

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

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In the Matter of the Arbitration Between:

Hugh B. Burris, Jr.; Carol W. Burris;  
Hugh B. Burris, Jr. and Carol W. Burris, JTWROS;  
Hugh Benton Burris, Jr., IRA;  
Hugh Benton Burris, Jr., IRA; Carol W. Burris, IRA;  
Hugh B. Burris, Jr., M.D. PA Pension Plan  
Dr. Hugh Benton Burris, Jr., MD, TTEE;  
Benton Bland Interest, Inc. PSP;  
Eino Olivares; Linda Olivares;  
IRA FBO Eino Olivares DWSC as Custodian;  
IRA FBO Linda O. Olivares DLJSC as Custodian;  
First National Bank of ONAGA, Custodian FBO Eino R. Olivares;  
Jose P. Olivares; Heljo Olivares;  
Jose P. Olivares; Heljo Olivares, JMROS;  
Gary T. Brieden; Sandra K. Brieden;  
Gary T. Brieden Smith Barney Inc. IRA Custodian;  
Sandra K. Brieden Smith Barney Inc. IRA Custodian;  
Theo S. Mandel; Edie A. Mandel;  
Theo S. Mandel & Edie A. Mandel, JTWROS;  
Karl Jauhainen;  
Harvey E. Slusky;  
Meagan Gabel; Harry G. Burrus;  
Megan Gabel and Harry G. Burrus JTWROS;  
William J. Stanton III IRA Sep;  
William E. Zinsmeyer;  
William E. Zinsmeyer & Associates Inc., Profit Sharing Plan;  
Tom W. Oliphint;  
R. Larry Brenner, M.D.;  
Stephen Cagle;

■ **CLAIMANTS**

VS.

Harry W. Wilk III;  
Frederick G. Shealy;  
Pershing Division of Donaldson, Lufkin & Jenrette Securities Corporation;  
Southwest Securities, Inc.;  
Robert G. Bettiga;  
Leo H. Stakemiller, Jr.;  
Sigma Financial Group, LLP, F/K/A South Texas Financial Group, F/K/A IC

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Brokerage, Inc.;

Sigma Financial Corporation;

Bluebonnet Securities, Inc.;

## RESPONDENTS.

Case Number: 99-02233

Hearing Site: Houston, Texas

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### REPRESENTATION OF PARTIES

Claimants, Hugh B. Burris, Jr., Carol W. Burris, Hugh B. Burris, Jr. and Carol W. Burris, JTWROS, Hugh Benton Burris, Jr., IRA, Hugh Benton Burris, Jr., IRA, Carol W. Elurris, IRA, Dr. Hugh Benton Burris, Jr., MD, TTEE, Benton Bland Interest, Inc. PSP, ("Hugh and Carol Burris"); Eino Olivares, Linda Olivares, IRA FBO Eino Olivares DLJSC as Custodian, IRA FBO Linda O. Olivares DLJSC as Custodian; First National Bank of ONAGA, Custodian FBO Eino R. Olivares, ("Eino and Linda Olivares"); Jose P. Olivares, Heljo Olivares, Jose P. Olivares, Heljo Olivares, JTWROS ("Jose and Heljo Olivares"); Gary T. Brieden, Sandra K. Brieden, Gary T. Brieden Smith Barney Inc. IRA Custodian, Sandra K. Brieden Smith Barney Inc. IRA Custodian, ("Gary and Sandra Brieden"); Theo S. Mandel, Edie A. Mandel, Theo S. Mandel & Edie A. Mandel, JTWROS, ("Edie and Theo Mandel"); Karl Jauhiainen, ("Jauhiainen"); Harvey Slusky, ("Slusky"); Megan Gabel, Harry Burrus, Harry G. Burrus JTWROS, ("Gabel and Burrus"); William J. Stanton III, William J. Stanton IRA SEP, ("Stanton"); William E. Zinsmeyer, William E. Zinsmeyer & Associates Inc., Profit Sharing Plan, ("Zinsmeyer"); Tom W. Oliphint, ("Oliphint"); R. Larry Brenner, M.D., ("Brenner"); Stephen Cagle, ("Cagle") hereinafter collectively referred to as Claimants were represented by Greg Jones, Esq. and Cynthia R. Levin Moulton, Esquire, of Franklin, Cardell & Jones, Houston, Texas., and by Lance Arney, Esq. of Houston, Texas.

