

**Award
NASD Regulation, Inc.**

In the Matter of the Arbitration Between:

Harald Beck, Claimant vs. Quick & Reilly, Inc., Respondent.

Case Number: 99-02177

Hearing Site: San Francisco, California

REPRESENTATION OF PARTIES

Claimant, Harald Beck: Richard G. Carlston, Esq., Miller, Starr & Regalia, Walnut Creek, California

Respondent, Quick & Reilly, Inc.: Philip A. McLeod, Esq., Keesal, Young & Logan, San Francisco, California

CASE INFORMATION

Statement of Claim filed on or about: May 7, 1999

Claimant, Harald Beck, signed the Uniform Submission Agreement: April 26, 1999

Statement of Answer filed by Respondent, Quick & Reilly, Inc., on or about: July 19, 1999

Respondent, Quick & Reilly, Inc., signed the Uniform Submission Agreement: July 21, 1999

CASE SUMMARY

For about 10 years prior to the events here in question, Claimant Harald Beck ("Claimant" or "Beck") had been a brokerage customer of Respondent Quick & Reilly, Inc. ("Respondent" or "Q & R") at Q & R's San Francisco, California office. During that time, through his Q & R account, Claimant acquired a total of 355,000 shares of beneficial interest ("shares") in Wedgestone Financial, a Massachusetts business trust ("Wedgestone"), which began its existence in 1980 as a REIT, suffered financial reverses and in 1991 sought relief under Chapter 11 of the Bankruptcy Code, emerging from reorganization in 1992, with 47% of its stock owned by an insider group of new investors, as a manufacturer of accessories and after-market parts for the light duty truck market. See, e.g., Claimant's Exh. 2, at 2.

Wedgestone's publicly-held stock was thinly traded as so-called "penny stock" on the over-the-counter market during the next 6 or so years. Its market price was generally in the range of about \$0.20 per share to spiking briefly to slightly over \$0.60 per share (See Resp.'s Exh. D, at Tab 2.) In 1997, Wedgestone's insiders decided to take the company "private" by means of a tender offer followed by a "short-form merger" under Massachusetts law. Claimant's Exh. 2, at 2-4. This resulted in a tender offer dated May 8, 1998, to purchase all of the company's publicly-owned shares at a price of \$0.67 per share. See Claimant's Exh. 2, *passim*.

Claimant's Wedgestone shares were held in street name in his Q & R brokerage account. In May 1998, Beck received a copy of the Wedgestone tender offer from a Q & R affiliate which was the custodian of his Wedgestone shares. Claimant did **not** want to accept the tender price of \$0.67 per share. He notified the Q & R office in San Francisco that he rejected the offer for his Wedgestone shares, and if the planned short-form merger took place intended to take the judicial action required for an appraisal of the market value of his shares. Beck requested Q & R to protect his statutory shareholder dissent and appraisal rights in that regard, given that Claimant's shares were held by Q & R in street name. Q & R agreed to do so.

Beck refused to tender his shares. Respondent, not Claimant, thereafter received notices about the effective date of the merger and the time deadlines to take actions to secure dissent and appraisal rights. The deadline for providing an effective notice of a shareholder's dissent and intent to seek a share value appraisal under the Massachusetts Business Corporation Law ("MBCL"), sections 85-98, was August 10, 1998 (Statement of Claim, Exh. D).

It was conceded by Q & R prior to the start of the evidentiary hearings that Respondent negligently failed to timely provide the required notice in order for Beck to be able to seek judicial appraisal of the market value of his Wedgestone shares under the MBCL, in an action against Wedgestone as the issuer. See Claimant's Arbitration Brief, Exh. A.

