

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

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In the Matter of the Arbitration Between:

Richard T. and Virginia M. Stockton, Claimant v. Baxter, Banks & Smith, Ltd.  
Aaron Capital, Incorporated, Kevin John Ruggiero and Francis Martin McDermott, Respondents

Case Number: 99-03009

Hearing Site: Tampa, Florida

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**REPRESENTATION OF PARTIES**

For Richard T. and Virginia M. Stockton  
("Claimant"):

Scott A. Beatty, Esq.  
Thomas R. Grady, Esq.  
Grady & Associates, Inc.  
Naples, Florida

For Baxter, Banks & Smith, Ltd. ("BBS") and  
Francis Martin McDermott ("McDermott"):

Jeffrey Mark Sherman, Esq.  
Nicole Mouser, Esq.  
Mouser & Wells, P.A.  
St. Petersburg, Florida

On or about January 14, 2000, counsel  
withdrew for Respondents BBS and  
McDermott.

Thereafter, McDermott appeared pro  
se and on behalf of BBS.

For Aaron Capital, Incorporated ("Aaron"):

Joel A. Gordon, Esq.  
Houston, Texas

Kevin John Ruggiero ("Ruggiero"):

did not appear

**CASE INFORMATION**

Statement of Claim filed on or about: June 30, 1999.

Claimant signed the Uniform Submission Agreement on: June 28, 1999.

Statement of Answer filed by Respondents BBS and McDermott on or about: October 26,  
1999.

Respondents BBS and McDermott did not file executed Uniform Submission Agreements.

Statement of Answer filed by Respondent Aaron on or about: October 19, 1999.

Respondent Aaron signed the Uniform Submission Agreement on: October 25, 1999.

Respondent Ruggiero did not file a Statement of Answer or executed Uniform Submission Agreement.

### **CASE SUMMARY**

Claimant contends that Respondents BBS, McDermott and Ruggiero effected unauthorized trades in the account of Claimant, a retired couple. Respondents convinced Claimant to liquidate their entire blue chip stock portfolio (worth nearly \$600,000.00) and deposit the proceeds as cash into an account at Respondent BBS. Once the money was deposited into the BBS account, Respondents BBS, McDermott and Ruggiero made unauthorized purchases totaling \$576,850.00 worth of securities in Maid Aide, Inc., a company thinly traded on the OTC Bulletin Board System. Unknown to Claimant, the creation and existence of Maid Aide was designed solely to defraud investors like Claimant. Upon discovering the unauthorized purchases, Claimant sold the securities for pennies a share.

Claimant further contends that Respondents BBS, McDermott and Ruggiero engaged in fraud and market manipulation, made unsuitable recommendations and committed civil theft. Claimant also contends that Respondents BBS, McDermott and Ruggiero violated the Florida Securities and Investor Protection Act by selling unregistered securities and committing fraud. Claimant contends that as a result of said Respondents unauthorized, fraudulent and illegal conduct, Claimant incurred \$576,850.00 in compensatory damages, \$115,850.71 in pre-judgment interest, and attorneys' fees and costs in the amount of \$48,794.70, for a total sum of \$741,495.41.

Respondents BBS, McDermott and Aaron denied the allegations of wrongdoing set forth in the Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested in the Statement of Claim: 1) compensatory damages in the amount of \$577,000.00; 2) rescission; 3) punitive damages; 4) treble damages; 5) interest; 6) costs; and 7) attorneys' fees. Thereafter, Claimant submitted to the Panel, in connection with the entry of this Stipulated Award, relief requested of: 1) compensatory damages in the amount of \$576,850 (representing the monies removed from Claimant's account); 2) pre-judgment interest in the amount of \$115,850.71; and 3) reasonable attorneys' fees and costs, pursuant to the Florida Securities and Investor Protection Act, in the amount of \$48,794.70.

Respondents BBS and McDermott requested in their Statement of Answer: 1) dismissal of the Statement of Claim; 2) costs; and 3) attorneys' fees. Thereafter, said Respondents consented to the relief requested by Claimant in the Stipulated Award.

Respondent Aaron requested: 1) dismissal of the Statement of Claim; 2) costs; and 3) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

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

Respondents BBS and McDermott did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

Respondent Ruggiero did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

On or about November 13, 1999, Claimant filed a motion to preclude Respondents BBS, Aaron, Ruggiero and McDermott from presenting any matter, argument or defenses at the evidentiary hearing. The Panel did not make a determination on said motion as said motion is now moot.