Respondents, Harry W. Wilk, III, hereinafter referred to as ("Wilk"); Frederick G. Shealy, hereinafter referred to as ("Shealy"); Leo H. Stakemiller, Jr., hereinafter referred to as ("Stakemiller"); Sigma Financial Group, LLP, F/K/A South Texas Financial Group, F/K/A IC Brokerage, Inc., hereinafter referred to as ("Sigma Financial Group") were represented by M.W. Meredith, Jr., Esquire of the Firm Meredith Donnell & Abernethy, Corpus Christi, Texas.

Respondent, Sigma Financial Corporation, hereinafter referred to as ("Sigma") Was represented by Joseph H. Spiegel, Esquire of Southfield, Michigan

Respondent, Robert G. Bettiga ("Bettiga") of Corpus Christi, Texas was

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dismissed from this action.

Respondent, Pershing Division of Donaldson, Lufkin & Jenrette Securities Corporation from Jersey City, New Jersey was dismissed from this action.

Respondent and Southwest Securities, Inc. of Dallas Texas was dismissed from this action.

Respondent, Bluebonnet Securities, initially represented by Susan Henry, Bluebonnet Securities, Inc., Austin, Texas was dismissed from this action.

### **CASE INFORMATION**

Claimants filed a joint Statement of Claim on or about August 3, 1999.

Claimants signed the Uniform Submission Agreement on or about May 26, 1999.

Respondents, Pershing and Southwest filed their Statement of Answer on or about September 27, 1999.

Respondents, Pershing and Southwest did not file a Uniform Submission Agreement.

Respondents, Wilk, Shealy, Stakmiller and Sigma Financial Group filed a Joint Answer to the Statement of Claim on or about October 8, 1999.

Respondents, Wilk, Shealy, Stakmiller and Sigma Financial Group signed the Uniform Submission Agreement, on October 8, 1999.

Respondent Robert G. Bettiga did not file an Answer or a Uniform Submission Agreement

Respondent, Sigma filed the Statement of Answer on or about October 7, 1999.

Respondent, Sigma filed the Uniform Submission Agreement on August 24, 1999.

Respondent, Bluebonnet did not file an Answer or a Uniform Submission Agreement.

Respondent, Sigma filed a Motion for a leave to file a Counterclaim and a Motion for leave to file Third- Party Claims on or about on or about: October 5, 2000.

Claimant, Hugh B. Burris filed a Motion to Strike the Counterclaim and a Motion to strike the Third- Party Claims on or about: October 13, 2000.

### **CASE SUMMARY**

Claimants alleged the following causes of action: Common Law Fraud and Negligent Misrepresentation; Statutory Fraud; Suitability; Failure to Supervise; Negligence; Violation of State Statutes, Violation of industry rules, Conversion/breach of trust; Breach of Fiduciary duty.

All of Claimants' causes of action relate to the purchase of common stock.

1. Unless specifically admitted The Joint statement of Answer Respondents, Wilk, Sealy, Stakemiller and Sigma Financial Group denied the allegations in the Statement of Claim asserted the following affirmative defenses: Claimants claims should be barred as a result of the Statutes of limitations and Latches.

2. Unless specifically admitted in its Answer Respondent/Counter Claimant, Sigma denied the allegations set forth in the Statement of Claim and alleged the following affirmative defenses:

1. The statement of claim fails to state a cause of action upon which relief may be granted.
2. The doctrine of assumption of the risk.
3. The Statement of Claim is barred by the doctrine of estoppel.
4. The Statement of Claim is barred by the statute of frauds.
5. The Statement of claim is barred for want of consideration
6. The Statement of Claim is barred by the doctrine of unclean hands.