Claimant's account agreement with Q & R requires the parties to resolve disputes concerning the brokerage account under the Rules of the NASD Code of Arbitration Procedure ("NASD Code") by arbitration in a tribunal of NASD's Office of Dispute Resolution. Claimant thus seeks in this arbitration proceeding to recover from Q & R damages allegedly caused by Respondent's negligence regarding preservation of his rights: because Beck's damages, if any, proximately caused by Respondent's negligence, would be primarily derived from the appraisal of the value of his 355,000 Wedgestone shares as a "dissenting shareholder" in the merger, this proceeding necessarily became the functional equivalent of an equitable appraisal action by Beck, under the MBCL, in a Massachusetts court.

If the valuation as of the relevant time of Wedgestone shares in this proceeding determines a value in excess of the tender offer price of \$0.67 per share, then because it is undisputed that Wedgestone did pay Claimant the tender price of \$0.67 per share for his 355,000 shares on or about September 14, 1998 (see Statement of Claim, Exh. G), Beck's damages proximately caused by Q & R's negligence would include such excess from the appraisal valuation.

Claimant provided the arbitration panel with copies of what he contended were legal authorities relevant to the pertinent appraisal and valuation process (see Arbitrators' Exh. 2, and Claimant's Exhs. Nos. 8 and 9): six appellate opinions; four by the Supreme Judicial Court of Massachusetts and one by the Appeals Court of Massachusetts, dealing with the dissenting shareholder valuation process of Massachusetts statutory law, MBCL, at M.G.L.A., c. 156B, sections 86-98; and, an opinion of the U.S. Court of Appeals for the Third Circuit, which also considers the valuation process (the "Delaware block" method) described in the Massachusetts court decisions.

Beck contended that this case authority (a) established a statutory valuation date, (b) mandates the "Delaware block" method of value appraisal as the system to employ in valuing dissenters' stock under the MBCL, and (c) requires the imposition of pre-award interest at the rate of 12% per annum, compounded, on any valuation award.

Respondent submitted no copies of case authority, but did provide the panel with copies of annotations to M.G.L.A. c. 156B, section 98 (Resp. Exhs. A and B), with some notations in what Beck testified was his handwriting (see Resp. Exh. B.)

Claimant asserted that expert appraisal of the value of Wedgestone stock as of the statutory appraisal date would establish a figure "in excess" of \$1.86 per share, resulting in share valuation damages of over \$1 million (Statement of Claim, at 10:24 - 11:3.) He also claimed that after the tender price funds reached his Q & R account in mid-September 1998, through the fault of Respondent, he was prevented from investing such funds in The Japan Fund (shares in which he then already owned) and thus was further damaged by the amount of gain that investment of the Wedgestone tender funds would have brought him over succeeding months, up to the time of an award herein ("delayed access" damages.) In addition, Beck claimed that, based on statements to him from unidentified lawyers in Massachusetts, an equitable appraisal valuation suit by him there against Wedgestone could have been concluded in about one year; or, sometime in the early fall of 1999. Therefore, Beck also claimed that he was entitled to additional "delayed access" damages from an additional lost investment in The Japan Fund, of the balance of the appraised value of his Wedgestone shares (i.e., the net amount he claims he would have recovered in the Massachusetts action that Q & R's negligence prevented him from bringing), extending from last fall to the present.

Finally, Claimant argued that various statements in Wedgestone's tender offer document (Claimant's Exh. 2), plus his communications from and with Wedgestone and its insider officers and controlling shareholders, and the evidence developed of Wedgestone's rapidly-improving financial condition and business prospects at about the time the short-form merger was executed, demonstrated that the Wedgestone insiders were engaged in an alleged fraudulent "squeeze-out" of minority shareholders such as himself, by means of the tender offer and merger. Q & R objected to any such claim by Claimant that he was also possibly entitled to damages against Respondent, alternatively on a fraud theory, on the grounds that there could be no proximate cause relation between its negligence in failing to protect Beck's statutory stock value appraisal rights, and the alleged breach of fiduciary duty by Wedgestone's insiders, and that Q & R was not a proper party defendant as to such fraudulent breach of fiduciary duty claims.

