

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

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In the Matter of the Arbitration Between:

Brian and Catherine Egan JTWROS, Catherine Egan IRA, Brian Egan, Brian Egan IRA, Catherine Egan as Custodian for Amanda Egan UTMA, Catherine Egan as Custodian for Andrew Egan UTMA, and Corporate Trade, Inc. (Claimants) vs. Brookstreet Securities Corp., John Elwin, Jason Woessner and Stanley C. Brooks (Respondents)

Case Number: 05-2357

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimants Brian and Catherine Egan JTWROS, Catherine Egan IRA, Brian Egan, Brian Egan IRA, Catherine Egan as Custodian for Amanda Egan UTMA, Catherine Egan as Custodian for Andrew Egan UTMA, and Corporate Trade, Inc. hereinafter collectively referred to as "Claimants": Brian H. Reis, Esq., Law Office of Brian H. Reis, New York, NY.

Respondents Brookstreet Securities Corp. ("Brookstreet"), Jason Woessner ("Woessner") and Stanley C. Brooks ("Brooks") hereinafter collectively referred to as "Respondents": Gregory Sherwin, Esq., Fields, Fehn & Sherwin, Los Angeles, CA.

Respondent John Elwin hereinafter referred to as "Elwin" appeared *pro se*. Previously represented by H. Thomas Fehn, Esq., Fields, Fehn & Sherwin, Los Angeles, CA.

**CASE INFORMATION**

Statement of Claim filed on or about: May 2, 2005.

Amended Statement of Claim filed on or about: November 8, 2005.

Claimants did not submit Uniform Submission Agreements.

Statement of Answer filed by Respondents on or about: July 28, 2005.

Respondent Brookstreet signed the Uniform Submission Agreement: June 17, 2005.

Respondent Woessner did not submit a Uniform Submission Agreement.

Respondent Brooks did not submit a Uniform Submission Agreement.

Respondent Elwin did not submit a Uniform Submission Agreement.

### **CASE SUMMARY**

Claimants asserted the following causes of action: suitability, unauthorized trades, churning, misrepresentation, breach of fiduciary duty, failure to supervise, respondeat superior, insider training. The causes of action relate to the purchase of DDS stock.

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

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$85,000.00 and punitive damages in the amount of \$170,000.00. In their Amended Statement of Claim, Claimants requested compensatory damages in the amount of \$273,000.00, interest, forum fees and attorneys' fees.

In their Amended Statement of Claim, Claimants requested compensatory damages in the amount of \$273,000, interest, forum fees and attorneys' fees.

Respondents requested that the claim be dismissed in its entirety.

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

Respondents Woessner, Brooks and Elwin did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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. Respondents Brookstreet, Woessner, Brooks and Elwin are jointly and severally liable for and shall pay to Claimants Brian Egan and Catherine Egan compensatory damages in the amount of \$68,000.00 plus interest at the rate of nine percent per annum from fourteen days after the date of the award until the award is paid.
2. Respondent Brookstreet is liable for and shall pay to Claimants Brian Egan and Catherine Egan \$300.00 to reimburse them for the filing fee previously paid to NASD Dispute Resolution.
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	= \$ 300.00
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### **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, Brookstreet Securities Corporation is a party.

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

### **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:

Three (3) Pre-hearing sessions with Panel @ \$1,125.00	= \$ 3,375.00
Pre-hearing conferences: October 3, 2005	1 session
January 31, 2006	1 session
March 30, 2006	1 session

Eight (8) Hearing sessions @ \$1,125.00	= \$ 9,000.00
Hearing Dates: April 10, 2006	2 sessions
April 11, 2006	2 sessions
April 12, 2006	1 session
June 21, 2006	2 sessions
June 22, 2006	1 session

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Total Forum Fees	= \$12,375.00
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1. The Panel has assessed \$12,375.00 of the forum fees to Brookstreet.

### **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.

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|---|-------------|
| 1. Claimants requested copies of tapes              | = \$ 135.00 |
| 2. Respondent Brookstreet requested copies of tapes | = \$ 75.00  |

**Fee Summary**

1. Claimants are solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Administrative Costs</u>	= \$ 135.00
Total Fees	= \$ 435.00
<u>Less payments</u>	= \$ 1,425.00
Refund Due Claimants	= \$ 990.00

*As stated in the "Award" section above, Respondent Brookstreet shall reimburse Claimants for the filing fee previously paid to NASD Dispute Resolution.*

2. Respondent Brookstreet is solely liable for:

Member Fees	= \$ 5,200.00
Administrative Costs	= \$ 75.00
<u>Forum Fees</u>	= \$12,375.00
Total Fees	= \$17,650.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$12,450.00

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

**ARBITRATION PANEL**

Abigail Pessen, Esq.	-	Public Arbitrator, Presiding Chairperson
Irwin Kahn, Esq.	-	Public Arbitrator
Joseph La Rosa	-	Non-Public Arbitrator

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, which is my award.

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Abigail Pessen, Esq.  
Public Arbitrator, Presiding Chairperson

7/7/06  
Signature Date

\_\_\_\_\_  
Irwin Kahn, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Joseph La Rosa  
Non-Public Arbitrator

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

July 10, 2006  
Date of Service (For NASD Dispute Resolution use only)

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