

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

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In the Matter of the Arbitration Between:

Ottilia Dee Baldwin,

Claimant,

v.

William Blair & Company, LLC and  
Norman Libman,

Respondents.

Case Number: 05-01600

Hearing Site: Indianapolis, Indiana

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

**REPRESENTATION OF PARTIES**

Ottilia Dee Baldwin ("Baldwin"), hereinafter referred to as "Claimant": Andrew Stoltmann, Esq. of Stoltmann Law Offices, P.C., located in Chicago, Illinois.

William Blair & Company, LLC ("William Blair"), hereinafter referred to as "Respondent": Ellen M. Wheeler, Esq. of the law firm Foley & Lardner, LLP, located in Chicago, Illinois.

Norman Libman ("Libman"), hereinafter referred to as "Respondent": Peter B. Schaeffer, Esq. of the Law Offices of Peter B. Schaeffer, located in Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed on or about: March 29, 2005

Baldwin signed the Uniform Submission Agreement: April 11, 2005

William Blair filed an Answer to the Statement of Claim on or about: June 21, 2005

William Blair signed the Uniform Submission Agreement: June 20, 2005

Libman filed an Answer and Request for Dismissal to the Statement of Claim on or about: June 21, 2005

Libman signed the Uniform Submission Agreement: June 16, 2005

Claimant filed a Motion to Amend Her Statement of Claim on: July 19, 2005

William Blair filed a Response to Claimant's Motion to Amend on: August 2, 2005

Libman filed a Response to Claimant's Motion to Amend on: August 1, 2005

Libman filed a Motion to Dismiss on: July 22, 2005

Claimant filed a Response to Libman's Motion to Dismiss on: August 8, 2005

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract, common law fraud and misrepresentations, breach of fiduciary duty and constructive fraud, Respondeat Superior and failure to supervise. The causes of action relate to the transfer and donation of 16,000 shares of Sara Lee stock to the Diamond Creek Equestrian Foundation without Claimant's authorization.

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

1. Indiana Law does not apply;
2. Indiana Code § 34-4-30-1 has been repealed;
3. Failure to state a claim for conversion;
4. Failure to state a claim for Indiana Securities Law violations;
5. No private right of action for violations of NASD Conduct Rules;
6. Failure to state a claim for breach of contract;
7. Failure to state a claim for fraudulent misrepresentation;
8. Failure to state a claim for breach of fiduciary duty;
9. Failure to state a claim for respondeat superior;
10. Failure to state a claim for negligent supervision;
11. Statute of limitations;
12. Lack of standing;
13. Waiver and estoppel; and
14. Laches

Unless specifically admitted in his Answer, Libman denied the allegations made in the Statement of Claim and asserted various affirmative defenses:

1. Civil Conversion § 34-4-30-1 Statute repealed;
2. Indiana State Securities Law violations – limitations bar;
3. There is no private right action;
4. Libman denies that he committed any breach of obligation or duty;
5. The initial statement of claim does not allege a specific false or misleading statement made by Libman;
6. Libman denies that he had a fiduciary duty relationship with respect to the decisions by Baldwin to transfer securities to Diamond Creek Equestrian Foundation;
7. The initial statement of claim should be dismissed in the absence of proof that Joanna Sunderland was a duly appointed guardian at the time of the filing, and that the filing of the initial statement of claim was within her authority as guardian;
8. The claims for civil conversion and breach of fiduciary duty are barred by the applicable statute of limitations; and
9. The claim for punitive damages should be dismissed because no wrongdoing occurred, and punitive damages are not available as a matter of law.

### **RELIEF REQUESTED**

Claimant requested \$4.5 million in treble damages, unspecified amount in punitive damages; costs and attorney's fees, including witness fees, expenses and accounting fees; disgorgement of commissions and fees; lost interest at the statutory rate of 8%; including pre and post-award

interest.

Respondent William Blair requested that the claims asserted against it be denied in its entirety, and for an award of costs and attorney's fees, and for such other relief as this Panel deems just.

Respondent Libman requested that the claims asserted against him be denied in its entirety, and for the Panel to grant expungement pursuant to the procedures of Rule 2130 of the NASD Conduct Rules.

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

On August 8, 2005, the Panel granted Claimant's Motion to Amend her Statement of Claim.

The Panel, having reviewed all the pleadings filed on Respondent Libman's Motion to Dismiss, entered an Order dated August 15, 2005 denying Libman's Motion to Dismiss.

At the hearing of this matter, Libman renewed his Motion to Dismiss for lack of standing. Also at the hearing, Libman and William Blair joined in an oral motion to limit damages and to preclude evidence relating to events occurring after January 2002.

Having heard the parties' oral arguments on these two issues, the Panel held Libman's renewed motion for dismissal in abeyance, and denied Libman's and William Blair's joint motion to limit damages and to preclude evidence.

### **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. Any and all claims asserted by Claimant, Ottilia Dee Baldwin, are denied.
2. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
3. 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 = \$ 600.00

#### **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, William Blair & Co. & Company, LLC is a party to this proceeding and is assessed the following fees;

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

October 17-21, 2005, adjournment by Claimant	= \$ 1,200.00
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### **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) Decision on discovery-related motion on the papers with one (1) arbitrator @ \$200.00	= \$ 200.00
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Claimant submitted one discovery-related motion

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: September 26, 2005 1 session	

Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 2,400.00
Pre-hearing conferences: July 1, 2005 1 session	
October 13, 2005	

Nine (9) Hearing sessions @ \$1,200.00	= \$10,800.00
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Hearing Dates:	November 8, 2005	2 sessions
	November 9, 2005	2 sessions
	November 10, 2005	2 sessions
	November 11, 2005	3 sessions

Total Forum Fees	= \$13,850.00
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1. The Panel has assessed \$4,616.66 of the total forum fees solely to Claimant, Ottilia Dee Baldwin.
2. The Panel has assessed \$4,616.66 of the total forum fees solely to Respondent, William Blair & Company, LLC.
3. The Panel has assessed \$4,616.66 of the forum fees solely to Respondent Norman B. Libman.

### **Fee Summary**

1. Claimant, Ottilia Dee Baldwin, is solely liable for:

Initial Filing Fee	= \$ 600.00
Postponement Fee	= \$ 1,200.00
Forum Fees	= \$ 4,616.66
Total Fees	= \$ 6,416.66
Less payments	= \$ 2,500.00
Balance Due NASD Dispute Resolution	= \$ 3,916.66

2. Respondent, William Blair & Company, LLC, is solely liable for:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 4,616.66
Total Fees	= \$13,166.66
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 4,616.66

3. Respondent, Norman B. Libman, is solely liable for:

Forum Fees	= \$ 4,616.66
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 4,616.66

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

**ARBITRATION PANEL**

George W. Harding	-	Public Arbitrator, Presiding Chairperson
Stephen L. Flint, JD	-	Public Arbitrator
Todd L. Barlow	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ George W. Harding  
George W. Harding  
Public Arbitrator, Presiding Chairperson

11-21-05  
Signature Date

/s/ Stephen L. Flint, JD  
Stephen L. Flint, JD  
Public Arbitrator

12/27/05  
Signature Date

/s/ Todd L. Barlow  
Todd L. Barlow  
Non-Public Arbitrator

11-21-05  
Signature Date

11-21-05  
Date of Service (For NASD Dispute Resolution use only)

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Arbitration No. 05-01600  
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