

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Patricia Whitman, (Claimant) vs. Brean Murray, Foster, Inc. and John C. Moore, III,
(Respondents)

Case Number: 99-02801

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Patricia Whitman, hereinafter referred to as "Claimant": James C. Plowden-Wardlaw, Esq., Law Offices of James C. Plowden-Wardlaw, New York, NY

Respondent, Brean Murray, Foster, Inc. ("Brean"): David P. Langlois, Esq., Piper, Marbury, Rudnick & Wolfe LLP, New York, NY.

Respondent, John C. Moore, III ("Moore"): Michael S. Press, Esq., Riad & Associates, P.C., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: June 21, 1999.

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

Statement of Answer filed by Brean on or about: August 17, 1999.

Brean signed the Uniform Submission Agreement: August 13, 1999.

Statement of Answer filed by Moore on or about: November 30, 1999.

Moore did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; breach of duty; negligent and/or willful mismanagement of accounts; and failure to supervise. Claimant's claim involved the stocks of Microtest, Inc. and Syntellect, Inc.

Unless specifically admitted in its Answer, Brean denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's investment account had been in high risk investments before it came to Brean, and the investment objectives at Brean were consistent with Claimant's prior investment objectives; the status of Claimant's accounts was reflected in full on the account statements which were sent to her on a monthly basis;

the new account form signed by Claimant calls for an "aggressive growth" philosophy of investing and at no time did Claimant make a written or oral complaint to the firm about the activities of Moore or the handling of her account; Claimant negligently failed to provide any information to Brean orally or in writing concerning her unhappiness or desire to change the investments in her account; Brean engages in active supervision of its representatives including supervision of new accounts, orders, daily activity, monthly review of accounts, and similar matters; Brean at all relevant times adequately supervised Moore's activities pursuant to a reasonable system of policies and procedures and in accordance with proper brokerage procedure and industry rules governing the supervision of employees and registered representatives; Claimant's claims are barred, in whole or in part, by her assumption and acceptance of risk of loss from an aggressive growth investment strategy authorized by her; Claimant is barred by the principles of waiver and estoppel because she had full knowledge of all material facts concerning the investments, yet did not repudiate those investments or advise Brean of her desire to terminate investments of this nature; Claimant failed to mitigate losses by her actions, inactions, conduct, and deeds and is thus estopped from maintaining her claims which are barred by the doctrines of ratification and waiver; and Claimant is not entitled to attorneys' fees, prejudgment interest, or costs under any statute or rule of law and therefore is not entitled to punitive damages as a matter of law.

Unless specifically admitted in his Answer, Moore denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim against Moore upon which relief can be granted; Moore acted in compliance with all applicable rules and regulations, acted in good faith, and did not induce the alleged act or acts, if any, constituting alleged violations of law; the damages allegedly suffered by Claimant have no causal relationship with any act committed by or legally attributable to Moore; Claimant authorized all investment decisions in her accounts and any losses she suffered were caused either by her own investment decisions or market conditions over which Moore had no control; the injuries, if any, alleged to have been sustained by Claimant were caused, in whole or in part, by Claimant's failure to exercise reasonable care and to mitigate damages; Claimant did not reasonably rely to her detriment on any action or inaction of Moore nor any action or inaction legally attributable to Moore. Claimant, through her actions or deeds, waived her rights to maintain this action against Moore and ratified all transactions in her accounts; Claimant is estopped from complaining about the handling of her account; Moore discharged his responsibilities in a professional and ethical manner, in good faith, and all actions were well within the parameters of accepted brokerage procedure and all exchange and governmental regulations; Claimant's claim is barred, in whole or in part, by the doctrines of contributory/comparative negligence; and Moore denies that Claimant has any right to seek attorneys' fees or punitive damages in this matter.

RELIEF REQUESTED

Claimant requested:

- a. Compensatory damages in the amount of \$58,214.00;
- b. Loss of investment opportunity in the amount of \$251,855.00;
- c. Margin interest in the amount of \$1,493.02;
- d. Punitive damages in an amount deemed appropriate by the Panel; and
- e. The costs and expenses of this action, including attorneys' fees.

