

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Fabian Basabe

Case No. 99-01790

Names of Respondents

J.W. Barclay & Co., Inc.
John Anthony Bruno
Anton Michael Brill

REPRESENTATION OF PARTIES

For Fabian Basabe ("Basabe"), hereinafter referred to as "Claimant": Mark F. Raymond, Esq. of Tew Cardenas Rebak Kellogg Lehman Demaria & Tague, L.L.P., Miami, FL.

For J.W. Barclay & Co., Inc. ("J.W. Barclay"), John Anthony Bruno ("Bruno") and Anton Michael Brill ("Brill"), hereinafter referred to as "Respondents": David E. Robbins, Esq. of Kaufman, Feiner, Yamin, Gildin & Robbins, L.L.P., New York, N.Y.

CASE INFORMATION

Statement of Claim filed on or about: April 15, 1999.

Claimant signed the Uniform Submission Agreement on: March 31, 1999.

Answer of J.W. Barclay, Bruno, and Brill with Counterclaim of J.W. Barclay filed on or about: July 30, 1999.

J.W. Barclay and Bruno signed Uniform Submission Agreements on: July 27, 1999.

Brill signed the Uniform Submission Agreement on: July 15, 1999.

CASE SUMMARY

Claimant asserted the following: Brill persistently "cold called" Claimant and sought to gain his confidence with representations about allegedly having successfully made money for his brokerage clients, that he had substantial investment experience, and that he was employed at a highly reputable and established brokerage firm. Upon these and other misrepresentations, Brill convinced Claimant, a first time investor with a ninth grade education, to open a trading account. Brill improperly qualified Claimant, without taking the time to "know his customer", and embarked on a reckless pattern of unauthorized trades and high risk recommendations, causing the account to be invested in a number of securities without Claimant's consent, all grossly unsuitable. In a matter of ten months, Brill's investment advice resulted in Claimant's loss of principal exceeding \$450,000.00. Brill's investment strategies only grew worse as the losses multiplied. Respondent Bruno then fraudulently induced Claimant to place an additional \$100,000.00 in his trading account. To induce Claimant to place additional funds into the account, Bruno provided a written assurance to Claimant that the money would be used to conduct "additional equity transactions". Respondent Bruno never intended to honor his promise to Claimant. The money was diverted to pay J.W. Barclay's debt to Oppenheimer & Co. Specifically, J.W. Barclay was

responsible to Oppenheimer & Co., for the account overage in Claimant's account caused by Brill's unauthorized trades. Bruno, as President of J.W. Barclay, was responsible for the daily trading activities, for compliance relating to all securities laws and regulations, and for the actions of Respondent Brill. Bruno sat back and watched as Claimant suffered substantial losses and the account was churned and unsuitably invested.

Unless specifically admitted in their Statement of Answer, Respondents J.W. Barclay, Bruno, and Brill denied the allegations of wrongdoing contained in the Statement of Claim and alleged the following: Claimant takes absolutely no responsibility for the millions of dollars of trading that took place in his account, half of which (trade number wise) and three quarters of which (value wise) were unsolicited orders. Of those unsolicited orders, half were limit orders in which the Claimant directed Respondent Brill to purchase or sell specific stocks, short term, for specific prices. Claimant alleged a pattern of unauthorized trading, but never complained to Respondents, and continued to deposit funds into his account. Claimant alleged that Respondent Brill completely controlled the trading activity in the account, but repeatedly entered unsolicited orders. Claimant alleged his account was churned, but for the roughly 140 trades executed in Claimant's account, Respondent Brill only charged \$100.00 per trade. Claimant never complained to anyone, oral or written, about any of these trades. Claimant regularly made large deposits to fuel his trading activity. Claimant insisted on purchasing a \$1 million stock position, on margin, when his account was in a negative equity position. Since Respondent J.W. Barclay would not permit Claimant to gamble with their money, as an accommodation it was agreed that if Claimant deposited the \$100,000.00 to satisfy most of his debit balance and another \$100,000.00 to conduct additional trading, then Respondents Bruno and J.W. Barclay would attempt to help him recover his losses. Claimant sent in the first \$100,000.00 to conduct the requested trading. When Claimant failed to wire the additional funds to satisfy his debit balance obligation, Bruno had no choice but to apply the funds to satisfy Claimant's contractual obligation, in accordance with the terms of his margin agreement.

