

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

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In the Matter of the Arbitration Between:

Damon Vickers (Claimant) vs. Westminster Financial Securities, Inc., James P. Nunez, Michael Lieb, Robert Davidson, Jr., Christopher John Broderick, and Lawrence Miles Brazie (Respondents)

Case Number: 03-05466

Hearing Site: Cincinnati, Ohio

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

**REPRESENTATION OF PARTIES**

Claimant Damon Vickers ("Claimant"): Barry R. Lax, Esq., Law Office of Barry Lax, New York, NY.

Respondents Westminster Financial Securities, Inc. ("Westminster Financial"), Christopher John Broderick ("Broderick"), and Lawrence Miles Brazie ("Brazie"): Thomas P. Whelley, II, Esq., Chernesky, Heyman & Kress P.L.L., Dayton, OH. Previously represented by John H. Stachler, Esq., Jablinski, Folino, Roberts & Martin, Dayton, OH.

Respondents James P. Nunez ("Nunez") and Robert Davidson, Jr. ("Davidson"): Stephen M. Pfarrer, Esq., Law Office of Stephen M. Pfarrer, Dayton, OH. Previously represented by Christopher J. Broderick, Esq., Law Office of Christopher J. Broderick, Dayton, OH.

Respondent Michael Lieb hereinafter referred to as ("Lieb"): Janice M. Paulus, Esq., Coolidge, Wall, Womsley & Lombard P.A. Dayton, OH. Previously represented by Christopher J. Broderick, Esq., Law Office of Christopher J. Broderick, Dayton, OH.

**CASE INFORMATION**

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

Amended Statement of Claim ("Amended Claim") filed on or about: April 28, 2004.

Claimant signed the Uniform Submission Agreement: July 8, 2003.

Joint Statement of Answer filed by Respondents Nunez, Davidson, Broderick, Brazie and Lieb on or about: September 17, 2003.

Answer to Amended Claim filed by Lieb on or about: May 26, 2004.

Joint Answer to Amended Claim and Counterclaim filed by Respondents Westminster Financial, Broderick, and Brazie on or about: May 26, 2004.

Joint Answer to Amended Claim and Counterclaim filed by Respondents Nunez and Davidson on or about: October 26, 2004.

Lieb signed the Uniform Submission Agreement: September 17, 2003.  
Davidson signed the Uniform Submission Agreement: September 17, 2003.  
Nunez signed the Uniform Submission Agreement: September 17, 2003.  
Brazie signed the Uniform Submission Agreement.  
Broderick signed the Uniform Submission Agreement.  
Westminster Financial did not sign the Uniform Submission Agreement.

### **CASE SUMMARY**

Claimant asserted the following causes of action in the Statement of Claim and Amended Claim: breach of contract; breach of fiduciary duty; tortious interference with business relationships; misappropriation of trade secrets; conversion; unfair competition; quantum meruit; and unjust enrichment.

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

Unless specifically admitted in his Answer, Lieb denied the allegations made in the Amended Claim and asserted various affirmative defenses.

Unless specifically admitted in their Answer, Respondents Westminster Financial, Broderick, and Brazie denied the allegations made in the Amended Claim and asserted various affirmative defenses.

In their Counterclaim Respondents Westminster Financial, Broderick, and Brazie asserted the following cause of action: breach of contract, misrepresentation and misappropriation of trade name, and intentional misrepresentation.

Unless specifically admitted in their Answer, Respondents Nunez and Davidson denied the allegations made in the Amended Claim and asserted various affirmative defenses.

In their Counterclaim, Nunez and Davidson asserted the following cause of action: breach of contract.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$1,000,000.00; unspecified punitive damages; that an injunction be issued; interest; attorneys' fees; costs; and such further relief as the Panel may find appropriate.

Respondents Nunez, Lieb, Davidson, Broderick, and Brazie requested that the Statement of Claim be dismissed with prejudice.

Respondents Westminster Financial, Broderick, and Brazie requested that the Amended Claim be dismissed in its entirety.

In their Counterclaim Respondents Westminster Financial, Broderick, and Brazie requested

\$1,000,000.00 in compensatory damages; unspecified punitive damages; costs; interest; attorneys' fees and such further relief as the Panel may find appropriate.

Respondent Lieb requested that the Amended Claim be dismissed with prejudice; judgment in his favor; attorneys' fees; costs; and such further relief as deem appropriate and proper. Nunez and Davidson requested that the Amended Claim be dismissed with prejudice.