To establish a valuation of Wedgestone shares in excess of the tender price of \$0.67, Beck presented the testimony and valuation study documents of two experts: in Claimant's case in chief, Dr. James I. Plummer, MBA, Ph.D., president of QED Research, Inc., of Palo Alto, California; and, in Beck's rebuttal case, Mr. Steven D. Garber, CFA, ASA, the managing partner of the San Francisco office of Willamette Management Associates.

Without reference to the issuer's financial statements for the first two quarters of 1998, i.e., those two quarters next preceding the tender and merger, Dr. Plummer initially computed the appraised value of Wedgestone stock as of July 15, 1998, as being \$1.86 per share. See Claimant's Exhs. 5 and 6. After preparing his original value appraisal (Exh. 5), on March 31, 2000, Dr. Plummer received copies of Wedgestone's "consolidated financial statements" for the 98:1 and 98:2 quarters. See Claimant's Exh. 4. Using this new financial information, and accepting the position of Respondent's expert appraiser (below) that a fair value appraisal should take into account the diluting effect of outstanding stock options and warrants, Dr. Plummer subsequently revised his original value appraisal, in a revised appraisal study establishing a fair value per share figure of \$2.91. See Claimant's Exh. No. 7, and its Figure 1.1B (Revised).

Dr. Plummer testified that his appraisal followed the general guidelines of the "Delaware block" valuation methodology, using three alternative methods. However, he only employed two of the three methods in reaching his opinion of the appraised value of Wedgestone stock in July 1998: an earnings approach utilizing EBIT multiples, weighted at 65%, and a public markets approach, estimating the value of the issuer to an acquiring public company, weighted at 35%. He computed a "net asset" approach as well, but accorded it no weight because in his opinion the "Delaware block" analysis may no longer include this approach, which he also felt was a "static" real estate valuation method, not pertinent to valuing a going concern. Dr. Plummer also testified that he considered using a discounted cash flow analysis, but rejected it because he did not consider the post-merger forecasts of Wedgestone's insider management (see Claimant's Exh. 2, at 3-14 and Schedule II) to be reliable. Claimant's expert also ignored the historical price of Wedgestone stock in his study because the publicly-held stock was but a minority of all the issued and outstanding shares, and had been only "thinly" traded.

Respondent produced its appraisal expert, Mr. Glenn R. Daniel, CFA, MS, manager for regional operations at the San Francisco office of Houlihan Lokey Howard & Zukin, who initially determined by his appraisal analysis that the value of Wedgestone stock as of June 8, 1998, was \$0.98 per share. See Resp. Exh. D, Tab 21, at 6 and 36. Mr. Daniel's study did not attempt to literally conform to some framework within a "Delaware block" rubric. It did rely upon financial projections of Wedgestone's management, as set out in the "fairness" opinion of Commonwealth Associates dated January 30, 1998, contained in Schedule II of the tender offer (see Claimant's Exh. 2.) Mr. Daniel's valuation study employed a market capitalization approach using debt-free EBITDA multiples derived from selected comparables, and a discounted cash flow approach based on the projections in the more recent Commonwealth "fairness" opinion over the 1998-2001 fiscal years. Mr. Daniel said that his study took into some account the improved financial results at Wedgestone reported (after the tender offer was prepared) in the first two 1998 quarters (see Resp. Exh. C), but not to the positive degree accorded such data by Dr. Plummer. Mr. Daniel's study also took into consideration the historical stock values.

Mr. Daniel testified that he agreed with Dr. Plummer that a net asset analysis was unsuitable for valuation of shares of this issuer. While both these experts used a market capitalization approach, they disagreed on multiples and the comparable issuers to use to determine a range of multiples. They substantially disagreed on where Wedgestone was headed at or about the time of

its short-form merger: Dr. Plummer, referring to the 98:1 and 98:2 financial data and other positive information about the status of Wedgestone's truck parts business (see, e.g., Claimant's Exhs. 10-15, and 18, presented by Claimant after Dr. Plummer's testimony, but illustrative of the more optimistic approach), was much more sanguine about its post-merger prospects than Mr. Daniel, who placed greater credence in its management's conservative and somewhat-negative projections, and reports of sales disappointments and uncertainties in various product lines.