Respondent, Sigma also moved to file a counterclaim against Claimants in which they assert the following causes of action: misrepresentation, negligent misrepresentation, violation of NASD's rules and regulations, fraud.

Unless specifically admitted in his Answer, Claimant, Hugh B. Burris denied the allegation set forth in the Counterclaim and asserted the following defenses to Respondent, Sigma's Counterclaim:

1. Respondent Sigma's Counterclaim is untimely.
2. Respondent Sigma's Counterclaim is barred by laches.
3. Respondent, Sigma's Counterclaim fails to state a claim upon which relief may be granted.
4. Respondent Sigma's Counterclaim is barred by estoppel.
5. Respondent Sigma's Counterclaim is barred by the doctrine of "unclean hands".
6. Claimant Hugh B. Burris owed no legal duty to Respondent, Sigma.
7. Claimant Hugh, B. Burris made no representations to Respondent, Sigma.
8. Claimant Hugh B. Burris did not fail to disclose any material facts to Respondent Sigma.

9. Respondent Sigma did not justifiably rely on any representations made by Claimant, Hugh B. Burris to its detriment.
10. Respondent Sigma has suffered no damages as a result of any conduct by Claimant Hugh B. Burris.
11. Claimant Hugh B. Burris did not make a representation to anyone concerning Performance Nutrition Stock with knowledge that the representation was untrue.
12. Claimant Hugh B. Burris did not fail to exercise reasonable care in making a representation to anyone concerning Performance Nutrition Stock.
13. Claimant Hugh B. Burris did not violate any NASD Rules or Regulations, nor was he subject to any NASD Rules or Regulations.

Respondent Sigma further moved for leave to file a Third-party Claim against various parties in which they seek indemnification and contribution.

Claimant Hugh B. Burris moved that Respondent Sigma's Third- Party Claim be stricken on the ground that was untimely under NASD Rule 10314(b).

#### **RELIEF REQUESTED**

Claimants requested the following relief against the Respondents:

Compensatory Damages	\$3,000,000.00
Interest	unspecified
Punitive Damages	unspecified
Attorney's Fees	unspecified
Costs	unspecified

Respondents requested that the claims against them be dismissed.

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

On or about October 1, 1999 the following Respondents were dismissed without prejudice: Pershing Division of Donaldson, Lufkin & Jenrett Securities Corporation and Southwest Securities Inc.

At the time of the hearing the Panel determined that Claimants had failed to serve Respondent Robert Bettiga and thus Mr. Bettiga was not a party to this action.

Respondent Bluebonnet Securities filed for Bankruptcy prior to the

Arbitration. As a result, the Claim was stayed pursuant to the U.S. Bankruptcy Code.

On or about March 6, 2001 the Panel denied Respondent Sigma's Motion to File a Counterclaim and a Third-party Claim.

Respondents Shealy, Stakemiller, South Texas Financial Group and Sigma Financial Group, L.L.P. submitted a Motion to Dismiss, on or about October 6, 1999. The Panel granted this motion.

### **AWARD**

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

1. All relief requested against Frederick G. Shealy, Leo H. Stakemiller and Sigma Financial Group, L.L.P. F/K/A South Texas Financial Group, F/K/A IC Brokerage, Inc. is denied.
2. Respondents Harry W. Wilk III and Sigma Financial Corporation are jointly and severally liable for and shall pay to Claimants, Hugh and Carol Burris \$36,175.96 in Compensatory damages. Respondent, Harry W. Wilk III is individually liable and shall pay to Claimants Hugh and Carol Burris \$242,647.74 in Compensatory damages.
3. Respondents Harry W. Wilk III and Sigma Financial Corporation are jointly and severally liable for and shall pay to Claimants, Eino and Linda Oliveres \$135,200.00 in Compensatory damages. Respondent Harry W. Wilk III is individually liable and shall pay to Claimant Eino and Linda Oliveres \$92,690.42 in Compensatory damages.
4. Respondents Harry W. Wilk III and Sigma Financial Corporation are jointly and severally liable for and shall pay to Claimant Heljo Oliveres \$8,710.00 in Compensatory damages.
5. Respondents Harry W. Wilk III and Sigma Financial Corporation are jointly and severally liable for and shall pay to Claimants, Gary and Sandra Brieden \$6,972.82 in Compensatory damages. Respondent, Harry W. Wilk III is individually liable and shall pay to Claimants Gary and Sandra Brieden \$46,689.83 in Compensatory damages.

