

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

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In the Matter of the Arbitration Between

Name of Claimant

Russell Benjamin Holloway, Sr.,  
By and Through His Attorney-in-Fact,  
Dan L. Holloway

and

03-02280  
Oklahoma City, Oklahoma

Name of Respondent

Capital West Securities, Inc.

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Nature of the Dispute: Customer vs. Member

**REPRESENTATION OF PARTIES**

Russell Benjamin Holloway, Sr. By and Through His Attorney-in-Fact, Dan L. Holloway ("Claimant") was represented by Andrew Waldron, Esq., Woska & Hayes, L.L.P., Oklahoma City, Oklahoma.

Capital West Securities, Inc. ("Respondent") was represented by Joe M. Hampton, Esq., Ryan, Whaley, Hampton & Bomhoff, Oklahoma City, Oklahoma. Also present at the hearing were Althea Roberts and David Jensen.

**CASE INFORMATION**

The Statement of Claim was filed on or about March 25, 2003. The Submission Agreement of Claimant Russell Benjamin Holloway, Sr. was signed on or about March 10, 2003.

The Statement of Answer was filed by Respondent Capital West Securities, Inc. on or about June 17, 2003. The Submission Agreement of Respondent Capital West Securities, Inc. was signed on or about June 12, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; unsuitability; violation of 71 O.S. §408; and, failure to supervise. The causes of action relate to the order execution of various common stocks. Claimant alleges that Respondent Capital West Securities, Inc. engaged in aggressive and speculative trading despite his objectives for conservative investments, particularly in light of his deteriorating mental and physical condition.

Unless specifically admitted in its Answer, Respondent Capital West Securities, Inc. denied the allegations made in the Statement of Claim and asserted the following defenses:

Failure to State a Claim. Claimant's Statement of Claim fails to state a claim upon which the Panel could reward relief to Claimant.

Waiver. In further response to the Statement of Claim, Respondent states that Claimant, by his conduct, has waived any rights to recover herein.

Negligence of Others. In further response to the Statement of Claim, Respondent states that the alleged damages of Claimant were proximately caused by the conduct or negligence of Claimant and/or Claimant's agent or the conduct or negligence of a third-party.

Assumption of Risk. In further response to the Statement of Claim, Respondent states that Claimant knowingly, willingly and voluntarily assumed the risk of any alleged harm of which he now complains.

Ratification. In further response to the Statement of Claim, Respondent states that Claimant ratified the acts and transactions complained of and upon which recovery is sought and, therefore, Claimant is precluded from recovering herein.

Lack of Due Diligence. In further response to the Statement of Claim, Respondent states that Claimant failed to use the requisite due diligence in monitoring, managing and handling the investments in his account.

Market Price Fluctuations. In further response to the response to the Statement of Claim, Respondent states that any losses incurred by Claimant resulted, in whole or in part, from market price fluctuations that were beyond the control and responsibility of Respondent.

Comparable Fault. In further response to the Statement of Claim, Respondent states that if any fault is found on the part of Respondent, liability for any loss to Claimant herein is no greater than the percentage of damages which equals the percentage of fault attributed to Respondent.

Failure to Mitigate. In further response to the Statement of Claim, Respondent stated that Claimant has failed to mitigate his damages.

Unclean Hands. Claimant is *in pari delicto* and guilty of unclean hands, which bars any recovery by Claimant herein.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$150,000.00 as compensatory damages, plus all costs, attorney's fees and interest as allowed by law.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees and such other further relief as the Panel deems appropriate under these circumstances.

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

Respondent Capital West Securities, Inc. filed a Prehearing Brief on or about June 14, 2004.

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. The claims asserted in this matter are denied in their entirety.
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.

### **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 = \$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 event giving rise to the dispute. In this matter, the member firm is Capital West Securities, Inc.

