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

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In the Matter of the Arbitration Between:

Name of the Claimant  
William M. Cooper

Case Number: 03-05244

Names of the Respondents  
Milestone Financial Services, Inc.  
Louis Ward  
Joseph C. Broyles  
John Bergen  
James Byrns

Hearing Site: New Orleans, LA

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

**REPRESENTATION OF PARTIES**

For William M. Cooper, hereinafter referred to as "Claimant": Richard S. Frankowski, Esq.,  
Whatley Drake, LLC, Birmingham, AL.

For Respondents Milestone Financial Services, Inc. ("MFS") and Louis Ward ("Ward"):  
Douglas L. McCoy, Esq. and Norman M. Stockman, Esq., Hand Arendall, L.L.C., Mobile, AL.

For Respondent John Bergen ("Bergen"): Michael Reese Davis, Esq., Sharp Henry Cerniglia  
Colvin Waver & Hymel, L.L.C., Baton Rouge, LA.

For Respondent James Byrns ("Byrns"): Jacob S. Frenkel, Esq., Smith Gambrell & Russell, LLP,  
Washington, DC.

For Respondent Joseph C. Broyles ("Broyles"): Douglas L. McCoy, Esq. and Norman M.  
Stockman, Esq., Hand Arendall, L.L.C., Mobile, AL until June 21, 2004, at which time counsel  
withdrew.

**CASE INFORMATION**

Statement of Claim filed on or about: July 18, 2003.

Claimant signed the Uniform Submission Agreement: June 30, 2003.

Statement of Answer filed by Respondents MFS, Ward, Broyles, Bergen, and Byrns, hereinafter  
collectively referred to as "Respondents", on or about: September 19, 2003.

Respondent MFS signed the Uniform Submission Agreement: September 11, 2003.

Respondent Ward signed the Uniform Submission Agreement: September 12, 2003.

Respondent Broyles signed the Uniform Submission Agreement: September 18, 2003.

Respondent Bergen signed the Uniform Submission Agreement: September 15, 2003.

Respondent Byrns signed the Uniform Submission Agreement: September 15, 2003.

### **CASE SUMMARY**

Claimant asserted the following causes of action: negligence; unsuitability; failure to supervise; misrepresentation; lack of supervision; making untrue statements of material fact; omission of material facts; failure to disclose; and, violations of NASD rules, state, and federal law. The causes of action relate to margin trading, day trading, and short selling unspecified securities products, including Peoplesoft, Inc. and Triquint stock, in Claimant's account.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$70,000.00, punitive damages of \$150,000.00, attorneys' fees, and interest.

Respondents requested dismissal of the Statement of Claim.

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

At the commencement of the evidentiary hearing, counsel for Respondent Broyles, Douglas L. McCoy, Esq. and Norman M. Stockman, Esq., advised the undersigned arbitrators (the "Panel") that they were unable to contact Respondent Broyles and, therefore, withdrew as counsel for Respondent Broyles.

As stated above, Respondent Broyles did not appear at the evidentiary hearing in this matter. Upon review of the file and the representations made by/on behalf of the Claimant, the Panel determined that Respondent Broyles has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

During the evidentiary hearing, Respondents made motions to dismiss and for a directed verdict. All of the motions were denied with the exception of Respondent Byrns' Motion to Dismiss which was granted.

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

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondents MFS, Ward, and Bergen are liable, jointly and severally, and shall pay to Claimant compensatory damages in the sum of \$65,551.00 plus pre-judgment interest at the rate of 5% per annum accruing from February 20, 2002 until the date of payment of the Award. Respondent Broyles is jointly and severally liable with Respondents MFS, Ward, and Bergen on the damage award herein up to the sum of \$9,850.00.

Respondents MFS, Ward, and Bergen are liable, jointly and severally, and shall pay to Claimant attorneys' fees in the sum of \$7,500.00 pursuant to Mississippi Blue Sky law.

Respondents MFS, Ward, and Bergen are liable, jointly and severally, and shall pay to Claimant the sum of \$300.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Claimant's claims against Respondent Byrns are dismissed, with prejudice.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

### **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
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#### **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. Accordingly, Respondent MFS is a member firm and a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were granted during these proceedings for which fees were assessed.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were assessed during these proceedings.

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: February 19, 2004 1 session	
One (1) Pre-hearing session with the Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: December 30, 2003 1 session	
Four (4) Hearing sessions @ \$1,125.00	= \$4,500.00
Hearing Dates: June 21, 2004 2 sessions	
June 22, 2004 2 sessions	

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Total Forum Fees	= \$6,075.00
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The Panel has assessed the total forum fees of \$6,075.00, jointly and severally, to Respondents MFS, Bergen, and Ward.

**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.

No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimant is solely liable for:

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

Respondent MFS is solely liable for:

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

Respondents MFS, Bergen, and Ward are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 6,075.00
Total Fees	= \$ 6,075.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 6,075.00

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

**ARBITRATION PANEL**

Ron Christner	-	Public Arbitrator, Presiding Chairperson
Martin Patrice Irons, J.D.	-	Public Arbitrator
John C. Anjier, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Ron Christner  
Public Arbitrator, Presiding Chairperson

Signature Date

/s/  
Martin Patrice Irons, J.D.  
Public Arbitrator

Signature Date

/s/  
John C. Anjier, Esq.  
Non-Public Arbitrator

Signature Date

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

NASD Dispute Resolution

Arbitration No. 03-05244

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John C. Anjicr, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Ron Christner  
Public Arbitrator, Presiding Chairperson

7-2-04  
Signature Date

Martin Patrice Irons, J.D.  
Public Arbitrator

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

John C. Anjicr, Esq.  
Non-Public Arbitrator

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Award Page 5 of 5**ARBITRATION PANEL**

Ron Christner

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Public Arbitrator, Presiding Chairperson

Martin Patrice Irons, J.D.

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Public Arbitrator

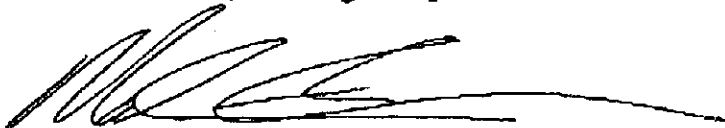
John C. Anjier, Esq.

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Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

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Signature Date\_\_\_\_\_  
Martin Patrice Irons, J.D.

Public Arbitrator

7/7/04  
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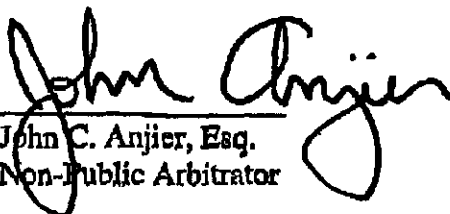
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Public Arbitrator, Presiding Chairperson

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