Respondent J.W. Barclay asserted a counterclaim against Claimant for the unsecured debit balance, resulting from Claimant's refusal to satisfy his debt.

RELIEF REQUESTED

Claimant requested actual and compensatory damages, in a collective amount, in excess of \$563,000.00, including interest, trebled punitive damages, costs, attorneys' fees, and such other relief deemed appropriate by the Panel. Further, Claimant requested dismissal of the counterclaim.

Respondents J.W. Barclay, Bruno, and Brill requested dismissal of the Statement of Claim and costs. Further, Respondent J.W. Barclay requested damages on its counterclaim in the sum of \$16,832.78 for the debit balance in Claimant's margin account plus interest and attorneys' fees.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents J.W. Barclay, Bruno and Brill are found liable, jointly and severally, and shall pay to Claimant compensatory damages in the sum of \$445,346.05 plus pre-judgement interest in the sum of \$109,020.82. Post-judgement interest shall accrue at the rate of ten percent (10%) per annum from October 27, 2000 until the date of payment of the Award.
2. Respondents J.W. Barclay and Bruno are found liable, jointly and severally, by clear and convincing evidence, and shall pay to Claimant punitive damages in the sum of \$150,000.00. Respondent Brill is found liable, by clear and convincing evidence, and shall pay to Claimant punitive damages in the sum of \$6,000.00. Punitive damages are awarded pursuant to Sections 768.737 and 768.72 Fla. Stat. and the following finding by the panel: Brill engaged in fraud in inducing Claimant to open an account and in continuously misleading Claimant about the account's progress. Although Claimant was mailed confirmation slips, he did not understand them and Brill was aware of that. Brill continuously and affirmatively misrepresented, knowingly, facts to Claimant, relieving Claimant of the duty to independently investigate. Brill engaged in intentional misconduct. Additionally, his conduct was so lacking in care that it constituted a conscious disregard for the rights of Claimant. Bruno knew (had actual knowledge of) Brill's conduct. Bruno, in September 1998, additionally, affirmatively led Claimant to believe that he would aid Claimant in recovering his losses by assigning his "head trader" to "take over" the account, if only Claimant would send in an additional \$100,000.00. Claimant did so, relying on Bruno's statements. Bruno had no intention other than to recover \$100,000.00 from Claimant, and intended not to honor his representation. Bruno, too, engaged in intentional misconduct and was so lacking in care that he had an indifference to the rights of Claimant. As an employer, J.W. Barclay and Bruno too, actively engaged in all of the aforementioned conduct as they knowingly condoned, ratified, consented to and promoted this conduct.
3. Respondent J.W. Barclay's counterclaim is hereby denied.
4. Respondents J.W. Barclay Bruno and Brill are found liable, jointly and severally and shall pay to Claimant the sum of \$375.00 representing reimbursement of the claim filing fee.
5. The issue of attorneys' fees in this matter shall be determined by a court of competent jurisdiction, pursuant to Fla. Stat. Section 517.211.
6. All other requests for relief not specifically addressed herein are 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	= \$ 375.00
Counterclaim filing fee	= \$ 750.00

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm, J.W. Barclay, is a party.

Member surcharge	= \$ 2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 3,500.00

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:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference date: April 11, 2000 1 session	

One (1) Pre-hearing session with Panel x \$1,200.00	= \$ 1,200.00
Pre-hearing conference date : November 29, 1999 1 session	

Fourteen (14) Hearing sessions x \$1,200.00	= \$16,800.00
Hearing dates:	
May 23, 2000	2 sessions
May 24, 2000	2 sessions
May 25, 2000	2 sessions
October 24, 2000	2 sessions
October 25, 2000	2 sessions
October 26, 2000	2 sessions
October 27, 2000	2 sessions

Total Forum Fees	= \$18,450.00
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The Panel has assessed the total forum fees of \$18,450.00 jointly and severally to Respondents J.W. Barclay and Bruno.

Fee Summary

Claimant be and hereby is solely liable for:

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

Less payments	= \$ 375.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondent J.W. Barclay be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 750.00
Member Fees	= \$ 6,100.00
Total Fees	= \$ 6,850.00
Less payments	= \$ 6,850.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondents J.W. Barclay and Bruno be and hereby are jointly and severally liable for:

Forum Fees	= \$18,450.00
Total Fees	= \$18,450.00
Less payments	= 450.00
Balance Due NASD Dispute Resolution, Inc.	= \$18,000.00

All fees are payable to NASD Dispute Resolution, Inc. and are due within 30 days of the Award's date of service.

