

**Amended Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

The Bruning Family Trust and Gloria Bruning, Claimants v. QA3 Financial Corp., William A. Morrow, Steve Schroeder, and Financial Designs, LTD., Respondents

Case Number: 03-02093

Hearing Site: San Diego, California

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Nature of the Disputes: Customers vs. Member, Associated Person, and Non-Members

**REPRESENTATION OF PARTIES**

For Claimants:

Floyd R. Brown, Esq.  
Law Office of Floyd R. Brown  
Carlsbad, California

For Respondent  
QA3 Financial Corp.:

Brian S. Mick, Esq.  
Croker, Huck, Kasher, DeWitt, Anderson &  
Gonderinger, L.L.C.  
Omaha, Nebraska

For Respondent  
William A. Morrow:

Erwin J. Shustak, Esq.  
Teresa A. Gillis, Esq.  
Shustak Jalil & Heller, P.C.  
San Diego, California

For Respondent Steve Schroeder:

Steve Schroeder  
Financial Designs, LTD.  
San Diego, California

For Respondent Financial Designs, LTD.:

William A. Morrow  
Financial Designs, LTD.  
San Diego, California

**CASE INFORMATION**

Statement of Claim filed: March 18, 2003

Amended Statement of Claim filed: October 17, 2003

Statement of Answer to QA3 Financial Corp.'s Counterclaim filed by Claimants:  
January 12, 2004

Claimants' Uniform Submission Agreement signed: May 8, 2003

Statement of Answer and Counterclaim filed by Respondent QA3 Financial Corp.: September 15, 2003

Statement of Answer to Amended Statement of Claim, Motion to Dismiss, and Renewed Counterclaim filed by Respondent QA3 Financial Corp.: April 13, 2004

Respondent QA3 Financial Corp.'s Uniform Submission Agreement signed: December 31, 2003

Statement of Answer and Affirmative Defenses filed by Respondent William A. Morrow:  
July 31, 2003

Respondent William A. Morrow's Uniform Submission Agreement signed: July 28, 2003

**CASE SUMMARY**

In their Initial and Amended Statements of Claim, Claimants alleged breach of fiduciary duty, negligence, fraudulent misrepresentations, omissions, unsuitable recommendation, and failure to supervise. The dispute involved the purchase and/or sale of Direct Access International, Inc. (hereinafter "DAI") and DocuVision, Inc. (hereinafter "DocuVision").

Respondents QA3 Financial Corp. and William A. Morrow denied the allegations of wrongdoing set forth in the Claimants' Initial and Amended Statements of Claim.

### **RELIEF REQUESTED**

In their Initial Statement of Claim, Claimants requested compensatory damages in the amount of \$400,000.00, punitive or exemplary damages in the amount of \$400,000.00, pre-award and post-award interest, attorney's fees, and arbitration costs.

In their Amended Statement of Claim, Claimants requested compensatory damages in the amount of \$295,000.00, punitive or exemplary damages in the amount of \$400,000.00, pre-award and post-award interest, attorney's fees, and arbitration costs.

Respondents QA3 Financial Corp. and William A. Morrow requested dismissal of the Claimants' Initial and Amended Statements of Claim in their entirety. Additionally, William A. Morrow requested unspecified legal fees, costs, and disbursements.

In its Counterclaim, QA3 Financial Corp. requested compensatory damages in the amount of \$3,450.00, "consisting the \$2,250.00 arbitration fee and attorneys fees and costs in the amount of \$1,200.00", pre-award and post-award interest, and expungement of all reference to this matter from their CRD record.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On September 19, 2003, NASD Dispute Resolution received Claimants and Claimants' counsel's signed Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waivers of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

Respondent QA3 Financial Corp.'s Counterclaim did not set forth any allegations against Claimants. However, its Counterclaim requested relief against Claimants. Claimants requested dismissal of Respondents' Counterclaims in their entirety.

Steve Schroeder and Financial Designs, LTD are not members of the NASD and did not submit to NASD arbitration.

On April 26, 2004, the Arbitration Panel granted Respondent QA3 Financial Corp.'s Motion to Dismiss and dismissed the Amended Statement of Claim with prejudice as against QA3 Financial Corp.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **FINDINGS AND CONCLUSIONS**

The Panel finds:

- (1) Don Bruning and Gloria Bruning, Trustees, on behalf of the Bruning Family Trust (hereinafter the "Trust") and Gloria Bruning as attorney in fact for her sister Irene Ortega Covarrubias (hereinafter "Ms. Bruning") (both the Trust and Ms. Bruning hereinafter from time to time referred to as "Claimants"), W. Aubrey Morrow (hereinafter Mr. Morrow) and QA3 Financial Corp., and Iowa Corporation, (hereinafter "QA3 Financial Corp.") agreed to submit this matter to binding arbitration. This Panel has jurisdiction to adjudicate this matter;
- (2) The Panel affirmatively confirmed that each Panel Member had executed an Oath of Arbitrator and made all disclosures required to be made of them under applicable law and the Rules and Regulations of NASD. The Parties confirmed that they accepted the composition of the Panel;
- (3) Mr. Morrow established a confidential, fiduciary relationship with Claimants on or about June 2, 1998. Thereafter, Claimants relied upon him to provide appropriate and suitable investment advice. In connection therewith, he made affirmative misrepresentations and failed to disclose material information to Claimants and was the primary cause of:
  - (a) The Trust's investments of \$245,000.00 in an entity known as DAI and \$20,000.00 in an entity known as DocuVision; and
  - (b) Ms. Bruning's investments of \$10,000.00 in DAI and \$20,000.00 in DocuVision;
- (4) Claimants' investments in DAI and DocuVision are worthless and all investment funds have been lost;
- (5) The investments in DAI and DocuVision were unsuitable for Claimants, particularly as Claimants were not "accredited investors" nor did they have a preexisting personal or business relationship with one or more of the founding shareholders and directors of DAI and DocuVision. Further, Mr. Morrow was affiliated with both DAI and DocuVision and the investments were not registered under the Securities Act of 1933, as amended, nor qualified under the California Corporations Securities Law of 1968, as amended;
- (6) The confidential, fiduciary relationship between Mr. Morrow and Claimants existed through at least January, 2002, and Claimants' claims are not barred by any statutes of limitations;
- (7) Claimants are not without fault and are appropriated 30% fault and responsibility for the loss of their investment funds;