In rebuttal, Claimant presented Mr. Garber as his second appraisal expert. Mr. Garber's own appraisal of share value study (see Claimant's Exh. No. 16) fixed that value at \$1.96 per share. He testified that his appraisal methodology had been to critique the Daniel appraisal and then to correct that appraisal and **applying its methodology** (as modified and corrected), determine a "corrected" valuation. Thus, Mr. Garber used not only a market capitalization method (as had both Dr. Plummer and Mr. Daniel), and a cash flow discount analysis (as had Mr. Daniel), but also employed a "transaction" study based upon a particular acquisition within the general industry category (see Claimant's Exh. 16, at its "Exhibit VII", page 3 of 7.) Following the use of weighing allocation employed by the "Delaware block" system, Mr. Garber assigned a 40% weight to the first two, and 20% to the third analysis method.

Like Mr. Daniel and opposed to Dr. Plummer, Mr. Garber assumed that the projections of Wedgestone's management were correct (i.e., as being the "best available") for purposes of his five-year cash flow discount analysis, except that having available actual quarterly 98:1 and 98:2 figures, he applied them and ignored management's 98:1E and 98:2E projections. Where Mr. Daniel used a discount factor of 13%, Mr. Garber employed a discount of 11%. He also applied a control premium factor at 20% because Claimant's shares represented a minority interest, while conceding that whether to use such a factor in a cash flow discount study was controversial.

Mr. Garber also selected different, more numerous, and somewhat-higher multiples than those used by Mr. Daniel for the market capitalization analysis. However, like Mr. Daniel he employed Wedgestone's EBITDA figures instead of the EBIT numbers, deducted the issuer's interest-bearing debt, and added a 20% control premium.

The presentation of expert appraisal evidence was completed by Respondent recalling its valuation expert, Mr. Daniel, in surrebuttal. He presented a further valuation study in which were "blended" aspects of the previous valuations presented by all three experts, over three days of evidentiary hearings. See Resp. Exh. H. For this study Mr. Daniel testified that he had accepted the substance of Dr. Plummer's capitalization multiples (5.0 and 6.5); however, consistent with his earlier approach (as well as that of Mr. Garber), he applied the multiples to EBITDA figures, and not EBIT numbers. As in the Garber analysis, Mr. Daniel's final study factored market capitalization analyses at a (total) 60% weight, and the separate cash flow discount analysis at 40%. He did not follow Mr. Garber's "merger and acquisition" one transaction method (involving the acquisition of Deflecta Shield Corp. by Lund International) on the grounds that it was too "focused" and resulted in a multiplier he deemed to be outside the acceptable range. Mr. Daniel's resultant range of an enterprise value for Wedgestone (less existing debt, plus debt from privatization) at the approximate time of the 1998 tender, was

computed into a control equity value, rounded off, of \$28,200,000. Resp. Exh. H, page 3. To this was added, as did Mr. Garber's study, the option and warrant exercise proceeds, for a final rounded off control equity value of \$28,500,000.

With total diluted Wedgestone shares at 22,698,000, this "blended" appraisal analysis derived a per share valuation of \$1.26.

