

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

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In the Matter of the Arbitration Between:

Dean Witter Reynolds, Inc., Claimant vs. Brent Lydell Moore, Respondent.

Case Number: 99-05088

Hearing Site: San Francisco, CA

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**REPRESENTATION OF PARTIES**

Claimant, Dean Witter Reynolds, Inc., (hereinafter referred to as "Claimant"): Kenneth C. Mennemeier, Esq., Mennemeier, Glassman & Stroud, LLP, 980 9<sup>th</sup> Street, Suite 1700, Sacramento, CA 95814.

Respondent, Brent Lydell Moore, (hereinafter referred to as "Respondent"): Paul Chan, Esq., Biegler, Ortiz & Chan, 801 K Street, 23<sup>rd</sup> Floor, Sacramento, CA 95814.

**CASE INFORMATION**

Statement of Claim filed on or about: September 12, 1999

Claimant signed the Uniform Submission Agreement: October 25, 1999

Statement of Answer filed by Respondent on or about: January 27, 2000

Respondent signed the Uniform Submission Agreement: January 24, 2000

**CASE SUMMARY**

Claimant asserted the following causes of action: Unjust enrichment and money received and kept. The claims relate to Claimant's allegations that it mistakenly overpaid Respondent during a portion of his employment with Claimant.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant acted with unclean hands; Claimant waived all rights to recover the funds under the theory of estoppel; Claimant failed to mitigate its damages; Respondent changed his position in reliance on Claimant's mistake and Claimant would be unjustly enriched if awarded the amount claimed.

**RELIEF REQUESTED**

Claimant requested in the original Statement of Claim:

Compensatory Damages

\$89,857.50

Interest

Unspecified, but at the rate of 10%  
per year from the time of the  
overpayment until the date of the

**Other Monetary/Non-Monetary Relief**

Claimant requested at the arbitration hearing:

Compensatory Damages

Interest

Other Monetary Relief

Respondent requested:

Monetary/Non-Monetary Relief

**Award.**

As the panel finds just and proper.

\$82,357.50

Unspecified, but at the rate of 7%  
per year from the time of the  
overpayment until the date of the  
Award for a total of \$15,328.48.

Forum fees in the amount of \$5050.

That Claimant take nothing, but in  
the event of an award, there be an  
offset for the taxes the Claimant paid  
on the money given to him, and that  
offset be given for the unpaid bonus  
of \$30,000 and for Respondent's  
salary for January and February  
1999.

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

1. Respondent shall pay to Claimant \$65,000.
2. All other claims are denied in their entirety.
3. Forum fees shall be split equally between the parties.

### **FEES**

Pursuant to the 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 = \$1000

#### **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, the member firm is a party.

Member surcharge	= \$1000
Pre-hearing process fee	= \$ 600
<u>Hearing process fee</u>	<u>= \$1500</u>
Total Member Fees	= \$3100

#### **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 \$750	= \$750
Pre-hearing conference: August 29, 2000	1 session

<u>Two (2) Hearing sessions x \$750</u>	<u>= \$1500</u>
Hearing Date: December	2 sessions
Total Forum Fees	= \$2250

The Panel has assessed \$1125 of the forum fees to Claimant.

The Panel has assessed \$1125 of the forum fees to Respondent.

### **Fee Summary**

Claimant is hereby solely liable for:

Initial Filing Fee	= \$1000
Member Fees	= \$3100
<u>Forum Fees</u>	<u>= \$1125</u>
Total Fees	= \$5225
<u>Less payments</u>	<u>= \$4850</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 375

NASD Dispute Resolution, Inc.

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Respondent hereby is solely liable for:

<u>Forum Fees</u>	= \$1125
Total Fees	= \$1125
<u>Less payments</u>	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$1125

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

NASD Dispute Resolution, Inc.

Arbitration No. 99-05088

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Concurring Arbitrators' Signatures



Ruth Olick

Industry Arbitrator, Presiding Chair

12/7/00  
Signature Date

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Frank Weaver

Industry Arbitrator

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

\_\_\_\_\_  
Allan B. Currie

Industry Arbitrator

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

Date Served:

DEC 15 2000

\_\_\_\_\_  
Date of Service (For NASD office use only)

NASD Dispute Resolution, Inc.  
Arbitration No. 99-05088  
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Industry Arbitrator, Presiding Chair

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Signature Date



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Frank Weaver  
Industry Arbitrator

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Allan B. Currie  
Industry Arbitrator

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Ruth Glick  
Industry Arbitrator, Presiding Chair

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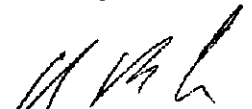
Signature Date

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Frank Weaver  
Industry Arbitrator

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Signature Date



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Allan B. Currie  
Industry Arbitrator

12/8/00

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Signature Date

Date Served:

**DEC 15 2000**

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Date of Service (For NASD office use only)