- (8) Punitive and exemplary damages are not appropriate;
- (9) Pre-award interest is not appropriate; and,
- (10) QA3 Financial Corp.'s affiliation with Mr. Morrow did not take place until January 2, 2001. The investments at issue here were made prior to the affiliation between QA3 Financial Corp. and Mr. Morrow, and, based upon the facts alleged, and evidence presented, QA3 Financial Corp. was dismissed as a party and the Amended Statement of Claim was dismissed, with prejudice, as against QA3 Financial Corp. by Order of this Panel dated April 26, 2004. The Panel confirms its previous Order.

### **AWARD**

After considering the pleadings, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Mr. Morrow is liable to and shall pay the Trust \$185,500.00 in compensatory damages.
- 2) Mr. Morrow is liable to and shall pay the Trust \$331.88 as partial reimbursement of the filing fee.
- 3) Mr. Morrow is liable to and shall pay Ms. Bruning \$21,000.00 in compensatory damages.
- 4) Mr. Morrow is liable to and shall pay Ms. Bruning \$43.13 as partial reimbursement of the filing fee.
- 5) The Trust and Ms. Bruning are jointly and severally liable to and shall pay QA3 Financial Corp. \$3,150.00 in arbitration costs.
- 6) Except as noted above, the parties shall bear their respective costs, including attorney's fees.
- 7) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 375.00
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### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm QA3 Financial Corp. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 4,000.00
<b>Total Member Fees</b>	<b>= \$ 7,000.00</b>

### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Chair @ \$450.00/session	= \$ 450.00
Pre-hearing conference: February 5, 2004	1 session

Two (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences: December 19, 2003	1 session
April 19, 2004	1 session

Eight (8) Hearing sessions @ \$1,200.00/session	= \$ 9,600.00
Hearings: May 24, 2004	2 sessions
May 25, 2004	2 sessions
May 26, 2004	2 sessions
May 27, 2004	2 sessions

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<b>Total Forum Fees</b>	<b>= \$12,450.00</b>
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1. The Panel assessed \$850.00 of the forum fees jointly and severally to the Trust and Ms. Bruning.
2. The Panel assessed \$3,256.80 of the forum fees to the Trust.
3. The Panel assessed \$423.20 of the forum fees to Ms. Bruning.
4. The Panel assessed \$400.00 of the forum fees to QA3 Financial Corp.
5. The Panel assessed \$7,520.00 of the forum fees to Mr. Morrow.

**Fee Summary**

1. The Trust and Ms. Bruning are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 850.00
Total Fees	= \$ 1,225.00
Less payments	= \$(1,225.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

2. The Trust is charged with the following fees and costs:

Forum Fees	= \$ 3,256.80
Less payments	= \$( 800.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,456.80</b>

3. Ms. Bruning is charged with the following fees and costs:

Forum Fees	= \$ 423.20
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 423.20</b>

4. QA3 Financial Corp. is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 400.00
Total Fees	= \$ 7,400.00
Less payments	= \$(7,000.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 400.00</b>

5. Mr. Morrow is charged with the following fees and costs:

Forum Fees	= \$ 7,520.00
Less payments	= \$( 400.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 7,120.00</b>

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

ARBITRATION PANEL

Steven J. Roberts, Esq.	-	Public Arbitrator, Presiding Chair
Robert John Wagener	-	Public Arbitrator
John H. Knight, Jr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Steven J. Roberts, Esq.  
Chair, Public Arbitrator

6/17/04

Signature Date

Robert John Wagener  
Public Arbitrator

Signature Date

John H. Knight, Jr.  
Non-Public Arbitrator

Signature Date

June 21, 2004

Date of Service



**ARBITRATION PANEL**

Steven J. Roberts, Esq.	-	Public Arbitrator, Presiding Chair
Robert John Wagener	-	Public Arbitrator
John H. Knight, Jr.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Steven J. Roberts, Esq.  
Chair, Public Arbitrator

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Signature Date

  
Robert John Wagener  
Public Arbitrator

17 June 2004  
Signature Date

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John H. Knight, Jr.  
Non-Public Arbitrator

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Signature Date

June 21, 2004  
Date of Service

**ARBITRATION PANEL**

Steven J. Roberts, Esq.	-	Public Arbitrator, Presiding Chair
Robert John Wagener	-	Public Arbitrator
John H. Knight, Jr.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Steven J. Roberts, Esq.  
Chair, Public Arbitrator

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Signature Date

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Robert John Wagener  
Public Arbitrator

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Signature Date

  
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John H. Knight, Jr.  
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June 21, 2004  
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