Beck presented no documentation of his Japan Fund investment claim. While he and a Q & R account representative, David Harley, testified to a number of telephone calls between Claimant and Q & R's San Francisco office in the late summer and early fall of 1998, Beck admitted that he never went in person to the Q & R office to clear up what he claimed were improper "holds" on his attempted use of funds in his account. Instead, Claimant asserted that several times when he attempted by telephone to make investments with his Wedgestone stock tender proceeds, he received a recorded message that the transaction could not be completed. Claimant provided no other evidence that his account funds were being held or restricted against his wishes. Claimant also testified that for some (undefined) period of time after the tender funds reached his Q & R account, he deferred from withdrawing or otherwise using such funds, based on legal advice -- apparently directed to preserving his position for future litigation based on the failure of Q & R to protect his dissenting shareholder appraisal rights.

Q & R witnesses David Harley and Samantha Kefford, assistant regional manager in the San Francisco office in the early fall of 1998, both testified that they knew of no restrictions on Beck's ability to utilize funds in Claimant's Q & R account after it had received the tender funds.

Finally, Claimant testified that he had several telephone calls with Wedgestone's controlling shareholders about the tender offer, including John C. Shaw, owner of almost 39% of all outstanding stock, who allegedly told Beck that Claimant's stock was "worth \$5.00 per share." Under Rule 10323 of the NASD Code, this statement was admitted over objection for what weight it might eventually be accorded.

RELIEF REQUESTED

Claimant Harald Beck requested:

Compensatory damages in the range of \$500,000 to \$1,000,000.

Respondent Quick & Reilly, Inc. requested:

An award in its favor, finding that Claimant take nothing by way of his Statement of Claim, for costs and reasonable attorney's fees, and for such other and further relief as the Panel may deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

None. The parties made no pre-hearing motions, and presented no discovery disputes for

resolution. Both submitted to the jurisdiction of this tribunal over the dispute described above in the Statement of the Case.

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 other evidence presented at the evidentiary hearing, the arbitration Panel has decided as follows in full and final resolution of all of the issues submitted for determination:

1. The negligence of Q & R, conceded by Respondent, proximately caused Claimant to lose his standing as a dissenting shareholder to have brought a judicial proceeding against Wedgestone Financial as the issuer, for appraisal of the value of his 355,000 shares of Wedgestone stock, and to exclude such stock from the Wedgestone tender offer of May 8, 1998.

2. As a result, Claimant is entitled to seek valuation damages from Respondent proximately caused by such negligence, in this proceeding in arbitration under the auspices of NASD Regulation, Inc., Office of Dispute Resolution.

3. To the extent he may have sought to do so, inferentially or otherwise, Claimant is not entitled to recover any damages from Respondent based upon the alleged "fraud" of Wedgestone's insider management group of controlling shareholders, on the theory that they took their company "private" as a means of fraudulently "squeezing out" public minority shareholders such as Beck in anticipating a substantial increase in the company's value after mid-1998.

a. Claimant failed to present competent evidence of such alleged fraud sufficient to meet a claimant's burden of proof, assuming *arguendo* that this arbitration was a proper forum, or that Q & R was a proper defendant.

b. It appears from those portions of Massachusetts law presented by the parties that Claimant could have sued Wedgestone and its management group for fraud damages based on the alleged breach of fiduciary duty, directly, in a court of competent jurisdiction, independent of the MBCL's exclusive statutory scheme for dissenting shareholder stock value appraisal. Therefore Q & R's negligence did not prevent Beck from pursuing such a direct fraud damage claim. See, e.g., M.G.L.A., c. 156B, section 98; *Coggins v. New England Patriots Football Club, Inc.* (1986), 492 N.E.2d 1112, 397 Mass. 525; and see Arbitrators' Exh. 2 and Resp. Exhs. A and B. In addition under Massachusetts law "... the purpose and the result of the corporate action ..." [of "going private"] do not bear on determining the value of the shares. See, e.g., *Sarrouf v. New England Patriots Football Club, Inc.* (1986) 492 N.E.2d 1122, 1125 at note 5, 397 Mass. 542.

