

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

John P. Tilling (Claimant) v. S.W. Bach & Company (Respondent)

Case Number: 04-01896

Hearing Site: New York, New York

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

Claimant John P. Tilling hereinafter referred to as "Claimant": Daniel J. Brooks, Esq., Schnader Harrison Segal & Lewis, LLP, New York, NY.

Respondent S.W. Bach & Company hereinafter referred to as "Respondent": Louis F. Burke, Esq., Louis F. Burke, P.C., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: March 17, 2004.

Claimant signed the Uniform Submission Agreement: February 27, 2004.

Statement of Answer filed by Respondent on or about: June 28, 2004.

Respondent signed the Uniform Submission Agreement: July 16, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: churning; unsuitability; breach of fiduciary duty; and common law fraud. The causes of action relate to shares of Johnson & Johnson, Yahoo, a 10-year treasury note, as well as other unspecified securities.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$290,947.48; compensatory damages in the amount of \$272,573.00; interest; punitive damages in the amount of \$300,000.00; costs and disbursements; and attorneys' fees.

Respondent requested that the Panel dismiss the Statement of Claim in its entirety and grant such other and further relief as the Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

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, and 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. Respondent is liable for and shall pay to Claimant the sum total of \$471,041.00, plus interest of 2% from February 1, 2004 until May 1, 2005. Of this amount, \$272,573.00 represents lost capital from firm churning, \$290,968.00 represents commissions and fees, and the panel reduced the award by \$92,500.00 because of funds lost by the client from his actions which were independent of any churning by Respondent.
2. Any and all relief not specifically addressed herein, including punitive damages, 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

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. Accordingly, S. W. Bach & Company is a party.

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

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 Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference: September 14, 2004 1 session	

Five (5) Hearing sessions @ \$1,200.00 = \$6,000.00

Hearing Dates:	May 3, 2005	2 sessions
	May 4, 2005	2 sessions
	May 5, 2005	1 session

Total Forum Fees = \$7,200.00

1. The Panel has assessed \$3,600.00 of the forum fees against Claimant.
2. The Panel has assessed \$3,600.00 of the forum fees against Respondent.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 3,600.00
Total Fees	= \$ 3,975.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 2,400.00

2. Respondent is solely liable for:

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 3,600.00
Total Fees	= \$10,600.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 3,600.00

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

ARBITRATION PANEL

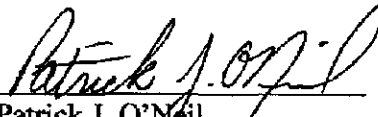
Thomas Benjamin Salzer, Esq.	-	Public Arbitrator, Presiding Chairperson
Patrick J. O'Neil	-	Public Arbitrator
Mark S. Brody	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Thomas Benjamin Salzer, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Patrick J. O'Neil
Public Arbitrator

May 6, 2005

Signature Date

Mark S. Brody
Non-Public Arbitrator

Signature Date

May 9, 2005


Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Thomas Benjamin Salzer, Esq.	-	Public Arbitrator, Presiding Chairperson
Patrick J. O'Neil	-	Public Arbitrator
Mark S. Brody	-	Non-Public Arbitrator

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Thomas Benjamin Salzer, Esq.
Public Arbitrator, Presiding Chairperson

6 May 2005

Signature Date

Patrick J. O'Neil
Public Arbitrator

Signature Date

Mark S. Brody
Non-Public Arbitrator

Signature Date

May 9, 2005

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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Patrick J. O'Neil	-	Public Arbitrator
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Thomas Benjamin Salzer, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Patrick J. O'Neil
Public Arbitrator

Signature Date



Mark S. Brody
Non-Public Arbitrator



Signature Date

May 9, 2005

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