

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Alan H. Shaw

Case No. 98-03878

Names of Respondents

J. C. Bradford & Co.
Darren J. Schiff

In the Matter of the Arbitration Between

Name of Claimant

Foot and Leg Clinic Profit Sharing Plan

Consolidated with
Case No. 99-1369

Names of Respondents

J.C. Bradford & Co.
Darren J. Schiff

REPRESENTATION OF PARTIES

For Alan H. Shaw ("Shaw") and Foot and Leg Clinic P.A. Profit Sharing Plan ("Foot and Leg"), hereinafter collectively referred to as "Claimants": Thomas J. Gallo, Esq. and Mark W. Phillips, Esq. of the law firm of Robins, Kaplan, Miller & Ciresi L.L.P., Atlanta, Georgia.

For Respondent J.C. Bradford & Co. ("Bradford"): Peter W. Schneider, Esq. and Jeffrey W. Willis, Esq. of the law firm of Rogers & Hardin LLP, Atlanta, Georgia and Linda Gibbons Willis, Associate General Counsel, Bradford, Nashville, Tennessee.

For Respondent Darren Schiff ("Schiff"): Susan W. Housen, Esq. and Jennifer Tourial, Esq. of the law firm of Holland & Knight LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed in NASD Arbitration #98-3878 on or about: October 16, 1998.
Statement of Claim filed in NASD Arbitration # 99-1369 on or about: March 19, 1999.
Letter dated April 13, 1999 from Mark W. Phillips, Esq. to NASD Regulation, Inc. filed.
Claimant Foot and Leg signed the Uniform Submission Agreement: March 19, 1999.
Claimant Shaw signed the Uniform Submission Agreement: October 16, 1998.
Claimant's Answer to Respondent Schiff's Counterclaim filed in NASD Arbitration # 98-3878 on or about: December 4, 1998.
Claimant's Answer to J.C. Bradford's Counterclaims filed in NASD Arbitration # 98-3878 on or about: December 28, 1998.
Alan H. Shaw's Answer to Bradford's Third Party Complaint filed in NASD Arbitration # 99-1369 on or about: July 14, 1999.
Response and Counterclaims of J.C. Bradford & Co. filed in NASD Arbitration # 98-3878 on or about: December 18, 1998.
Answer of J.C. Bradford & Co. to Statement of Claim and Third-Party Claim Against Dr. Alan Shaw filed in NASD Arbitration # 99-1369 on or about: June 29, 1999.
Amended Response of J.C. Bradford & Co. to Statement of Claim filed on or about: July 26, 1999.
Respondent Bradford signed the Uniform Submission Agreement: December 18, 1998.
Answer and Counterclaim of Darren Schiff filed in NASD Arbitration # 98-3878 on or about: November 16, 1998.
Answer of Darren Schiff filed in NASD Arbitration # 99-1369 on or about: July 13, 1999.
Respondent Darren Schiff's Amended Response to Statement of Claim filed on or about: September 17, 1999.
Respondent Schiff signed Uniform Submission Agreements: November 12, 1998 and June 14, 1999.

CASE SUMMARY

Claimant Alan H. Shaw asserted the following: Respondent Schiff, his broker at Bradford, sold Claimant Shaw's NationsBank stock without Shaw's authorization and consent during the summer and fall of 1997. Further, Respondent Schiff purchased in excess of 150,000 shares of Milestone Scientific, Inc. ("Milestone") stock for Shaw's account when Shaw only authorized the purchase of 15,000 shares of Milestone. Respondent Schiff admitted in a Settlement Agreement and Release dated April 30, 1998 that the NationsBank and Milestone trades were done without Shaw's authorization or consent. Claimant Shaw also seeks the return of 34,638 shares of InterVu stock that Bradford wrongfully liquidated from Shaw's account in September 1998 to meet margin calls arising out of Respondent Schiff's unauthorized purchases of Milestone.

Claimant Shaw sought damages against Respondent Schiff for the wrongful conduct described above and against Bradford under the doctrine of respondeat superior and for failing to adopt and implement appropriate supervisory procedures. Claimant Shaw alleged that Respondents

Schiff and Bradford are jointly and severally liable to Shaw for: (1) violations of Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder; (2) violations of Section 12(a)(2) of the Georgia Securities Act; (3) breach of fiduciary and contractual duties; (4) actual and constructive fraud; and, (5) negligence. Claimant Shaw seeks a judgement against Respondent Schiff individually for breach of the April 30, 1998 Settlement Agreement and Release.

Claimant Foot and Leg alleged that Respondent Schiff, its broker at Bradford, purchased 19,000 shares of Milestone common stock without Claimant Foot and Leg's knowledge and consent in 1997 and 1998.