In their Counterclaim, Respondents Nunez and Davidson requested unspecified compensatory damages; reimbursement of costs; attorneys' fees; and such further relief as they may be entitled at law or equity.

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

Westminster Financial did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

In the afternoon session of the July 14, 2005 hearing, the parties notified the Panel that a settlement had been reached with all Respondents. The details of the settlement were recorded on the record and the parties advised the Panel that the settlement terms would subsequently be memorialized in writing. On or about August 26, 2005, Claimant requested a hearing before the Panel to enforce the settlement agreement reached at the hearing with Respondents Westminster Financial, Broderick, and Brazie.

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.

### **AWARD**

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

1. The Panel confirms the parties' settlement agreement of July 2005, as proposed by the Claimant with only the following revision:

In line eight of the paragraph entitled "Confidentiality" the word "law" shall be substituted with the words "federal or state law or regulation."

2. Any and all relief not specifically addressed herein is 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	= \$ 375.00
Broderick, Brazie and Westminster's Counterclaim filing fee	= \$ 1,250.00

Nunez and Davidson's Counterclaim filing fee = \$ 250.00

**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 persons at the time of the events giving rise to the dispute. Accordingly, Westminster Financial Securities, Inc. is a party.

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

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

November 15, 16, 17 & 18, 2004 adjournment by Lieb, Nunez and Davidson = \$ 1,200.00

**Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

July 15, 2005 settled by all the parties = \$ 300.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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 a single arbitrator @ \$450.00 per session	= \$ 450.00
Pre-hearing conference: November 5, 2004 1 session	

Six (6) Pre-hearing sessions with Panel @ \$1200.00 per session	= \$ 7,200.00
Pre-hearing conferences:	
April 26, 2004 1 session	
March 16, 2005 1 session	
June 11, 2005 1 session	
June 17, 2005 1 session	
October 14, 2005 1 session	
November 22, 2005 1 session	

Ten (10) Hearing sessions @ \$1,200.00 per session	= \$ 12,000.00
Hearing Dates:	
July 12, 2005 2 sessions	
July 13, 2005 3 sessions	
July 14, 2005 3 sessions	
December 27, 2005 2 sessions	

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Total Forum Fees = \$ 19,650.00

1. The Panel has assessed \$1,200.00 of the forum fees against Claimant.
2. The Panel has assessed \$18,450.00 of the forum fees against Westminster Financial.

**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.

1. Respondents Westminster Financial, Broderick & Braize, requested retrieval of file from archive @ \$25.00 and duplication of 3 tapes @ \$15.00 per tape = \$ 70.00
2. Claimant requested duplication of 2 tapes @ \$15.00 per tape = \$ 30.00

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
Administrative Costs	= \$ 30.00
<u>Forum Fees</u>	<u>= \$ 1,200.00</u>
Total Fees	= \$ 1,575.00
<u>Less payments</u>	<u>= \$ 1,730.00</u>
Refund Due Claimant	= \$ 155.00
  
2. Westminster Financial is solely liable for:

Member Fees	= \$ 7,000.00
Administrative Costs	= \$ 70.00
Three-Day Cancellation Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 18,450.00</u>
Total Fees	= \$ 25,820.00
<u>Less payments</u>	<u>= \$ 7,570.00</u>
Balance Due NASD Dispute Resolution	= \$ 18,250.00
  
3. Nunez and Davidson are liable for:

Counterclaim Filing Fee	= \$ 250.00
Total Fees	= \$ 250.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 250.00
  
4. Lieb, Nunez and Davidson are jointly and severally liable for:

Adjournment Fee	= \$ 1,200.00
Total Fees	= \$ 1,200.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,200.00
  
5. Westminster Financial, Broderick, and Brazie are jointly and severally liable for:

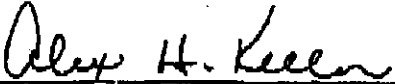
Counterclaim Filing Fee	= \$ 1,250.00
Total Fees	= \$ 1,250.00
<u>Less payments</u>	<u>= \$ 1,250.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

Alex H. Keller	-	Public Arbitrator, Presiding Chairperson
Jeffrey M. Bain, Esq.	-	Public Arbitrator
Sandra J. Bakalus	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
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Alex H. Keller  
Public Arbitrator, Presiding Chairperson

  
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Signature Date

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Jeffrey M. Bain, Esq.  
Public Arbitrator

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Signature Date

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Sandra J. Bakalus  
Non-Public Arbitrator

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Signature Date

**February 7, 2006**

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Date of Service (For NASD Dispute Resolution use only)

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