4. The parties agreed that the MBCL, M.G.L.A. ch. 156B, sections 86-98, as a matter of choice of law, was the controlling law for appraisal of the value of Claimant's Wedgestone shares.

a. Under such law, the "statutory valuation date" is the day preceding the date of the vote approving the proposed corporate action. *Id.* at section 92. The Board of Trustees (directors) of Wedgestone approved the proposed (short-form) merger on July 8, and the merger became effective on July 16, 1998. See Claimant's Exh. 1. Thus under section 92, the valuation date should be July 7, 1998, the day preceding the approval (not the merger).

None of the experts used this date. Claimant's experts used July 15, and Respondent's expert used June 8, 1998, for the effective date of their appraisals. However, neither date is sufficiently removed from the statutory date, under the relevant circumstances, to impeach any valuation study which was presented, on that basis alone.

5. Certain Massachusetts court decisions applying the MBCL's dissenting shareholder stock appraisal statutes have stated that the "Delaware block" method of valuation was the appropriate but not the exclusive methodology to use, given the case history of the current appraisal statutes. That method is characterized as determining the market value, the earnings value, and the net asset of the stock, followed by the assignment of a percentage weight to each such element of value. See, e.g., *Piemonte v. New Boston Garden Corporation* (1979) 387 N.E.2d 719, 724, 377 Mass. 719; *Sarrouf v. New England Patriots Football Club, Inc.* (1986) 492 N.E.2d 1132, 1127, 397 Mass. 546. However, Delaware itself has moved away from a mandated use of the particular valuation method, instead permitting valuation by "generally accepted techniques", see *Sarrouf, supra*, 492 N.E.2d at 1127, note 8. And, the Supreme Judicial Court of Massachusetts has never **required** a dissenting shareholder valuation appraisal to be conducted only under the "Delaware block" method. *Ibid.*

a. The arbitration panel holds that strict compliance with the so-called "Delaware block" method is not required here; and, that all the appraisal studies submitted complied sufficiently with "generally accepted techniques".

6. The alleged opinion of value by an insider of Wedgestone to Claimant of \$5.00 per share is entitled to no weight. The statement is self-serving hearsay, and is also inherently counter-intuitive. If the management insiders wanted Beck to tender his shares under the \$0.67 per share price, then why would one of them call Claimant to tell him that his shares were worth almost 10 times as much?

7. In deciding the issue of stock valuation in a dissenting shareholder action, a Massachusetts court can decline to adopt the finite conclusion of value reached in any of the expert witnesses' stated opinions, and may instead in effect "pick and chose from among the [expert] information furnished" to decide on the valuation figure. See, e.g., *BNE Massachusetts Corp. v. Sims* (1992) 32 Mass.App.Ct. 190, 194, 588 N.E.2d 14, 17, following the rule of the Massachusetts Supreme Judicial Court in *Piemonte v. New Boston Garden Corp.* (1979) 377

Mass. 719, 731, 387 N.E.2d 1145. Based upon all of the evidence, the arbitration panel concludes that expert witness Daniel's final "melded" appraisal study utilized appropriate methods, but still was too conservative in approach when contrasted with certain elements properly included in the preceding appraisal by expert witness Garber. Therefore the arbitration panel concludes that the value of Claimant's Wedgestone stock on the statutory appraisal date **was \$1.65 per share**, for a total valuation of Claimant's 355,000 shares of Wedgestone stock in the principal sum of \$585,750. Since Claimant already received \$237,850 of that principal sum in September 1998, his net recovery against Respondent for the balance of the value of his Wedgestone shares herein, is the principal sum of \$347,900.

