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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Thomas W. Holley

Case Number: 03-05425

Name of the Respondent  
Walnut Street Securities Incorporated

Hearing Site: Atlanta, Georgia

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Thomas W. Holley, hereinafter referred to as "Claimant": Richard S. Frankowski, Esq., Whatley Drake L.L.C., Birmingham, Alabama.

For Walnut Street Securities Incorporated, hereinafter referred to as "Respondent": A. Inge Selden, III, Esq. and Julie L. Wilson, Esq., Maynard, Cooper & Gale, P.C., Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: July 24, 2003.

Claimant signed, but did not date, the Uniform Submission Agreement.

Statement of Answer filed by Respondent on or about: October 10, 2003.

Respondent did not file an executed Uniform Submission Agreement.

Brief in Support of Dismissal Based on Statutes of Limitation filed by Respondent on or about: March 16, 2004.

Response to Respondent's Brief in Support of Dismissal Based on Statutes of Limitation filed by Claimant on or about: March 28, 2004.

Amended Statement of Claim filed by Claimant on or about: April 12, 2004.

Brief in Support of Amendment to add Breach of Contract Claim filed by Claimant on or about: April 12, 2004.

Motion to Dismiss Claimant's Amended Statement of Claim filed by Respondent on or about: April 28, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability; churning; failure to supervise; unauthorized trades; violation of NASD Rules 3010 and 2310; fraud; negligence; and, breach of contract. The causes of action relate to the purchase and sale of shares of Skintech Labs, Inc., USA Digital, Inc. and other unspecified stocks in Claimant's account.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim, asserted various defenses and asserted a Motion to Dismiss the Statement of

Claim on the basis that Claimant's negligence and fraud claims were time barred. In addition, Respondent filed a Motion to Dismiss the Amended Statement of Claim on the basis that Claimant failed to state a claim of breach of contract as no private right of action existed for alleged violations of the rules promulgated by the NASD and other self-regulatory organizations.

In response to the Motion to Dismiss the Statement of Claim, Claimant conceded that the negligence and fraud claims were barred by the applicable statutes of limitation, but asserted that his claim of breach of contract would survive due to a six-year statute of limitation.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$100,000.00, plus punitive damages in the amount of \$300,000.00.

Respondent requested dismissal of Claimant's claims in their entirety and that it be awarded costs, attorneys' fees and any other relief deemed just and proper.

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

Respondent did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, is bound by the determinations of the Panel on all issues submitted.

On or about February 2, 2004, the Panel issued an order which stated that, during the pre-hearing conference on February 2, 2004, an issue had arisen as to whether Claimant's claims were barred by the applicable statutes of limitation. The order directed the parties to submit legal briefs on the issue by not later than March 16, 2004.

On or about April 1, 2004, the Panel issued an order which directed Claimant to file an Amended Statement of Claim within ten business days of receipt of the order which withdrew the claims of negligence and fraud and asserted a claim of breach of contract. In addition, the order instructed Claimant to simultaneously file a brief which explained why a cause of action of breach of contract existed and why a six-year statute of limitation was applicable to his claims.

On or about May 14, 2004, Claimant filed a request for an indefinite extension of time to file his response to Respondent's Motion to Dismiss the Amended Statement of Claim. Respondent did not file a response to the request. On or about May 20, 2004, the Panel issued an order which stated that, in Claimant's request for an extension of time, he failed to present a time deadline for his response and did not submit sufficient grounds for his refusal to set a time deadline. The order further stated that Claimant's case was dismissed, with prejudice.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings and the record in this matter, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's case is 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 that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm Walnut Street Securities Incorporated is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were filed in this matter.

#### **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 incurred in this matter.

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

The Panel has assessed forum fees for each session conducted. A 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 the Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: February 2, 2004 1 session	
Total Forum Fees	= \$1,125.00

The Panel has assessed \$562.50 of the forum fees to Claimant.  
The Panel has assessed \$562.50 of the forum fees to Respondent.

**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 are 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 in this matter.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 862.50
<u>Less payments</u>	= \$ 862.50
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 5,762.50
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 562.50

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

**ARBITRATION PANEL**

James C. Hoover, Esq.	-	Public Arbitrator, Presiding Chairperson
James G. Killough, Esq.	-	Public Arbitrator
Mary O. Pitts, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

05/20/04

\_\_\_\_\_  
James C. Hoover, Esq.  
Public Arbitrator, Presiding Chairperson

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

/s/

05/21/04

\_\_\_\_\_  
James G. Killough, Esq.  
Public Arbitrator

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

/s/

05/25/04

\_\_\_\_\_  
Mary O. Pitts, Esq.  
Non-Public Arbitrator

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

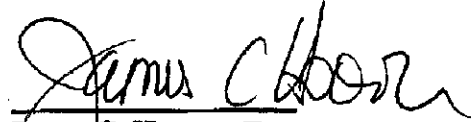
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Date of Service (For NASD Dispute Resolution office use only)

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**Concurring Arbitrators' Signatures**

  
James C. Hoover, Esq.  
Public Arbitrator, Presiding Chairperson

5/20/04  
Signature Date

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James G. Killough, Esq.  
Public Arbitrator

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Signature Date

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Mary O. Pitts, Esq.  
Non-Public Arbitrator

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Signature Date

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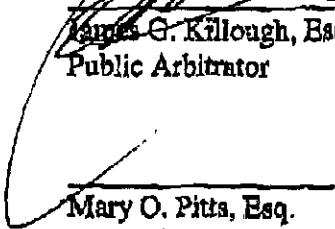
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James C. Hoover, Esq.  
Public Arbitrator, Presiding Chairperson



James G. Killough, Esq.  
Public Arbitrator



Mary O. Pitts, Esq.  
Non-Public Arbitrator

Signature Date

5/21/07  
Signature Date

Signature Date

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