6. Respondents Harry W. Wilk III and Sigma Financial Corporation are jointly and severally liable for and shall pay to Claimants, Theo and Edie Mandel \$14,622.50 in Compensatory damages. Respondent, Harry W. Wilk III is individually liable and shall pay to Claimants Theo and Edie Mandel \$43601.88 in Compensatory damages.
7. Respondents Harry W. Wilk III and Sigma Financial Corporation are jointly and severally liable for and shall pay to Claimant Karl Jauhainen \$9,990.00 in Compensatory damages.
8. Respondents Harry W. Wilk III and Sigma Financial Corporation are jointly and severally liable for and shall pay to Claimant, Harvey Slusky \$60,075.00 in Compensatory damages.
9. Respondents Harry W. Wilk III and Sigma Financial Corporation are jointly and severally liable for and shall pay to Claimants, Megan Gabel and Harry Burrus \$ 34,965.05 in Compensatory damages.
10. Respondent Harry W. Wilk III is liable for and shall pay to William J. Stanton \$49,190.47 in Compensatory damages.
11. Respondents Harry W. Wilk III and Sigma Financial Corporation are jointly and severally liable for and shall pay to Claimant, Tom Oliphint \$20,042.50 in compensatory damages.
12. Respondents Harry W. Wilk III and Sigma Financial Corporation are jointly and severally liable for and shall pay to Claimant, Larry Brenner \$27,460.01 in Compensatory damages.
13. Respondents Harry W. Wilk III and Sigma Financial Corporation are jointly and severally liable for and shall pay to Claimant Stephen Cagel \$36 321.51 in Compensatory damages. Respondent, Harry W. Wilk III is individually liable and shall pay to Claimant Stephen Cagel \$19,837.50 in Compensatory damages.
14. On motion of the Claimants, the Panel dismissed all claims of William E. Zinsmeyer.
15. Respondents Harry W. Wilk III and Sigma Financial Corporation are jointly and severally liable for and shall pay to Claimants, Hugh and Carol Burris, Eino and Linda Oliveres,

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Heljo Oliveres, Gary and Sandra Brieden, Theo and Edie Mandel, Karl Jauhiainen, Megan Gabel and Harry Burrus, Tom Oliphint, Larry Brenner, Harvey Slusky, William J. Stanton and Stephen Cagel \$ 250,000.00 in attorneys' fees. In deciding to award attorneys' fees, the panel considered the arguments of the parties, as well as the pleadings filed on their behalf, and determined that authority existed for an award of attorneys' fees to Claimants.

16. Any outstanding Motions or Counter-Motions not specifically ruled upon herein are denied.

17. Except as otherwise specified herein, each party shall bear its own costs.

18. Any and all relief not specifically addressed herein is 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 = \$500

**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 firms are Respondents in this action.

Member surcharge	= \$2,500
Pre-hearing process fee	= \$600
Hearing process fee	= \$4500
Total Fees	= \$7,600

**Forum Fees and Assessments**

The arbitrator has the authority to assess 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 that lasts four (4) hours or less. Fees associated with these proceedings are:



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Three (3) Pre-hearing sessions with a sole Arbitrator x \$ 450.00 = \$1,350.00