8. Claimant is not entitled to recover further compensatory damages from Respondent based on the alleged delay in the use of the proceeds from the involuntary tender of his Wedgestone shares: either the initial \$237,850 portion, or the balance of \$347,900 awarded here.

a. Claimant offered no competent proof of any alleged lost investment opportunity in The Japan Fund.

b. Claimant did not establish by a preponderance of any competent evidence that Respondent had improperly, or otherwise, imposed an involuntary "hold" or other restriction on his Q & R brokerage account after its receipt of the tender funds on or about September 15, 1998. Subject to his voluntary inaction under reported legal advice to protect his interests, from the available evidence he was free to use such funds after they reached his account.

c. Claimant did not prove by any competent evidence that had he been able to bring a statutory appraisal action in the Massachusetts courts, he could have had the balance of the appraised value available to him "within approximately a year", or likely in or about September 1999. Beck's statements that unnamed attorneys in Massachusetts had advised him that this was a "typical" time for completion of such a trial in that state, is without foundation and hearsay. Wedgestone appears from the record to have clearly had the financial wherewithal to post an appeal bond. Any significant trial judgment in Claimant's favor would very likely be appealed. The reported Massachusetts court opinions provided by Beck himself reflect much longer periods than one year between the valuation date (or date of trial) and when the defendant's appeal was decided and the valuations funds were finally available to the shareholder, viz:

Piemonte: about 5-3/4ths years between the valuation date and the date the appeal was decided.

Sarrouf: about 7-1/2 years between the two dates.

Chokel: about 10-1/2 years between the two dates.

BNE Massachusetts Corp.: about 7-1/2 years from the commencement of suit (12/8/84) to the date the appeal was decided (3/2/92); and, about 6-1/2 years from when the action commenced to the date of judgment in the trial court (4/10/90).

On this record it is unlikely that Claimant's appraisal action against Wedgestone would have been completed in only about 1 year, even without an appeal.

9. Under the MBCL, in a dissenting shareholder appraisal action, an award of prejudgment interest is not mandatory or automatic, but is awarded in the discretion of the trial court. That discretion includes the determination of the appropriate rate, and whether or not to compound interest. *Piemonte, supra*, 387 N.E.2d 1245, at 1154 [affirming a discretionary trial court award of 8% interest compounded annually, based on evidence from defendant's expert that a prudent investment in corporate bonds at the time (mid 1970's) would have yielded an 8% return, uncompounded]; *Sarrouf, supra*, 492 N.E.2d 1122, at 1126 [similar, as to discretionary award of 9% compounded annually, based on "prudent investments (which could have been made) since the date of the merger" (December 1976)]; *Chokel v. First National Supermarkets, Inc.* (1996) 660 N.E.2d 644, at 651-652, 421 Mass. 631 [rate of discretionary interest should be rate at which prudent investor could have invested money; thus, 12% acceptable, based on evidence at trial that AAA corporate bonds were yielding 11.5% in 1985]; and, *BNE Massachusetts Corp. v. Sims* (1992) 588 N.E.2d 14, at 21, 32 Mass.App.Ct. 190 [award of 12% interest compounded annually supported by evidence before the trial judge on the issue of interest rates, based on *Sarrouf* case].

a. Here Claimant presented no evidence about the rate(s) of return on prudent investments in the July 1998 time frame either at 12%, or at any other rate.

b. There was evidence from the testimony of Q & R's employees, not contradicted by Beck, that his Wedgestone stock tender funds were held in a Q & R market rate fund. Therefore those funds presumably earned a return during the time after the July 1998 valuation date, whether or not equal to what "AAA corporate bonds" were contemporaneously earning.

c. The arbitration panel declines to speculate on what would have been an applicable rate of pre-award interest which might be applied at least to the difference between the appraised value of Claimant's Wedgestone stock and the tender price, from the valuation date in July 1998, to the date of this award. Therefore no such interest is included in this award.

10. Respondent Q & R is also liable for and shall pay to Claimant the sum of \$375.00 as reimbursement for Claimant's filing fee.