Brean requested that the Panel deny Claimant any relief on her Statement of Claim, and award Brean the costs and disbursements of this action.

Moore requested that the Statement of Claim be dismissed in all respects, and that costs and disbursements be assessed against the Claimant for having filed this groundless claim.

OTHER ISSUES CONSIDERED AND DECIDED

Moore did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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 = \$ 300.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, Brean Murray, Foster, Inc. is a party.

Member surcharge = \$ 1,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$ 2,500.00

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 Panel x \$1,125.00 = \$ 1,125.00

Pre-hearing conference: July 25, 2000 1 session

Fifteen (15) Hearing sessions x \$1,125.00 = \$16,875.00

Hearing Dates: October 12, 2000 2 sessions
 October 13, 2000 2 sessions
 February 1, 2001 2 sessions
 February 2, 2001 2 sessions
 May 9, 2001 2 sessions
 May 10, 2001 2 sessions
 August 15, 2001 2 sessions
 August 16, 2001 1 session

Total Forum Fees = \$18,000.00

1. The Panel has assessed \$9,000.00 of the forum fees against Claimant.
2. The Panel has assessed \$4,500.00 of the forum fees against Brean.
3. The Panel has assessed \$4,500.00 of the forum fees against Moore.

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. Moore, requested tapes, \$75.00.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$9,000.00
Total Fees	= \$9,300.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution, Inc.	= \$7,875.00

2. Brean be and hereby is solely liable for:

Member Fees	= \$4,600.00
Forum Fees	= \$4,500.00
Total Fees	= \$9,100.00
Less payments	= \$4,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,500.00

3. Moore be and hereby is solely liable for:

Forum Fees	= \$4,500.00
Administrative Costs	= \$ 75.00
Total Fees	= \$4,575.00
Less payments	= \$ 75.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,500.00

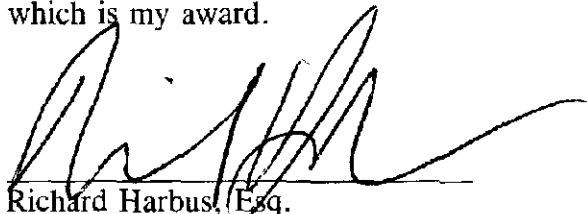
All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Richard Harbus, Esq.	-	Public Arbitrator, Presiding Chair
Allen D. Sklar	-	Public Arbitrator
Joan Caridi, Esq.	-	Industry Arbitrator

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.



Richard Harbus, Esq.
Public Arbitrator, Presiding Chair

9/11/01
Signature Date

Allen D. Sklar
Public Arbitrator

Signature Date

Joan Caridi, Esq.
Industry Arbitrator

Signature Date

October 5, 2001
Date of Service (For NASD office use only)

ARBITRATION PANEL

Richard Harbus, Esq.	-	Public Arbitrator, Presiding Chair
Allen D. Sklar	-	Public Arbitrator
Joan Caridi, Esq.	-	Industry Arbitrator

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.

Richard Harbus, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Allen D. Sklar
Public Arbitrator

Signature Date


Joan Caridi, Esq.
Industry Arbitrator

9/4/01
Signature Date

October 5, 2001
Date of Service (For NASD office use only)

ARBITRATION PANEL

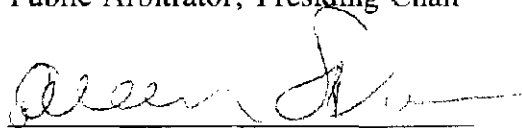
Richard Harbus, Esq.	-	Public Arbitrator, Presiding Chair
Allen D. Sklar	-	Public Arbitrator
Joan Caridi, Esq.	-	Industry Arbitrator

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.

Richard Harbus, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Allen D. Sklar
Public Arbitrator

Sept. 10, 2001
Signature Date

Joan Caridi, Esq.
Industry Arbitrator

Signature Date

October 11, 2001

Date of Service (For NASD office use only)