Concurring Arbitrators' Signatures

_____/s/_____
Neil J. Berman, Esq.
Public Arbitrator, Presiding Chair

Signature Date

_____/s/_____
Larry A. Feldman
Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

_____/s/_____
Sharon F. Broussard, MBA
Industry Arbitrator

Signature Date

Arbitrator Sharon F. Broussard respectfully dissents from paragraph one (1) with respect to the amount of the award of compensatory damages (she would award a different amount) and interest, concurs as to punitive damages and otherwise concurs in this decision.

November 21, 2000

Date of Service (For NASD-DR office use only)

NOV. 21. 2000 12:31 PM Union, Inc.

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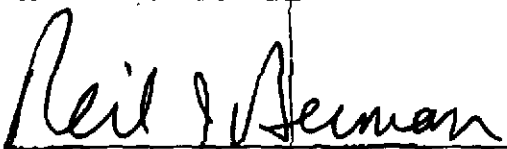
Respondent J.W. Barclay be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 750.00
Member Fees	= \$ 6,100.00
Total Fees	= \$ 6,850.00
Less payments	= \$ 6,850.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondents J.W. Barclay and Bruno be and hereby are jointly and severally liable for:

Forum Fees	= \$18,450.00
Total Fees	= \$18,450.00
Less payments	= 450.00
Balance Due NASD Dispute Resolution, Inc.	= \$18,000.00

All fees are payable to NASD Dispute Resolution, Inc. and are due within 30 days of the Award's date of service.

Concurring Arbitrators' Signatures

Neil J. Berman, Esq.
Public Arbitrator, Presiding Chair

11-21-00

Signature Date

Larry A. Feldman
Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

Sharon F. Broussard, MBA
Industry Arbitrator

Signature Date

Arbitrator Sharon F. Broussard respectfully dissents from paragraph one (1) with respect to the amount of the award of compensatory damages (she would award a different amount) and interest, concurs as to punitive damages and otherwise concurs in this decision.

November 21, 2000

Date of Service (For NASD-DR office use only)

Respondent J.W. Barclay be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 750.00
Member Fees	= \$ 6,100.00
Total Fees	= \$ 6,850.00
Less payments	= \$ 6,850.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondents J.W. Barclay and Bruno be and hereby are jointly and severally liable for:

Forum Fees	= \$18,450.00
Total Fees	= \$18,450.00
Less payments	= 450.00
Balance Due NASD Dispute Resolution, Inc.	= \$18,000.00

All fees are payable to NASD Dispute Resolution, Inc. and are due within 30 days of the Award's date of service.

Concurring Arbitrators' Signatures

Neil Berman, Esq.
Public Arbitrator, Presiding Chair

Larry A. Feldman
Public Arbitrator

Dissenting Arbitrator's Signature

Sharon F. Broussard, MBA
Industry Arbitrator

Arbitrator Sharon F. Broussard respectfully dissents from paragraph one (1) with respect to the amount of the award of compensatory damages (she would award a different amount) and interest, concurs as to punitive damages and otherwise concurs in this decision.

November 21, 2000
Date of Service (For NASD-DR office use only)

JR

Respondent J.W. Barclay be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 750.00
Member Fees	= \$ 6,100.00
Total Fees	= \$ 6,850.00
Less payments	= \$ 6,850.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondents J.W. Barclay and Bruno be and hereby are jointly and severally liable for:

Forum Fees	= \$18,450.00
Total Fees	= \$18,450.00
Less payments	= 450.00
Balance Due NASD Dispute Resolution, Inc.	= \$18,000.00

All fees are payable to NASD Dispute Resolution, Inc. and are due within 30 days of the Award's date of service.

Concurring Arbitrators' Signatures

Neil J. Berman, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Larry A. Feldman
Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

Sharon F. Broussard, MBA
Industry Arbitrator

11-22-00

Signature Date

Arbitrator Sharon F. Broussard respectfully dissents from paragraph one (1) with respect to the amount of the award of compensatory damages (she would award a different amount) and interest, concurs as to punitive damages and otherwise concurs in this decision.

November 21, 2000

Date of Service (For NASD-DR office use only)