11. The parties shall each bear all other respective costs including attorney's fees.

FEES

Pursuant to the NASD 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 = \$375.00

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 = \$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 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 (1) Pre-hearing session with Panel x \$1,200.00 = \$1,200.00

Pre-hearing conference: November 22, 1999 1 session

Seven (7) Hearing sessions x \$1,200.00 = \$8,400.00

Hearing Dates: April 4, 2000 2 sessions

April 5, 2000 3 sessions

April 6, 2000 2 sessions

Total Forum Fees = \$9,600.00

1. The Panel has assessed the \$9,600.00 in forum fees to Respondent, Quick & Reilly, Inc.

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.

Fee Summary

1. Claimant, Harald Beck, be and hereby is solely liable for:

Initial Filing Fee = \$ 375.00

Member Fees = \$ 0.00

Administrative Costs = \$ 0.00

Total Fees = \$ 375.00

<u>Less payments</u>	= \$1,575.00
Balance (Refund)	= \$1,200.00

2. Respondent, Quick & Reilly, Inc., be and hereby is solely liable for:

Initial Filing Fee	= \$ 0.00
Member Fees	= \$ 6,100.00
Forum Fees	= \$ 9,600.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$15,700.00
<u>Less payments</u>	= \$ 6,100.00
Balance Due NASD Regulation, Inc.	= \$ 9,600.00

All balances are due to NASD Regulation, Inc. and are payable within 30 days of the service date of this Award.

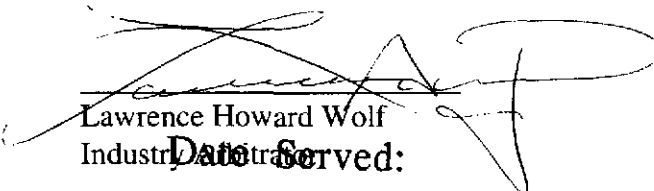
Concurring Arbitrators' Signatures

Edwin C. Shiver, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Henry G. Wong
Public Arbitrator

Signature Date



Lawrence Howard Wolf
Industrial Arbitrator

5/14/00

Signature Date

MAY 19 2000

Date of Service (For NASD office use only)

<u>Less payments</u>	<u>= \$1,575.00</u>
Balance (Refund)	= \$1,200.00

2. Respondent, Quick & Reilly, Inc., be and hereby is solely liable for:


Initial Filing Fee	= \$ 0.00
Member Fees	= \$ 6,100.00
Forum Fees	= \$ 9,600.00
<u>Administrative Costs</u>	<u>= \$ 0.00</u>
Total Fees	= \$15,700.00
<u>Less payments</u>	<u>= \$ 6,100.00</u>
Balance Due NASD Regulation, Inc.	= \$ 9,600.00

All balances are due to NASD Regulation, Inc. and are payable within 30 days of the service date of this Award.

Concurring Arbitrators' Signatures

Edwin C. Shiver, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Henry G. Wong
Public Arbitrator

May 11, 2000

Signature Date

Lawrence Howard Wolf
Industry Arbitrator

Signature Date

Date Served:

MAY 19 2000

Date of Service (For NASD office use only)

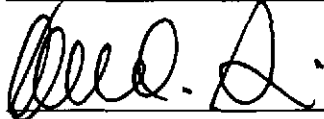
Less payments	= \$1,575.00
Balance (Refund)	= \$1,200.00

2. Respondent, Quick & Reilly, Inc., be and hereby is solely liable for:

Initial Filing Fee	= \$ 0.00
Member Fees	= \$ 6,100.00
Forum Fees	= \$ 9,600.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$15,700.00
<u>Less payments</u>	= \$ 6,100.00
Balance Due NASD Regulation, Inc.	= \$ 9,600.00

All balances are due to NASD Regulation, Inc. and are payable within 30 days of the service date of this Award.

Concurring Arbitrators' Signatures



Edwin C. Shiver, Esq.
Public Arbitrator, Presiding Chair

May 10, 2000
Signature Date

Henry G. Wong
Public Arbitrator

Signature Date

Lawrence Howard Wolf
Industry Arbitrator

Signature Date

Date Served:

MAY 19 2000

Date of Service (For NASD office use only)