

**AWARD**

**NASD REGULATION, INC.**

In the matter of the Arbitration Between

Name of Claimant(s)

Ronald Tracy

Consolidated  
Arbitration  
Case Numbers  
96-05062 and  
96-05255

Name of Respondent(s)

Dain Bosworth Incorporated

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**REPRESENTATION**

For Ronald Tracy: Scott A. Shorr, Esq. and Keith A. Ketterling, Esq., Stoll Stoll Berne Lokting & Shlachter P.C., Portland, Oregon

For Dain Bosworth Incorporated: Ronald P. Kane, Esq., Gomberg Kane & Fischer, Ltd., Chicago, Illinois

**CASE INFORMATION 96-05062**

Statement of Claim filed by Ronald Tracy: November 11, 1996

Ronald Tracy's Submission Agreement signed: November 12, 1996

Statement of Answer filed by Dain Bosworth Incorporated: February 6, 1997

Dain Bosworth Incorporated's Submission Agreement signed: March 5, 1997

**CASE INFORMATION 96-05255**

Statement of Claim filed by Dain Bosworth Incorporated: November 22, 1996

Dain Bosworth Incorporated's Submission Agreement signed: November 22, 1996

Statement of Answer filed by Respondent Ronald Tracy: March 7, 1997

Ronald Tracy's Submission Agreement signed: February 10, 1997

Ronald Tracy's Hearing Memorandum filed: April 8, 1998

Ronald Tracy's Post-Hearing Memorandum filed: April 20, 1998

Dain Bosworth Incorporated's Post-Hearing Memorandum filed: April 27, 1998

#### HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

March 19, 1998 (one session)

Hearing Date(s)/Session(s): April 13, 1998 (two sessions)

April 14, 1998 (two sessions)

Hearing Location: Portland, Oregon

#### CASE SUMMARY

Ronald Tracy alleged that Dain Bosworth Incorporated (Dain Bosworth) recruited Tracy and his large book of clients to Dain Bosworth by offering him a \$200,000 up-front bonus and promising him that he could continue to offer his clients Initial Public Offerings (IPOs) underwritten by Paulson Investment Company, Inc. (Paulson); and based on that offer, Tracy passed up a better financial offer to work at PaineWebber Inc. and went to work at Dain Bosworth. Tracy further alleged that initially, Dain Bosworth lived up to the agreement by allowing Tracy to participate in the very successful Paulson offering of Supergen, Inc.; However, just a few months after the Supergen offering, Dain Bosworth breached the agreement; First, Dain Bosworth refused to allow Tracy to place shares with his clients for the Paulson IPO of Microvision; then, shortly thereafter, Dain Bosworth refused to allow Tracy to place shares of a second Paulson IPO, Neotherapeutics. Tracy further alleged that Dain Bosworth's refusal to let Tracy sell shares of the Paulson IPO's (1) breached their oral agreement, (2) violated the covenant of good faith and fair dealing that underlied their bonus agreement, and (3) served to constructively discharge Tracy.

Dain Bosworth alleged that pursuant to the terms of a Promissory Note executed by Mr. Tracy on or about July 30, 1993, the principal sum of \$50,000.00, plus accrued interest, was immediately due and payable upon Tracy's resignation; that demand was made on Tracy; and that Tracy has not made payment and is in default. Dain Bosworth further alleged that Tracy is not entitled to any alleged damages or performance bonuses and further alleged that he is not entitled to a declaratory judgment regarding the amount he owes Dain Bosworth.

### RELIEF REQUESTED

Ronald Tracy alleged that he is entitled to the lost commissions that he would have earned on the sales of Microvision and Neotherapeutics units in the amount of approximately \$24,000.00; and approximately \$10,000.00 for Dain Bosworth's negligence in delaying the termination of his license; and further alleged that he is entitled to earned performance bonuses of approximately \$11,000.00 plus a declaratory judgment that the remaining amount of his forgivable loan to Dain Bosworth has been satisfied by Dain Bosworth's constructive discharge of Mr. Tracy. Mr. Tracy also requested recovery of his costs and fees incurred in this matter.

Dain Bosworth requested that the panel deny Mr. Tracy's claims in their entirety and further requested that Tracy be ordered to pay Dain Bosworth \$50,000.00 plus interest at the rate of six percent per annum from July 30, 1993 to the date of entry of the award and the costs and expenses of this proceeding, including attorney's fees.

### OTHER ISSUES CONSIDERED AND DECIDED

Pursuant to the parties' agreement and Rule 10314(d) of the NASD Regulation, Inc. (NASD) Code of Arbitration Procedure, case numbers 96-05062 and 96-05255 were consolidated for hearing purposes.

The parties have agreed that the Award in this matter may be executed in either counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with NASD.

### AWARD

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

1. All claims by Ronald Tracy are dismissed.
2. Ronald Tracy is liable for and shall pay to Dain Bosworth Incorporated the sum of \$50,000.00 plus interest at the rate of 6% per annum from July 30, 1993 until payment of this award.
3. The parties shall each bear their respective costs including attorney's fees.

### FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain Ronald Tracy's hearing session deposit in the amount of \$600.00. The panel determined that Ronald Tracy shall be responsible for forum fees in the amount of \$1,500.00, calculated as follows: One pre-hearing session times \$300.00 plus three hearing sessions times \$600.00, minus the \$600.00 hearing session deposit retained by the NASD. The panel further determined that the NASD shall retain Dain Bosworth's hearing session deposit in the amount of \$600.00 as an assessment of forum fees against Dain Bosworth for one hearing session.

Fees are payable to NASD Regulation, Inc.


### OTHER FEES

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, Dain Bosworth Incorporated has paid to NASD the \$200.00 member surcharge previously invoiced with respect to Case Number 96-05062 and has also paid the \$200.00 member surcharge with respect to Case Number 96-05255.

### ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Gerald D. Wygant, Esq.	Public Arbitrator
Willard L. Cushing, Esq.	Public Arbitrator
Peter Frank Bozikovich	Industry Arbitrator

### Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Gerald D. Wygant, Esq.

\_\_\_\_\_  
Willard L. Cushing, Esq.

\_\_\_\_\_  
Peter Frank Bozikovich

Date of Decision: \_\_\_\_\_

Date Served:

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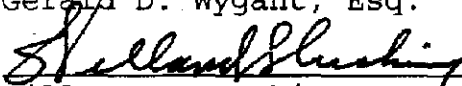
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