Pre-hearing conference(s): July 13, 2000 1 session

March 6, 2001 1 session

March 27, 2001 1 session

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

Pre-hearing conference: May 12, 2000 1 session

Twenty (20) Hearing sessions x \$ 1,200.00 = \$26,550.00

Hearing Date(s): April 2, 2001 1 session

April 3, 2001 2 sessions

April 4, 2001 3 sessions

April 5, 2001 2 sessions

April 10, 2001 2 sessions

April 11, 2001 2 sessions

April 25, 2001 1 sessions

April 26, 2001 2 sessions

April 27, 2001 2 sessions

May 10, 2001 3 sessions

**Total Forum Fees = \$ 26,550.00**

1. The arbitrator has assessed the entire \$26,550.00 of the forum fees to, Respondent, Sigma Financial Corporation..

**Fee Summary**

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee = \$ 500.00

Total Fees = \$ 500.00

Less payments = \$ 1700.00

Balance to be refunded by NASD-DR = \$ 1200.00

2. Respondent, Pershing Division of DLJ Securities Corp. be and hereby is solely liable for:

Member Surcharge = \$ 2,500.00

Total Fees = \$ 2,500.00

Less payments = \$ 2,500.00

Balance Due to NASD Dispute Resolution, Inc. = \$ 00

3. Respondent, Southwest Securities, Inc., be and hereby is solely liable for:

Member Surcharge = \$ 2,500.00

Total Fees = \$ 2,500.00

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<u>Less payments</u>	= \$ 7,000.00
Balance refunded by NASD Dispute Resolution Inc.	= \$ 4,500.00

2. Respondent, Sigma Financial Corporation, be and hereby is solely liable for:

<u>Member Fees</u>	= \$ 7,600.00
<u>Filing Fee</u>	= \$ 2,000.00
Hearing Session Deposit	= \$ 1,200.00
<u>Forum Fees</u>	= \$ 26,550.00
Total Fees	= \$ 37,350.00
<u>Less payments</u>	= \$ 7,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 29,750.00

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Bertrand C. Moser  
Robert E. Otto  
Woody W. Wilson

Public Panelist, Presiding Chair  
Non-Public, Panelist  
Public Panelist

Bertrand C. Moser  
Public Arbitrator, Presiding Chair

Signature Date

Robert E. Otto  
Non-Public Arbitrator, Panelist

Signature Date

Woody W. Wilson  
Public Arbitrator, Panelist

Signature Date

Date of Service (For NASD-Dispute Resolution office use only)

**NASD-DR Award**

**Hugh B. Burris, Jr., et al. vs. Harry W. Wilk, III, et al**

**Arbitration # 99-02233**

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Signature Date

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Non-Public Arbitrator, Panelist

\_\_\_\_\_  
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■ \_\_\_\_\_  
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NASD-DR Award

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Woody W. Wilson

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Non-Public, Panelist  
Public Panelist

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Non-Public Arbitrator, Panelist

Signature Date

Woody W. Wilson  
Public Arbitrator, Panelist

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Date of Service (For NASD-Dispute Resolution office use only)

06/27/01 WED 15:05 FAX

NASD REGULATION

## NASD-DR Award

Hugh B. Burris, Jr., et al. vs. Harry W. Wilk, III, et al.

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Woody W. Wilson

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- Non-Public, Panelist
- Public Panelist

Bertrand C. Moser

Public Arbitrator, Presiding Chair

Signature DateRobert E. Otto

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Non-Public Arbitrator, Panelist

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 Hugh B. Burris, Jr., et al. vs. Harry W. Wilk, III et al.  
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Signature Date Bertrand G. Moser  
 Public Arbitrator, Presiding Chair

Robert E. Otto  
 Non-Public Arbitrator, Panelist

Signature Date

Woody W. Wilson  
 Woody W. Wilson  
 Public Arbitrator, Panelist

June 28, 2001  
 Signature Date

Dare of Service (For NASD-Dispute Resolution office use only)