Claimant Foot and Leg seeks damages against Respondent Schiff for the wrongful conduct described above and against Respondent Bradford under the doctrine of respondeat superior and for failing to adopt and implement appropriate supervisory procedures. Claimant Foot and Leg alleged that Respondents Schiff and Bradford are jointly and severally liable to Claimant Foot and Leg for: (1) violations of Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder; (2) violations of Section 12(a)(2) of the Georgia Securities Act; (3) breach of fiduciary and contractual duties; (4) actual constructive fraud; and, (5) negligence.

Respondent Bradford denied Claimants' allegations and maintained the following: Claimants' claims against Respondent Bradford are barred under numerous legal and equitable principles, including principles of contract, ratification, waiver, estoppel, accord and satisfaction, voluntary assumption of the risk, unclean hands, failure to mitigate alleged damages, failure of proof, and statutes of limitation and repose and/or the doctrine of laches. Respondent Bradford further maintained that Claimants were suitable for the trades in their accounts based on their extensive experience in the stock market, knowledge of the risks, and financial wherewithal, and that Claimants were aware of the level of trading activity in their account and controlled that activity.

Respondent Bradford asserted counterclaims against Claimant Shaw for tortious interference with business and contractual relations, conspiracy to breach fiduciary duty, and conspiracy to defraud based on Claimant Shaw accepting money from Respondent Schiff and entering into a settlement with Respondent Schiff without Respondent Bradford's knowledge. Respondent Bradford also asserted a claim against Claimant Shaw for breach of contract based on a debit balance of \$34,911.00 in Claimant Shaw's Bradford account. Finally, Respondent Bradford asserted a counterclaim and/or third-party claim against Claimant Shaw under ERISA and common law based on Shaw's status as Trustee of the Foot and Leg account and his agreement to indemnify Respondent Bradford against any losses suffered by Foot and Leg.

Respondent Schiff denied Claimants' allegations as set forth in their Statements of Claim and asserted numerous defenses to the claims, including: ratification, authorization, payment and release, duress, waiver, estoppel, accord and satisfaction, unjust enrichment, unclean hands, and that the Settlement Agreement is void *ab initio*, on the grounds that there is a failure of

consideration, it is unconscionable and violates public policy. Respondent Schiff also requested that the Panel restore to him all benefits paid to Claimant pursuant to the Settlement and Release Agreement.

Respondent Schiff amended his response to Claimant Shaw's Statement of Claim on September 17, 1999, setting forth a counterclaim for declaratory judgment and seeking an award from the Panel declaring the Release and Settlement Agreement void and unenforceable and ordering Claimant to reimburse Respondent Schiff for all benefits paid by him pursuant to the agreement. In the alternative, Respondent Schiff requested that the Panel reimburse him in the amount that he paid Claimant Shaw in excess of any judgment amount entered against Respondent Schiff.

RELIEF REQUESTED

Claimant Shaw requested damages in his Statement of Claim in excess of \$3,500,000.00. At the conclusion of the evidentiary hearing, Claimant Shaw requested the following specific damages:

A. Damages for which Respondent Bradford and Schiff are jointly and severally liable:

Monetary Damages:

Milestone Damages:	\$1,898,921.00
NationsBank Damages:	\$ 651,994.00
Churning Damages:	\$ 377,570.00
Total:	\$2,928,395.00

In addition, Claimant Shaw requested the return of 34,638 shares of InterVu stock or the equivalent number of shares from InterVu's successor in interest.

B. Damages against Respondent Schiff individually:

Claimant Shaw seeks damages against Respondent Schiff for breach of the April 30, 1998 Settlement Agreement and Release in the amount of \$3,614,493.47.

C. Claimant Shaw requested that Respondents Bradford and Schiff be held liable for Claimant Shaw's attorney's fees and for punitive damages.

Claimant Foot and Leg requested damages in its Statement of Claim in excess of \$500,000.00. At the conclusion of the evidentiary hearing, Claimant Foot and Leg requested the following specific damages:

A. Damages for which Respondents Bradford and Schiff are jointly and severally liable:

Monetary Damages:

Milestone Damages:	\$484,388.00
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- B. Claimant Foot and Leg requested that Respondents Bradford and Schiff be held liable for its attorney's fees and for punitive damages.

Respondent Bradford requested that Claimants' claims against it be dismissed, that Claimant Shaw be ordered to pay to Respondent Bradford \$34,911.00 to cover the debit balance in his Bradford account, that Respondent Bradford be awarded its attorney's fees and other expenses of litigation, and that all costs of this arbitration be assessed against Claimants. On its counterclaim/ third-party claim, Respondent Bradford requested that Claimant Shaw be ordered to pay Respondent Bradford its attorney's fees and other expenses of litigation and that Claimant Shaw be ordered to indemnify and hold Respondent Bradford harmless for any damages suffered by the Foot & Leg Profit Sharing Plan.