On or about November 19, 1999, Claimant filed a Notice of Voluntary Dismissal Without Prejudice. Claimant notified NASD Dispute Resolution, Inc. that Claimant had settled the claims with Respondent Aaron, that Claimant's claims against Respondent Aaron are dismissed, without prejudice, and that Claimant and Respondent Aaron are to bear their own costs and attorneys' fees.

Respondents BBS and McDermott initially filed a response to the Statement of Claim, generally denying all material allegations of wrongdoing. Subsequent to their answer to the Statement of Claim, Claimant, Respondent BBS and Respondent McDermott settled the claims asserted in this arbitration. As part of the settlement, Respondent BBS admits that the trades were unauthorized and further admits all allegations of the Statement of Claim, including the claims that Respondent BBS violated Sections 517.07 and 517.301 of the Florida Securities and Investor Protection Act, and has consented to the entry of this Stipulated Award. As a further part of the settlement, the claims against Respondent McDermott are dismissed with prejudice.

On or about August 22, 2000, the parties requested a waiver of the adjournment fee relating to the adjournment of the evidentiary hearing scheduled for September 19, 20 and 21, 2000. After careful consideration of the parties' submissions of financial hardship, the Panel has denied the request for a waiver of the adjournment fee and has assessed the adjournment fee jointly and severally to Respondents BBS and McDermott.

On or about July 18, 2001, Claimant dismissed, without prejudice, all claims asserted against Respondent Ruggiero.

On or about August 15, 2001, Claimant dismissed, with prejudice, all claims asserted against Respondent McDermott.

The parties have agreed that the Stipulated Award in this matter may be executed in

counterpart copies or that a handwritten, signed Stipulated Award may be entered.

### **AWARD**

After considering the pleadings and noting the agreement of the parties to the entry of this Stipulated Award, the agreement is as follows:

1. Respondent BBS is liable for, and shall pay to Claimant, compensatory damages for unauthorized trading, fraud, market manipulation, unsuitability, civil theft and violations of Sections 517.07 and 517.301 of the Florida Securities and Investor Protection Act, in the amount of \$576,850.00, plus pre-judgment interest in the amount of \$115,850.71, for a total sum of \$692,700.71.
2. Pursuant to the Florida Securities and Investor Protection Act, Fla. Stat. Sections 517.07, 517.301 and 517.211, Respondent BBS is liable and shall pay Claimant's attorneys' fees and costs in the amount of \$48,794.70.
3. Pursuant to the Florida Securities and Investor Protection Act, Fla. Stat. Section 517.211, Respondent BBS is liable and shall pay to Claimant the sum of \$500.00 representing reimbursement of the filing fee previously paid by Claimant to NASD Dispute Resolution, Inc.

### **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	= \$500.00
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#### **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 persons at the time of the events giving rise to the dispute.

In this matter, Respondent Aaron is a member firm, was a party until November 19, 1999, and employed Respondent Ruggiero at the time of the events which gave rise to the dispute, claim and/or controversy at issue. Accordingly, the following member fees accrued as to Respondent Aaron:

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$4,500.00

In this matter, Respondent BBS was a member firm at the time the member fees accrued and

is a party. Accordingly, the following member fees accrued as to Respondent BBS:

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$4,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

September 19, 20 and 21, 2000, adjournment request by Claimant = \$1,200.00

The Panel assessed the total adjournment fee of \$1,200.00 jointly and severally to Respondents BBS and McDermott.

#### **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 \$1,200.00	= \$2,400.00
Pre-hearing conferences: February 22, 2000 1 session	
April 13, 2001 1 session	

Total Forum Fees = \$2,400.00

With respect to the pre-hearing conference held on February 22, 2000, the Panel has assessed a forum fee of \$1,200.00 jointly and severally to Respondents BBS and McDermott.

With respect to the pre-hearing conference held on April 13, 2001, the Panel has waived the forum fee of \$1,200.00.

#### **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.

There were no administrative costs incurred during these proceedings.

