

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Arthur Wein, individually and as custodian for Eric Wein and Brian Wein, (Claimant) vs. FAB Securities of America, Inc. f/k/a RAS Securities Corp., Marc Wein, David Parsons, and Wertheim Schroder & Co., Inc. n/k/a Schroder & Company, (Respondents)

Case Number: 99-01427

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Arthur Wein, individually and as custodian for Eric Wein and Brian Wein, hereinafter referred to as "Claimant": Robert G. Heim, Esq., Law Offices of Robert G. Heim, New York, NY. Previously represented by: Russell S. Burnside, Esq., Greenberg Dauber Epstein & Tucker, Newark, NJ.

Respondent, Marc Wein ("Wein"): Joseph F. Keenan, Esq., a sole practitioner, New York, NY.

Respondent, David Parsons ("Parsons"): Sheldon H. Gopstein, Esq., a sole practitioner, New York, NY.

Respondent, Wertheim Schroder & Co., Inc. n/k/a Schroder & Company ("Schroder"): John P. Bevilacqua, Esq., Senior Vice President, Salomon Smith Barney, New York, NY.

Respondent, FAB Securities of America, Inc. f/k/a RAS Securities Corp. ("FAB"), did not make an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: March 22, 1999.

Amended Statement of Claim filed on or about: July 5, 2000.

Opposition to Schroder's Motion to Dismiss filed by Claimant on or about: September 8, 2000.

Opposition to Parson's Motion to Dismiss filed by Claimant on or about: November 8, 2000.

Claimant signed the Uniform Submission Agreement: May 26, 1999.

Statement of Answer filed by Wein on or about: November 10, 1999.

Wein did not sign the Uniform Submission Agreement.

Statement of Answer filed by Parsons on or about: September 12, 2000.  
Parsons signed the Uniform Submission Agreement: September 8, 2000.

Statement of Answer and Motion to Dismiss filed by Schroder on or about: August 25, 2000.  
Schroder did not sign the Uniform Submission Agreement.

FAB did not file a Statement of Answer or sign the Uniform Submission Agreement.

### CASE SUMMARY

Claimant asserted the following causes of action: refusal to stop trading on margin; unauthorized trades; failure to execute orders; fraudulent and negligent misrepresentations; false assurances; unsuitability; negligence; wilful or negligent omission; breach of fiduciary duty; failure to know thy customer; failure to comply with the NASD Rules of Fair Practice; failure to supervise; and respondeat superior. Claimant's claim involved the stock of Burr Brown and Cognos Inc., as well as other unspecified financial products.

Unless specifically admitted in his Answer, Wein denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted the following defenses: Claimant's claims are barred by the applicable principles of waiver and ratification; Claimant failed to take timely and appropriate action to mitigate his losses; Claimant knew and assumed the risks of the transactions alleged to form the basis of his claim; and Wein, in discharging his duties, if any, to Claimant, acted in good faith and exercised at least that degree of care, diligence, and skill which ordinarily prudent persons would exercise in similar circumstances and like positions.

Unless specifically admitted in his Answer, Parsons denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted the following defenses: the Amended Statement of Claim fails to state a claim upon which relief may be granted; Claimant authorized and/or ratified all of the transactions in the respective accounts; Claimant's claims are barred by the principles of waiver, estoppel, ratification, and/or the Statute of Frauds; Claimant is barred from disputing the subject transactions under Article 8 of the Uniform Commercial Code; Claimant knowingly assumed the risks of the investments in question; if any damage or loss was sustained by Claimant, said damage or loss was caused or contributed to, in whole or in part, by Claimant's own actions, inactions, fault, neglect, and/or lack of due diligence; Parsons has no personal liability to Claimant whatsoever; Claimant has failed to mitigate his damages; no private right of action exists for

alleged violations of the rules of self-regulatory organizations; Parsons is entitled to a credit or offset in the amount of any cash and/or income tax savings gained as a result of the transactions at issue; and exemplary or punitive damages and attorneys' fees are beyond the scope of this proceeding and may not be awarded.

Unless specifically admitted in its Answer, Schroder denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted the following defenses: the Amended Statement of Claim has failed to state a claim against Schroder upon which relief can be granted; Schroder at all times acted in good faith in its dealings with Claimant; Claimant's claims are barred by the applicable statutes of limitations; Claimant has waived any potential for recovery under the Statement of Claim, or any of the causes of action purportedly stated therein; Claimant is estopped from asserting the Amended Statement of Claim or any of the causes of action purportedly stated therein due to his own conduct; Claimant's alleged damages, if any, were not caused by any negligent or otherwise culpable conduct by Schroder, but resulted from Claimant's own culpable conduct; and Claimant has provided no basis for his alleged damages as against Schroder.

