she did not sell that stock when it was at what can now be seen as its historical high and capture the extraordinary unrealized gain she then had on a position acquired substantially before Mr. Epstein succeeded Bill Schield as her Financial Advisor. The claim that Baird and Mr. Epstein became guarantors of the performance of ADCT by virtue of holding the good faith opinion that ADCT continued to have long term growth potential and making no recommendation that it be sold is without merit and should be dismissed.

### **RELIEF REQUESTED**

Claimant requested an award of compensatory damages in an amount to be determined at arbitration (estimated at \$580,000); punitive damages in the amount of \$100,000; attorneys fees and costs; and such other and further relief as may be just.

Respondents requested an award dismissing the claims and requiring that Claimant pay all costs and forum fees.

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

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 the NASD Dispute Resolution (the "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 Robert W. Baird & Co. Incorporated and David S. Epstein shall be and hereby are jointly and severally liable for and shall pay to Claimant Suzanne Spenner-Hupy the sum of \$100,000.00 (**One Hundred Thousand Dollars and No Cents**) as compensatory damages.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

### **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 = \$375.00

### **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. In this matter, the member firm(s) is Robert W. Baird & Co. Incorporated.

Member surcharge	\$	2,250.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	4,000.00
Total Member Fees	\$	7,000.00

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

1 Pre-hearing session(s) with Panel	x	1,200.00	\$	1,200.00
September 17, 2003	1 session			
8 Hearing sessions	x	1,200.00	\$	9,600.00
March 9, 2004	2 sessions			
March 10, 2004	1 session			
June 1, 2004	2 sessions			
June 2, 2004	2 sessions			
June 3, 2004	1 session			
Total Forum Fees			\$	10,800.00

The Arbitration Panel has assessed \$10,800.00 of the forum fees jointly and severally to Robert W. Baird & Co. Incorporated and David S. Epstein.

### **Fee Summary**

Claimant, Suzanne Spenner-Hupy, shall be and hereby is liable for:

Initial Filing Fee	= \$	375.00
Total Fees	= \$	375.00
<u>Less payments</u>	= \$	-1,575.00
Balance to be refunded by NASD Dispute Resolution	= \$	-1,200.00

Respondent, Robert W. Baird & Co. Incorporated, shall be and hereby is liable for:

Member Fees	= \$	7,000.00
Total Fees	= \$	7,000.00
<u>Less payments</u>	= \$	-7,000.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Robert W. Baird & Co. Incorporated and David S. Epstein, shall be and hereby are jointly and severally liable for:

Forum Fees	= \$	10,800.00
Total Fees	= \$	10,800.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	10,800.00

All balances are due to NASD Dispute Resolution

**ARBITRATION PANEL**

William B. Ross - Public Arbitrator, Presiding Chair  
George R. Fleischli, Esq. - Public Arbitrator  
Brian E. Slotky - Non-Public Arbitrator

Concurring Arbitrators:

/s/ William B. Ross  
William B. Ross  
Public Arbitrator, Presiding Chair

June 9, 2004  
Signature Date

/s/ George R. Fleischli  
George R. Fleischli, Esq.  
Public Arbitrator

June 8, 2004  
Signature Date

/s/ Brian E. Slotky  
Brian E. Slotky  
Non-Public Arbitrator

June 14, 2004  
Signature Date

Date of Service: \_\_\_\_\_

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Arbitration No. 03-00559  
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Respondent, Robert W. Baird & Co. Incorporated, shall be and hereby is liable for:

Member Fees	= \$	7,000.00
Total Fees	= \$	7,000.00
Less: payments	= \$	-7,000.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Robert W. Baird & Co. Incorporated and David S. Epstein, shall be and hereby are jointly and severally liable for:

Foreign Fees	= \$	10,800.00
Total Fees	= \$	10,800.00
Less payments	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	10,800.00

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

William B. Ross - Public Arbitrator, Presiding Chair  
George R. Fleischli, Esq. - Public Arbitrator  
Brian E. Slotky - Non-Public Arbitrator

### Concurring Arbitrators:

William B. Pass

**William B. Ross**  
Public Arbitrator, Presiding Chair

June 9, 2004  
Signature Date

**George R. Fleischli, Esq.**  
**Public Arbitrator**

**Signature Date**

**Brian E. Slotky**  
Non-Public Arbitrator

**Signature Date**

NASD Dispute Resolution  
 Arbitration No. 03-003559  
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Respondent, Robert W. Baird & Co. Incorporated, shall be and hereby is liable for:

Member Fees	= \$	7,000.00
Total Fees	= \$	7,000.00
<u>Less payments</u>	= \$	-7,000.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Robert W. Baird & Co. Incorporated and David S. Epstein, shall be and hereby are jointly and severally liable for:

Forum Fees	= \$	10,800.00
Total Fees	= \$	10,800.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	10,800.00

All balances are due to NASD Dispute Resolution

#### ARBITRATION PANEL

William B. Ross - Public Arbitrator, Presiding Chair  
 George R. Fleischli, Esq. - Public Arbitrator  
 Brian E. Slotky - Non-Public Arbitrator

Concurring Arbitrators:

William B. Ross  
 Public Arbitrator, Presiding Chair

George R. Fleischli  
 George R. Fleischli, Esq.  
 Public Arbitrator

Signature Date

June 8, 2004  
 Signature Date

Brian E. Slotky  
 Non-Public Arbitrator

Signature Date

NASD Dispute Resolution  
Arbitration No. 03-09559  
Award Page 5 of 5

Respondent, Robert W. Baird & Co. Incorporated, shall be and hereby is liable for:

Member Fees	= \$	7,000.00
Total Fees	= \$	7,000.00
Less Payments	= \$	7,000.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Robert W. Baird & Co. Incorporated and David S. Epstein, shall be and hereby are jointly and severally liable for:

Forum Fees	= \$	10,800.00
Total Fees	= \$	10,800.00
Less Payments	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	10,800.00

All balances are due to NASD Dispute Resolution

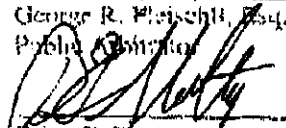
**ARBITRATION PANEL**

William B. Ross - Public Arbitrator, Presiding Chair  
George R. Fleischli, Esq. - Public Arbitrator  
Brian E. Slotky - Non-Public Arbitrator

Concurring Arbitrators:

William B. Ross  
Public Arbitrator, Presiding Chair

Signature Date

George R. Fleischli, Esq.  
Public Arbitrator  
  
Brian E. Slotky  
Non-Public Arbitrator

Signature Date

  
Signature Date