#### **FEE SUMMARY**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$500.00
Total Fees	= \$500.00
<u>Less payments</u>	<u>= \$500.00</u>

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

Respondent BBS be and hereby is solely liable for:

Member Fees	= \$7,600.00	
Total Fees	= \$7,600.00	
<u>Less payments</u>	<u>= \$ 0.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$7,600.00

Respondent Aaron be and hereby is solely liable for:

Member Fees	= \$7,600.00	
Total Fees	= \$7,600.00	
<u>Less payments</u>	<u>= \$2,700.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$4,900.00

Respondents BBS and McDermott be and hereby are jointly and severally liable for:

Adjournment Fees	= \$1,200.00	
Forum Fees	= \$1,200.00	
Total Fees	= \$2,400.00	
<u>Less payments</u>	<u>= \$ 0.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$2,400.00

All balances are due and payable to NASD Dispute Resolution, Inc. immediately upon receipt of the Stipulated Award by the parties pursuant to Rule 10330(g) of the Code.

#### ARBITRATION PANEL

Lisa M. Harris, Esq.	-	Public Arbitrator, Presiding Chair
Mary T. Hettig	-	Non-Public Arbitrator
Mimi B. Osiason	-	Public Arbitrator

#### Concurring Arbitrators' Signatures

\_\_\_\_\_  
/s/  
Lisa M. Harris, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
/s/  
Mary T. Hettig  
Non-Public Arbitrator

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

NASD Dispute Resolution, Inc.

Arbitration No. 99-03009

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/s/

Mimi B. Osiason  
Public Arbitrator

Signature Date

August 29, 2001

Date of Service

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

Respondent BBS be and hereby is solely liable for:

Member Fees	= \$7,600.00	
Total Fees	= \$7,600.00	
<u>Less payments</u>	<u>= \$ 0.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$7,600.00

Respondent Aaron be and hereby is solely liable for:

Member Fees	= \$7,600.00	
Total Fees	= \$7,600.00	
<u>Less payments</u>	<u>= \$2,700.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$4,900.00

Respondents BBS and McDermott be and hereby are jointly and severally liable for:

Adjournment Fees	= \$1,200.00	
Forum Fees	= \$1,200.00	
Total Fees	= \$2,400.00	
<u>Less payments</u>	<u>= \$ 0.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$2,400.00

All balances are due and payable to NASD Dispute Resolution, Inc. immediately upon receipt of the Stipulated Award by the parties pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Lisa M. Harris, Esq.	-	Public Arbitrator, Presiding Chair
Mary T. Hettig	-	Non-Public Arbitrator
Mimi B. Osiason	-	Public Arbitrator

**Concurring Arbitrators' Signatures**



Lisa M. Harris, Esq.  
Public Arbitrator, Presiding Chair

August 27, 2001  
Signature Date

\_\_\_\_\_  
Mary T. Hettig  
Non-Public Arbitrator

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



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

Respondent BBS be and hereby is solely liable for:

Member Fees	= \$7,600.00	
Total Fees	= \$7,600.00	
<u>Less payments</u>	<u>= \$ 0.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$7,600.00

Respondent Aaron be and hereby is solely liable for:

Member Fees	= \$7,600.00	
Total Fees	= \$7,600.00	
<u>Less payments</u>	<u>= \$2,700.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$4,900.00

Respondents BBS and McDermott be and hereby are jointly and severally liable for:

Adjournment Fees	= \$1,200.00	
Forum Fees	= \$1,200.00	
Total Fees	= \$2,400.00	
<u>Less payments</u>	<u>= \$ 0.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$2,400.00

All balances are due and payable to NASD Dispute Resolution, Inc. immediately upon receipt of the Stipulated Award by the parties pursuant to Rule 10330(g) of the Code.

### ARBITRATION PANEL

Lisa M. Harris, Esq.	-	Public Arbitrator, Presiding Chair
Mary T. Hettig	-	Non-Public Arbitrator
Mimi B. Oslason	-	Public Arbitrator

### Concurring Arbitrators' Signatures

\_\_\_\_\_  
Lisa M. Harris, Esq.  
Public Arbitrator, Presiding Chair

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

Mary T. Hettig  
Mary T. Hettig  
Non-Public Arbitrator

5-22-01  
Signature Date

NASD Dispute Resolution, Inc.

Arbitration No. 99-03009

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*Mimi B. Osiason*

Mimi B. Osiason

Public Arbitrator

8/24/2001

Signature Date

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Date of Service