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00

Hearing process fee	\$	2,750.00
Total Member Fees	\$	5,200.00

**Adjournment Fees**

Adjournment requested during these proceedings:

April 6-9, 2004 Hearing Dates, adjournment requested by Claimant Russell Benjamin Holloway, Sr. and Respondent Capital West Securities, Inc. (\$562.50 to assessed to each party) = \$1,125.00

**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:

1	Pre-hearing sessions with Panel	x	1,125.00	\$	1,125.00
	October 20, 2003	1	Session		
4	Hearing sessions	x	1,125.00		4,500.00
	June 14, 2004	2	Sessions		
	June 15, 2004	2	Sessions		
	Total Forum Fees			\$	5,625.00

The Arbitration Panel has assessed \$2,812.50 of the forum fees to Russell Benjamin Holloway, Sr.

The Arbitration Panel has assessed \$2,812.50 of the forum fees to Capital West Securities, Inc.

**Fee Summary**

Claimant, Russell Benjamin Holloway, Sr., shall be and hereby is liable for:

Initial Filing Fee	= \$	300.00
Adjournment Fee	= \$	562.50
<u>Forum Fees</u>	= \$	2,812.50
Total Fees	= \$	3,675.00
<u>Less payments</u>	= \$	-1,450.00
Balance Due NASD Dispute Resolution	= \$	2,225.00

Respondent, Capital West Securities, Inc., shall be and hereby is liable for:

Member Fees	= \$	5,200.00
Adjournment Fee	= \$	562.50

<u>Forum Fees</u>	= \$	<u>2,812.50</u>
Total Fees	= \$	8,575.00
<u>Less payments</u>	= \$	<u>-5,200.00</u>
Balance Due NASD Dispute Resolution	= \$	3,375.00

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

**ARBITRATION PANEL**

Robert Steven Haught, Esq. - Public Arbitrator, Presiding Chair  
Carroll O. Johnson - Public Arbitrator  
Joel Held, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Robert Steven Haught, Esq.  
Robert Steven Haught, Esq.  
Public Arbitrator, Presiding Chair

06/23/04  
Signature Date

/s/ Carroll O. Johnson  
Carroll O. Johnson  
Public Arbitrator

06/24/04  
Signature Date

/s/ Joel Held, Esq.  
Joel Held, Esq.  
Non-Public Arbitrator

06/23/04  
Signature Date

06/24/04  
Date of service

**NASD Dispute Resolution**  
**Arbitration No! 03-02280**  
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<u>Forum Fees</u>	= \$	2,812.50
<u>Total Fees</u>	= \$	8,575.00
<u>Less payments</u>	= \$	-5,200.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$</b>	<b>3,375.00</b>

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### ARBITRATION PANEL

**Robert Steven Haught, Esq. - Public Arbitrator, Presiding Chair**  
**Carroll O. Johnson - Public Arbitrator**  
**Joel Held, Esq. - Non-Public Arbitrator**

**Concurring Arbitrators:**

*Robert Steven Haught*  
Robert Steven Haught, Esq.  
Public Arbitrator, Presiding Chair

6-23-84  
Signature Date

**Carroll O. Johnson**  
**Public Arbitrator**

**Signature Date**

Joel Held, Esq.  
Non-Public Arbitrator

**Signature Date**

**Date of service**

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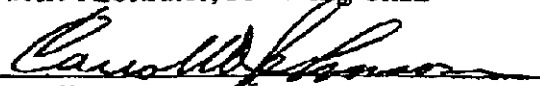
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Carroll O. Johnson - Public Arbitrator  
Joel Held, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

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Public Arbitrator, Presiding Chair

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Signature Date

  
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Public Arbitrator

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Non-Public Arbitrator

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NASD Dispute Resolution  
Arbitration No. 03-02280  
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Carroll O. Johnson - Public Arbitrator  
Joel Held, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Robert Steven Haught, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

Carroll O. Johnson  
Public Arbitrator

Signature Date

Joel Held, Esq.  
Non-Public Arbitrator

June 23, 2004  
Signature Date

Date of service