Respondent Schiff requested a finding in his favor and specifically requested that the Panel order the following:

1. That Claimant Shaw authorized and/or ratified all of the Milestone stock purchases and NationsBank stock sales in his account;
2. That Claimant Shaw will take nothing from Respondent Schiff;
3. That Claimant Shaw shall reimburse Respondent Schiff One Million Nine Hundred Thousand Dollars (\$1,900,000.00) that Respondent Schiff paid him throughout 1997 and 1998; and,
4. That Claimant Shaw shall return the Two Thousand Seven Hundred Fifteen (2,715) shares of common stock in InterVu, Inc. that Respondent Schiff pledged to Claimant Shaw.

OTHER ISSUES CONSIDERED AND DECIDED

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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

All of Claimants Shaw and Foot and Leg's claims against Respondents Bradford and Schiff are dismissed in all respects.

Claimants' requests for punitive damages are denied.

All of Respondents Bradford and Schiff's counterclaims are dismissed in all respects.

All third-party claims are dismissed in all respects.

Each party shall bear their respective costs, including attorneys' fees.

All other requests for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee NASD Arb. # 98-3878	= \$ 250.00
Initial claim filing fee NASD Arb. # 99-1369	= \$ 375.00
Counterclaim filing fee NASD Arb. # 98-3878 (Resps Schiff and Bradford)	= \$ 500.00
Third party claim filing fee NASD Arb. # 99-1369	= \$ 1,250.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge NASD Arb. # 98-3878	= \$2,500.00
Member surcharge NASD Arb. # 99-1369	= \$2,000.00
Pre-hearing process fee NASD Arb. # 98-3878	= \$ 600.00
Pre-hearing process fee NASD Arb. # 99-1369	= \$ 200.00
Hearing process fee	= \$4,500.00

Adjournment Fees

Adjournments requested during these proceedings:

September 13 through 17, 1999, adjournment by Resp Bradford	= fee waived by arb panel
May 1, 2000, adjournment by Respondent Bradford	= \$1,000.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One Pre-hearing session with a single arbitrator x \$300.00	= \$300.00
Pre-hearing conference: June 8, 1999	1 session
Three Pre-hearing sessions with Panel x \$1,000.00	= \$3,000.00
Pre-hearing conferences: April 7, 1999	1 session
August 12, 1999	1 session
September 3, 1999	1 session

Thirty-six Hearing sessions x \$1,000.00 = \$36,000.00

Hearing Dates:	October 14, 1999	2 sessions
	October 15, 1999	2 sessions
	January 12, 2000	2 sessions
	January 13, 2000	2 sessions
	January 14, 2000	2 sessions
	January 25, 2000	2 sessions
	January 26, 2000	2 sessions
	January 27, 2000	2 sessions
	April 10, 2000	2 sessions
	April 11, 2000	2 sessions
	April 12, 2000	2 sessions
	April 13, 2000	2 sessions
	May 2, 2000	2 sessions
	May 3, 2000	2 sessions
	May 4, 2000	2 sessions
	May 25, 2000	2 sessions
	May 30, 2000	2 sessions
	May 31, 2000	2 sessions

Total Forum Fees = \$39,300.00

The Panel has assessed \$13,100.00 of the forum fees to Claimants, jointly and severally.
The Panel has assessed \$13,100.00 of the forum fees to Respondent Bradford.
The Panel has assessed \$13,100.00 of the forum fees to Respondent Schiff.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

Fee Summary

Claimant Shaw be and hereby is solely liable for:

Initial Filing Fee	= \$250.00
Total Fees	= \$250.00
<u>Less payments</u>	<u>= \$250.00</u>
Balance Due NASD Regulation, Inc.	= \$0.00

Claimant Foot and Leg be and hereby is solely liable for:

Initial Filing Fee	= \$375.00
Total Fees	= \$375.00

<u>Less payments</u>	= \$375.00
Balance Due NASD Regulation, Inc.	= \$0.00

Claimants be and hereby are jointly and severally liable for:

Forum Fees	= \$13,100.00
Total Fees	= \$13,100.00
<u>Less payments</u>	= \$2,200.00
Balance Due NASD Regulation, Inc.	= \$10,900.00

Respondent Bradford be and hereby is solely liable for:

Third-Party Claim Filing Fee	= \$1,250.00
Counterclaim Filing Fee	= \$500.00
Adjournment Fee	= \$1,000.00
Member Fees	= \$9,800.00
Forum Fees	= \$13,100.00
Total Fees	= \$25,650.00
<u>Less payments</u>	= \$13,750.00
Balance Due NASD Regulation, Inc.	= \$11,900.00

