

## SECOND AMENDED AWARD

### NASD REGULATION, INC.

In the matter of the Arbitration Between

Name of Claimant

Baraban Securities Incorporated

v.

Arbitration No.  
96-03555

Name of Respondents

Western International Securities, Jon Hogen,  
Scott Werner, Hans Aebischer, Andrew Lais,  
Martha Thompson, Vincent Anthony Pree,  
Donald Michael Bizub, Curtis Alan Roberts, and  
Charles Alexander Wright

v.

Name of Third Party Respondents

Joseph Gerace, Douglas Wright, and  
Samuel Erez

---

### REPRESENTATION

For Claimant and Third Party Respondents:

Robert A. Uhl, Esq.  
Robert A. Uhl, Inc.  
Beverly Hills, California

For Respondents:

Thomas D. Birge, Esq.  
Birge & Mayers  
Denver, Colorado

### CASE INFORMATION

Statement of Claim filed:

August 12, 1996

First Amended Statement of Claim filed:

May 15, 1997

Claimant's Submission Agreement signed:

August 12, 1996

Joint Statement of Answer, Counterclaim, and Third-Party Claim filed by Respondents Western International Securities, Jon Hogen, Scott Werner, Hans Aebischer, Andrew Lais, and Martha Thompson:	October 28, 1996
Joint Amended Statement of Answer, Counterclaim, and Third-Party Claim filed by Respondents Western International Securities, Jon Hogen, Scott Werner, Hans Aebischer, Andrew Lais, and Martha Thompson:	June 30, 1997
Statement of Answer and Counterclaim filed by Respondent Vincent Pree:	August 20, 1997
Respondent Western International Securities' Submission Agreement signed:	September 3, 1996
Respondent Jon Hogen's Submission Agreement signed:	October 8, 1996
Respondent Scott Werner's Submission Agreement signed:	October 8, 1996
Respondent Hans Aebischer's Submission Agreement signed:	October 8, 1996
Respondent Andrew Lais' Submission Agreement signed:	October 9, 1996
Respondent Martha Thompson's Submission Agreement signed:	September 30, 1996
Respondent Vincent Pree's Submission Agreement signed:	August 19, 1997
Third Party Respondent Joe Gerace's Submission Agreement signed:	December 9, 1996
Third Party Respondent Douglas Wright's Submission Agreement signed:	December 9, 1996
Third Party Respondent Sam Erez's Submission Agreement signed:	December 9, 1996

### HEARING INFORMATION

Pre Hearing Conference Dates / Sessions: February 23, 1996 (1 Session)  
January 14, 1997 (1 Session)  
May 5, 1997 (1 Session)  
May 14, 1997 (1 Session)  
June 17, 1997 (1 Session)  
July 14, 1997 (1 Session)  
October 14, 1997 (1 Session)  
March 19, 1998 (1 Session)

Hearing Dates / Sessions: February 2, 1998 (2 Sessions)  
February 3, 1998 (2 Sessions)  
February 4, 1998 (2 Sessions)  
February 5, 1998 (2 Sessions)  
  
February 23, 1998 (2 Sessions)  
February 24, 1998 (2 Sessions)  
February 25, 1998 (2 Sessions)  
February 26, 1998 (2 Sessions)  
February 27, 1998 (2 Sessions)  
  
March 23, 1998 (2 Sessions)  
March 24, 1998 (2 Sessions)  
March 25, 1998 (2 Sessions)  
March 26, 1998 (2 Sessions)  
March 27, 1998 (2 Sessions)

Hearing Location: Los Angeles, California

### CASE SUMMARY

Claimant alleged in its First Amended Statement of Claim that Respondent Western International Securities unlawfully raided Claimant's South Pasadena Branch, interfered with Claimant's contractual relations, and stole trade secrets from the Claimant. Claimant also alleged that all Respondents breached their contracts with the Claimant, interfered with Claimant's contractual relations with its customers, and slandered the Claimant. Claimant further alleged that Respondents' conduct as a whole constituted unfair competition.

Respondents in their Amended Answer denied each and every allegation of wrongdoing set forth in the Claimant's Amended Statement of Claim.

Respondents in their Amended Counterclaim and Third-Party Claim alleged that Claimant and Third-Party Respondents breached their employment contracts, committed a theft of trade secrets, interfered with prospective business advantages and contractual relations, engaged in unfair competition, and committed defamation against the Respondents and Third-Party Claimants.

### **RELIEF REQUESTED**

Claimant requested not less than \$100,000.00 in compensatory damages, interest, punitive damages, costs, attorney's fees, and a permanent injunction against Respondents' alleged wrongful conduct.

Respondents requested the dismissal of all the claims set forth in Claimant's Amended Statement of Claim. Respondents jointly requested an award of not less than \$100,000.00 in compensatory damages, punitive damages, and attorney's fees,

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

The parties agreed that the Award in this matter may be executed either in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties agreed to receive conformed copies of the Award while the original remains on file with the NASD Regulation, Inc., Office of Dispute Resolution.