#### **RELIEF REQUESTED**

Claimant requested:

- a. Compensatory damages based upon the decrease in the value of Claimant's investment accounts;
- b. Compensatory damages for mental and emotional anguish;
- c. Pre-award interest at the prevailing mutual fund average rate of return from the date of each remittance of funds to FAB;
- d. Consequential damages;
- e. Post-award interest;
- f. Punitive damages;
- g. Costs, attorneys' fees, arbitration fees, and arbitration expenses; and
- h. Such other and further relief as is deemed just and equitable.

Wein requested that all of Claimant's claims be dismissed against him and that all costs and fees be assessed against Claimant.

Parsons requested that the Amended Statement of Claim be dismissed in its entirety.

Schroder requested that:

- a. Claimant take nothing by his Amended Statement of Claim;
- b. Schroder be awarded its costs of suit incurred herein; and
- c. Schroder be granted such other relief as the Panel may deem just and appropriate.

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

Upon review of the file and the representations made on behalf of Claimant, the undersigned arbitrators (the "Panel") determined that FAB has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Wein, Schroder, and FAB did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

During the hearings in this matter, the Panel allowed Claimant to amend the claim to include Eric Wein and Brian Wein, individually, as Claimants. Claimant submitted into evidence a Uniform Submission Agreement executed by both Eric Wein and Brian Wein.

Prior to the conclusion of the hearings in this matter, the Panel granted Schroder's Motion to Dismiss.

Parsons made a Motion to Dismiss at the conclusion of the hearings in this matter. The Panel granted said Motion.

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. Claimant's claims are hereby dismissed in their entirety.
2. All other requests for relief are hereby denied.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

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

Initial claim filing fee = \$ 250.00

#### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, FAB Securities of America, Inc. and Schroder & Company are parties.

#### FAB Securities of America, Inc.

Member surcharge = \$1,200.00

#### Schroder & Company

Member surcharge = \$1,200.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$2,000.00

#### 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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$1,000.00 = \$2,000.00

Pre-hearing conferences:	June 2, 2000	1 session
	October 5, 2000	1 session

Five (5) Hearing sessions x \$1,000.00 = \$5,000.00

Hearing Dates:	September 26, 2000	1 session
	September 27, 2000	2 sessions
	November 29, 2000	2 sessions

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Total Forum Fees = \$7,000.00

1. The Panel has assessed \$3,500.00 of the forum fees against Claimant.
2. The Panel has assessed \$3,500.00 of the forum fees against Wein.

### **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.

1. Wein, requested tapes, \$120.00.
2. Claimant, requested tapes, \$45.00.

### **Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 250.00
Administrative Costs	= \$ 45.00
<u>Forum Fees</u>	<u>= \$3,500.00</u>
Total Fees	= \$3,795.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,370.00
  
2. Wein be and hereby is solely liable for:

Forum Fees	= \$3,500.00
<u>Administrative Costs</u>	<u>= \$ 120.00</u>
Total Fees	= \$3,620.00
<u>Less payments</u>	<u>= \$ 120.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,500.00
  
3. FAB be and hereby is solely liable for:

<u>Member Fees</u>	<u>= \$1,200.00</u>
Total Fees	= \$1,200.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,200.00
  
4. Schroder be and hereby is solely liable for:

<u>Member Fees</u>	<u>= \$3,800.00</u>
Total Fees	= \$3,800.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,800.00

All balances are due and payable to NASD Dispute Resolution, Inc.

**Concurring Arbitrators' Signatures**

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 instrument which is my award.



Martin A. Edelstein, Esq.  
Public Arbitrator, Presiding Chair

12-17-00

Signature Date

\_\_\_\_\_  
David C. Carter  
Public Arbitrator

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

\_\_\_\_\_  
Derek B. Park  
Industry Arbitrator

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

January 3, 2001

Date of Service (For NASD office use only)

**Concurring Arbitrators' Signatures**

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 instrument which is my award.

\_\_\_\_\_  
Martin A. Edelstein, Esq.  
Public Arbitrator, Presiding Chair



David C. Carter  
Public Arbitrator

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

12/15/2000

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

\_\_\_\_\_  
Derek B. Park  
Industry Arbitrator

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

\_\_\_\_\_  
January 3, 2001

\_\_\_\_\_  
Date of Service (For NASD office use only)



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**Concurring Arbitrators' Signatures**

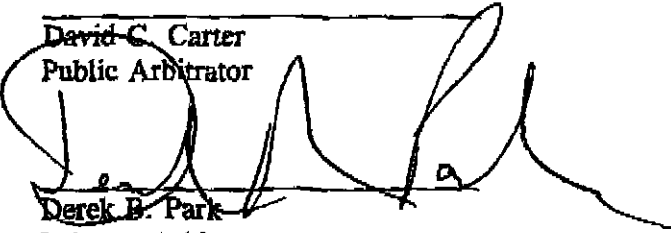
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Martin A. Edelstein, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

David C. Carter  
Public Arbitrator

Signature Date

  
Derek B. Park  
Industry Arbitrator

12/18/00  
Signature Date

January 3, 2001  
Date of Service (For NASD office use only)