

**STIPULATED AWARD  
NASD Dispute Resolution**

---

In the Matter of the Arbitration Between

Claimants

B & L Welch & Company and Leigh Welch

v.

04-01579  
Denver, Colorado

Respondent

Thomas Austin

---

Nature of Dispute: Customers v. Associated Person

**REPRESENTATION OF PARTIES**

B & L Welch & Company and Leigh Welch, hereinafter referred to as "Claimants," were represented by John Henry Schlie, Esq., Denver, Colorado.

Thomas Austin ("**Respondent**") was represented by David L. Goldberg, Esq., UBS Financial Services, Inc., New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about May 2, 2003. The Submission Agreement of Claimants, B & L Welch & Company and Leigh Welch, were signed on or about April 24, 2003.

The Statement of Answer was filed by Respondent, Thomas Austin, on or about July 11, 2003.

The parties filed a joint request for the issuance of a Stipulated Award for Thomas Austin's Expungement on or about January 13, 2004.

**CASE SUMMARY**

Claimants asserted causes of action including the following: suitability, negligent misrepresentation, breach of fiduciary duty, unauthorized transactions, misrepresentations and omissions, negligence, failure to supervise, respondeat superior and breach of good faith and fair dealing. The causes of action related to Claimants' allegation that Respondent made unsuitable investments in two GOAL notes linked to AOL Time Warner and WorldCom, Inc., that were not consistent with Claimants' investment objectives and were significantly more volatile and higher risk than Claimants had wanted for their account. Claimants stated that Respondent knew or should have known, that newsletters from Respondent's employer, UBS PaineWebber, Inc., omitted material information regarding the financial well-being of AOL and WordCom and helped to cause the losses in their account.

Respondent denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimants' causes of action are barred by the doctrines of ratification, waiver and estoppel; Claimants expressly and implicitly represented to Respondent their understanding of the nature and the risks of the securities purchased in their accounts; Claimants authorized the transactions complained of in the Statement of Claim and were in sole control of the assets in the accounts at all relevant times; and Claimants' alleged damages cannot be attributed to Respondent's statements, but are due instead to extraneous market conditions over which Respondent had no control or the actions of unnamed third parties.

### **RELIEF REQUESTED**

Claimants requested an award of damages in an amount to be proven at the hearing, plus attorney's fees, interest, costs and any other relief the panel deemed just and equitable.

Respondent requested that the claims asserted against him in the original claim be denied in their entirety and that he be awarded his costs and attorneys' fees. In addition, Respondent requested that this matter be expunged from his permanent registration record maintained by the Central Registration Department ("CRD").

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

On or about January 13, 2004, the parties submitted a Stipulation of Award between Claimants, B&L Welch & Company and Leigh Welch, and Respondent, Thomas Austin, wherein Claimants voluntarily agreed to dismiss all claim asserted against Respondent, Thomas Austin.

The Panel severed the instant matter from Case No. 03-03302 pursuant to the parties' joint Stipulation of Award. In its Order of March 8, 2004, the panel ordered the following:

1. Dismissal with prejudice of the claims against Respondent, Thomas Austin in Case # 03-03302 based upon the parties' agreement;
2. That NASD Dispute Resolution sever Respondent, Thomas Austin's request for expungement;
3. That NASD Dispute Resolution establish a new case, with a new case number, and with a caption as set forth above;
4. That the panel on the underlying case be assigned to the new case;
5. That Respondent, Thomas Austin, pay a \$250 filing fee within 30 days in order for NASD Dispute Resolution to process the expungement;

6. That the provisions of Rules 10314, 10321, and 10308 of the NASD Code of Arbitration Procedure do not apply; and
7. That the customers do not have to file an answer in the new claim.

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 originals remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

After considering the joint motion to sever and enter an award directing the expungement of the Respondent, Thomas Austin's registration records, and after reviewing the pleadings and files contained herein, but without making any findings of fact or conclusions of law, the undersigned arbitrators orders as follows:

1. The Panel recommends the expungement of all reference to the above captioned arbitration and the original arbitration from Respondent, Thomas Austin's, registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent, Thomas Austin, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
2. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages, are denied with prejudice; and
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 the non-refundable filing fee for each claim:

Associated Person's filing fee

= \$ 250

**Fee Summary**

Respondent, Thomas Austin is liable for:

<u>Initial Filing Fee</u>	= \$ 250
<u>Total Fees</u>	= \$ 250
<u>Less payments</u>	= \$ 250
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0

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

**ARBITRATION PANEL**

Stephen Kirk Ingebretsen, JD - Public Arbitrator, Presiding Chair  
John G. Brant - Public Arbitrator  
Alexander N. Feick- Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Stephen Kirk Ingebretsen, JD  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
John G. Brant  
Public Arbitrator

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

\_\_\_\_\_  
Alexander N. Feick  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (NASD use only)

### Fee Summary

**Respondent, Thomas Austin is liable for:**

<u>Initial Filing Fee</u>	= \$	250
<u>Total Fees</u>	= \$	250
<u>Less payments</u>	= \$	250
<b>Balance Due NASD Dispute Resolution</b>	= \$	0

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

**ARBITRATION PANEL**

Stephen Kirk Ingebretsen, JD - Public Arbitrator, Presiding Chair  
John G. Brant - Public Arbitrator  
Alexander N. Feick- Non-Public Arbitrator

### Concurring Arbitrators:

Stephen Kirk Ingebretsen  
Stephen Kirk Ingebretsen, JD  
Public Arbitrator, Presiding Chair

11-23-07  
Signature Date

**John G. Brant**  
**Public Arbitrator**

Signature Date

**Alexander N. Feick**  
Non-Public Arbitrator

Signature Date

Date of Service (NASD use only)

**Fee Summary**

Respondent, Thomas Austin is liable for:

<u>Initial Filing Fee</u>	= \$ 250
<u>Total Fees</u>	= \$ 250
<u>Less payments</u>	= \$ 250
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0

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

**ARBITRATION PANEL**

Stephen Kirk Ingebretsen, JD - Public Arbitrator, Presiding Chair  
John G. Brant - Public Arbitrator  
Alexander N. Feick - Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Stephen Kirk Ingebretsen, JD  
Public Arbitrator, Presiding Chair

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

John G. Brant  
John G. Brant  
Public Arbitrator

11/29/04  
Signature Date

\_\_\_\_\_  
Alexander N. Feick  
Non-Public Arbitrator

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

11/29/04  
Date of Service (NASD use only)

Fee Summary

Respondent, Thomas Austin is liable for:

Initial Filing Fee	= \$ 250
Total Fees	= \$ 250
Less payments	= \$ 250
Balance Due NASD Dispute Resolution	= \$ 0

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

ARBITRATION PANEL

Stephen Kirk Ingebretsen, JD - Public Arbitrator, Presiding Chair  
John G. Brant - Public Arbitrator  
Alexander N. Feick - Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Stephen Kirk Ingebretsen, JD  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
John G. Brant  
Public Arbitrator

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

  
\_\_\_\_\_  
Alexander N. Feick  
Non-Public Arbitrator

11/1/04  
\_\_\_\_\_  
Signature Date

11/29/04  
\_\_\_\_\_  
Date of Service (NASD use only)