On February 26, 1998, the Arbitration Panel, upon motion by the Respondents, dismissed Respondents Scott Werner, Hans Aebischer, Andrew Lais, Martha Thompson, Donald Michael Bizub, and Charles Wright with prejudice.

On April 10, 1998 Counter-Claimant Vincent Pree filed a Motion to Clarify the Award or, in the Alternative, to Amend or Modify the Award. On April 13, 1998 Counter-Respondent Baraban Securities, Inc. filed papers stating that it did not oppose the Motion. On June 8, 1998 the Arbitration Panel granted the Motion. This award completely supersedes the previous award issued in this case.

On January 21, 1999 Counter-Claimant Vincent Pree filed a Renewed Motion to Clarify and Enforce the Award. Counter-Respondent Baraban Securities, Inc. did not file any documents in opposition to the Motion. On February 22, 1999 the Arbitration Panel granted the Motion. This award completely supersedes the previous awards issued in this case.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Western International Securities is liable to and shall pay Baraban Securities, Inc. the sum of \$96,525.00 in compensatory damages
2. All other claims set forth in the Claimant's Statement of Claim are denied.
3. All claims set forth in the Respondents' Counterclaim and Third-Party Claim are dismissed with prejudice.
4. Respondents Jon Hogen, Curtis Roberts, and Vincent Anthony Pree are dismissed with prejudice.

5. Vincent Anthony Pree's Form U-5 dated August 8, 1996: Item 12 should remain as "discharged" but the explanation should state: management disagreement with Mr. Pree. The previous reason for termination ("failure to supervise") should be deleted in its entirety.
6. Vincent Anthony Pree's Form U-4 DRP page concerning Baraban should be deleted in its entirety.
7. Vincent Anthony Pree's Form U-5 and DRP-5 dated December 31, 1996 should be deleted in its entirety.
8. The NASD is directed to enforce this award as soon as possible.

#### **FORUM FEES**

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed:

One (1) Single Panelist Pre-Hearing Conference Session @ \$300.00/Session	= \$300.00
Seven (7) Full Panel Pre-Hearing Conference Session @ \$600.00/Session	= \$4,200.00
Thirty (30) Hearing Sessions @ \$600.00/Session	= \$18,000.00
<b>Total Fees Assessed</b>	<b>= \$22,500.00</b>

<b>Total Fees Assessed Against Claimant Baraban Securities, Inc.</b>	<b>= \$11,250.00</b>
<b>Credit for Hearing Session Deposit</b>	<b>= (\$600.00)</b>
<b>Claimant's Balance Due and Owing</b>	<b>= \$10,650.00</b>

<b>Total Fees Assessed Against Western International Securities</b>	<b>= \$11,250.00</b>
<b>Credit for Hearing Session Deposit - Counterclaim and Third-Party Claim</b>	<b>= (\$750.00)</b>
<b>Respondent's Balance Due and Owing</b>	<b>= \$10,500.00</b>

Fees are payable to NASD Regulation, Inc.

#### **OTHER FEES**


Pursuant to Rule 10333 of the Code, Respondent Western International Securities has paid to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced. The amount invoiced should have been \$300.00. The NASD shall refund the \$50.00 difference to Western International Securities.

Pursuant to Rule 10333 of the Code, Respondent Baraban Securities, Inc. has paid to NASD Regulation, Inc. the \$300.00 member surcharge previously invoiced.

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Robert L. Schouweiler, Esq.	Public Arbitrator
Alan D. Shifman, Esq.	Industry Arbitrator
David J. Anderson	Public Arbitrator

Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Alan D. Shifman, Esq.

\_\_\_\_\_  
David J. Anderson

Dissenting Arbitrator's Signature

\_\_\_\_\_  
Robert L. Schouweiler, Esq.

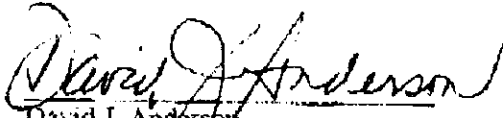
Date of Service: March 9, 1999

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Robert L. Schouweiler, Esq.	Public Arbitrator
Alan D. Shifman, Esq.	Industry Arbitrator
David J. Anderson	Public Arbitrator

Concurring Arbitrators' Signatures

Alan D. Shifman, Esq.

  
David J. Anderson

Dissenting Arbitrator's Signature

Robert L. Schouweiler, Esq.

Date of Service: March 9, 1999

ARBITRATORS


Name .....	Public / Industry
Robert L. Schouweiler, Esq.	Public Arbitrator
Alan D. Shifman, Esq.	Industry Arbitrator
David J. Anderson	Public Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Alan D. Shifman, Esq.

\_\_\_\_\_  
David J. Anderson

Dissenting Arbitrator's Signature

  
Robert L. Schouweiler, Esq.

Date of Service: March 9, 1999