

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of Claimant

Southwest Securities, Inc.

vs.

Case Number: 05-00100  
Hearing Site: Dallas, Texas

Name of Respondent

First Southwest Company

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**NATURE OF THE DISPUTE**

Member vs. Member

**REPRESENTATION OF PARTIES**

Southwest Securities, Inc. ("SWS") was represented by David S. Dyer, Esq., Secore & Waller, L.L.P., Dallas, Texas.

First Southwest Company ("First Southwest") was represented by Cheryl Jerome Moore, Esq. and Christopher R. Richie, Esq., Patton Boggs LLP, Dallas, Texas.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 7, 2005. The Submission Agreement of SWS was signed on or about January 20, 2005. The Statement of Answer, Motion to Dismiss and Counterclaim was filed by First Southwest on or about April 1, 2005. The Submission Agreement of First Southwest was signed on or about March 29, 2005.

The Answer to Counterclaim was filed by SWS on or about April 8, 2005.

The Brief in Support of Motion to Dismiss was filed by First Southwest on or about January 31, 2006. The Response to Motion to Dismiss was filed by SWS on or about January 31, 2006. The Reply Brief to SWS's Response to Motion to Dismiss was filed by First Southwest on or about February 13, 2006.

**CASE SUMMARY**

SWS asserted the following cause of action: breach of contract. The cause of action related to First Southwest's failure to pay five due bills that arose from the transfer of five

customer accounts from First Southwest to SWS. Each of the accounts held Cypress Hill, Texas, Municipal District #1, General Obligation bonds, but because the company was in bankruptcy and the bonds in default, First Southwest could not deliver the bond certificates in return for SWS's corresponding credit. In lieu of the certificates, First Southwest endorsed and delivered to SWS five due bills originally issued by Principal Financial Securities, one each for the five accounts. When Cypress Hill, pursuant to its bankruptcy plan, made payment on the subject bonds, SWS requested payment from First Southwest in order to receive payments due the five customers. First Southwest refused to pay the bills.

Unless specifically admitted in its Answer, First Southwest denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: SWS's claim is barred by the applicable statute of limitations; the Statement of Claim failed to state a claim upon which relief can be granted; SWS failed to allege facts sufficient to sustain any of the alleged causes of actions; SWS's claims are barred, in whole or in part, because First Southwest ceased to have any interest or liability for the accounts, due bills or bonds once the accounts were transferred to SWS and the due bills were accepted by SWS from Principal; SWS expressly or by its conduct ordered, approved, authorized, participated in, and ratified the transaction complained of and is therefore estopped or precluded from recovery; SWS is precluded from any recovery against First Southwest because it failed to use the requisite care and diligence to secure its interest in the due bills; any loss sustained by SWS was the direct and proximate result of SWS's own judgment, conduct or negligence, or the judgment, conduct, and negligence of one or more third parties other than First Southwest; SWS is precluded from any recovery against First Southwest because SWS failed to make reasonable and ordinary efforts to mitigate its alleged losses; SWS is precluded from any recovery against First Southwest based upon the terms of the due bills; and, SWS is precluded from recovering any attorneys' fees, based upon a statute or any other theory because First Southwest is not a party to a contract with SWS for the Bonds and SWS has failed to assert any valid cause of action.

In the Counterclaim, First Southwest asserted a claim against SWS for bringing a frivolous action.

Unless specifically admitted in its Answer, SWS denied the allegations made in the Counterclaim.

### **RELIEF REQUESTED**

SWS requested an award in the amount of:

Actual/Compensatory Damages	\$163,283.76
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified

Other Monetary Relief

Unspecified

First Southwest requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

In the Counterclaim, First Southwest requested an award in the amount of:

Actual/Compensatory Damages  
Attorneys' Fees  
Other Costs

Unspecified  
Unspecified  
Unspecified

**OTHER ISSUES CONSIDERED & DECIDED**

After consideration of the papers submitted and the arguments presented by the parties during the February 14, 2006 pre-hearing conference, the Panel determined that the Motion to Dismiss filed by First Southwest was denied.

At hearing, First Southwest reasserted its Motion to Dismiss. After consideration of the parties' argument, the Panel determined that the Motion be denied.

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

- 1.) Respondent/Counter-Claimant, First Southwest Company, is liable for and shall pay to Claimant/Counter-Respondent, Southwest Securities, Inc., the sum of \$163,283.76 in compensatory damages;
- 2.) Respondent/Counter-Claimant, First Southwest Company, is liable for and shall pay to Claimant/Counter-Respondent, Southwest Securities, Inc., the sum of \$45,000.00 in attorneys' fees pursuant to statute;
- 3.) The Counterclaim of First Southwest Company is denied and dismissed with prejudice;
- 4.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and

5.) Any relief not specifically enumerated is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fee for each claim:

Initial Claim filing fee	= \$	1,000.00
Counterclaim filing fee	= \$	500.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firms are Southwest Securities, Inc. and First Southwest Company.

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

#### **Adjournment Fees**

Adjournments granted during these proceedings:

May 9-10, 2006, adjournment requested by First Southwest (Waived by Panel)	= \$	1,125.00
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#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each hearing 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:

Three (3) Pre-hearing sessions with Panel x \$1,125.00	= \$	3,375.00
Pre-hearing conferences: July 15, 2005	1 session	
February 14, 2006	1 session	
August 8, 2006	1 session	

Four (4) Hearing sessions x \$1,125.00	= \$	4,500.00
Hearing Dates:	December 11, 2006	2 sessions
	December 12, 2006	2 sessions
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Total Forum Fees	= \$	7,875.00

The Panel has assessed \$7,875.00 of the forum fees to First Southwest Company.

### **FEE SUMMARY**

Claimant/Counter-Respondent, Southwest Securities, Inc., is liable for:

Initial Filing Fee	= \$	1,000.00
Member Fees	= \$	5,200.00
<hr/> Total Fees	= \$	6,200.00
Less payments	= \$	7,325.00
<hr/> Refund Due Southwest Securities, Inc.	= \$	1,125.00

Respondent/Counter-Claimant, First Southwest Company is liable for:

Counterclaim Filing Fee	= \$	500.00
Member Fees	= \$	5,200.00
Forum Fees	= \$	7,875.00
<hr/> Total Fees	= \$	13,575.00
Less payments	= \$	5,200.00
<hr/> Balance Due NASD Dispute Resolution	= \$	8,375.00

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

**ARBITRATION PANEL**

R. Dan Mitchell - Non-Public Arbitrator, Presiding Chair  
Dolores Martin - Non-Public Arbitrator  
Chester E. Young - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

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R. Dan Mitchell  
Non-Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Dolores Martin  
Non-Public Arbitrator

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

\_\_\_\_\_  
Chester E. Young  
Non-Public Arbitrator

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

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

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Chester E. Young - Non-Public Arbitrator

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R. Dan Mitchell  
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Non-Public Arbitrator, Presiding Chair

12/20/06  
Signature Date

Dolores Martin  
Dolores Martin  
Non-Public Arbitrator

Signature Date

Chester E. Young  
Chester E. Young  
Non-Public Arbitrator

Signature Date

12/21/06 Mm  
Date of Service (For NASD office use only)


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Non-Public Arbitrator, Presiding Chair

Signature Date




12-20-06

Dolores Martin  
Non-Public Arbitrator

Signature Date

Chester E. Young  
Non-Public Arbitrator

Signature Date

12/21/06 

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

  
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Chester E. Young  
Non-Public Arbitrator

1-4-07  
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Signature Date

12/21/06   
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Date of Service (For NASD office use only)