Respondent Schiff be and hereby is solely liable for:

Counterclaim Filing Fee	= \$500.00
Forum Fees	= \$13,100.00
Total Fees	= \$13,600.00
<u>Less payments</u>	= \$1,500.00
Balance Due NASD Regulation, Inc.	= \$12,100.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

_____/S/_____
Simone Sicola
Public Arbitrator, Presiding Chair

Signature Date

_____/S/_____
Stuart Meyers, Esq.
Public Arbitrator

Signature Date

_____/S/_____
Bruce Adelberg
Industry Arbitrator

Signature Date

July 7, 2000

Date of Service (For NASD office use only)

Claimants be and hereby are jointly and severally liable for:

Forum Fees	= \$13,100.00
Total Fees	= \$13,100.00
<u>Less payments</u>	<u>= \$2,200.00</u>
Balance Due NASD Regulation, Inc.	= \$10,900.00

Respondent Bradford be and hereby is solely liable for:

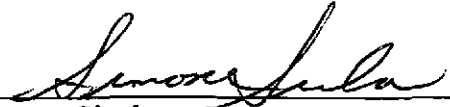
Third-Party Claim Filing Fee	= \$1,250.00
Counterclaim Filing Fee	= \$500.00
Adjournment Fee	= \$1,000.00
Member Fees	= \$9,800.00
Forum Fees	= \$13,100.00
Total Fees	= \$25,650.00
<u>Less payments</u>	<u>= \$13,750.00</u>
Balance Due NASD Regulation, Inc.	= \$11,900.00

Respondent Schiff be and hereby is solely liable for:

Counterclaim Filing Fee	= \$500.00
Forum Fees	= \$13,100.00
Total Fees	= \$13,600.00
<u>Less payments</u>	<u>= \$1,500.00</u>
Balance Due NASD Regulation, Inc.	= \$12,100.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures



Simone Sicola
Public Arbitrator, Presiding Chair

7/15/00

Signature Date

Stuart Meyers, Esq.
Public Arbitrator

Signature Date

Bruce Adelberg
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

Claimants be and hereby are jointly and severally liable for:

Forum Fees	= \$13,100.00
Total Fees	= \$13,100.00
<u>Less payments</u>	= \$2,200.00
Balance Due NASD Regulation, Inc.	= \$10,900.00

Respondent Bradford be and hereby is solely liable for:

Third-Party Claim Filing Fee	= \$1,250.00
Counterclaim Filing Fee	= \$500.00
Adjournment Fee	= \$1,000.00
Member Fees	= \$9,800.00
Forum Fees	= \$13,100.00
Total Fees	= \$25,650.00
<u>Less payments</u>	= \$13,750.00
Balance Due NASD Regulation, Inc.	= \$11,900.00

Respondent Schiff be and hereby is solely liable for:

Counterclaim Filing Fee	= \$500.00
Forum Fees	= \$13,100.00
Total Fees	= \$13,600.00
<u>Less payments</u>	= \$1,500.00
Balance Due NASD Regulation, Inc.	= \$12,100.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

Simone Sicola
Public Arbitrator, Presiding Chair

Signature Date



Stuart Meyers, Esq.
Public Arbitrator

6/27/00

Signature Date

Bruce Adelberg
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

Claimants be and hereby are jointly and severally liable for:

Forum Fees	= \$13,100.00
Total Fees	= \$13,100.00
<u>Less payments</u>	= \$2,200.00
Balance Due NASD Regulation, Inc.	= \$10,900.00

Respondent Bradford be and hereby is solely liable for:

Third-Party Claim Filing Fee	= \$1,250.00
Counterclaim Filing Fee	= \$500.00
Adjournment Fee	= \$1,000.00
Member Fees	= \$9,800.00
Forum Fees	= \$13,100.00
Total Fees	= \$25,650.00
<u>Less payments</u>	= \$13,750.00
Balance Due NASD Regulation, Inc.	= \$11,900.00

Respondent Schiff be and hereby is solely liable for:

Counterclaim Filing Fee	= \$500.00
Forum Fees	= \$13,100.00
Total Fees	= \$13,600.00
<u>Less payments</u>	= \$1,500.00
Balance Due NASD Regulation, Inc.	= \$12,100.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

Simone Scola
Public Arbitrator, Presiding Chair

Signature Date

Shurt Meyers, Esq.
Public Arbitrator

Signature Date

M. Bruce Adelberg
Bruce Adelberg
Industry Arbitrator

6/28/00
Signature Date

Date of Service (For NASD office use only)

