

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

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In the Matter of the Arbitration Between

Name of Claimant

James D. Gerlach

Case No. 01-00029

Names of Respondents

J. C. Bradford & Co. n/k/a UBS PaineWebber, Inc.  
as successor  
Buckman, Buckman & Reid, Inc.

Hearing Site: Atlanta, Georgia

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**REPRESENTATION OF PARTIES**

For James D. Gerlach ("Gerlach"), hereinafter referred to as "Claimant": Gerald B. Kline, Esq. of Sims Moss Kline & Davis LLP, Atlanta, Georgia.

For Respondent J.C. Bradford & Co. n/k/a UBS PaineWebber, Inc. as successor ("Bradford"): Patricia E. Cowart, Esq., Bradford.

For Respondent Buckman, Buckman & Reid, Inc. ("Buckman"): Mark J. Astarita, Esq. of Beam & Astarita, Bloomfield, New Jersey.

**CASE INFORMATION**

Statement of Claim filed on or about: January 2, 2001.

Claimant signed the Uniform Submission Agreement: December 21, 2000.

Statement of Answer filed by Respondent Bradford on or about: March 30, 2001.

Respondent Bradford signed the Uniform Submission Agreement: April 9, 2001.

Statement of Answer filed by Respondent Buckman on or about: March 15, 2001.

Respondent Buckman did not file an executed Uniform Submission Agreement.

Claimant's Motion to Amend Statement of Claim filed on or about: January 22, 2002.

Respondent Bradford's response to Claimant's Motion to Amend Statement of Claim filed on or about: January 25, 2002.

**CASE SUMMARY**

Claimant asserted the following: Respondents breached their agreements and obligations to Claimant in connection with the maintenance and transfer of his

securities account by engaging in a commercially unreasonable transfer in light of industry customs, practices, standards and conditions then prevailing. Further, Claimant asserted the following causes of action: breach of NASD Rules of Conduct; breach of public duty of care; breach of fiduciary duty; and deceit.

Unless specifically admitted in its Answer, Respondent Buckman denied the allegations made in the Statement of Claim and asserted that since Buckman was not involved with the transfer of the account, and since it had no obligation or responsibility for the transfer, it cannot be liable to Claimant for any alleged errors or negligence in the transfer, to the extent that anyone other than Claimant himself is to blame.

Unless specifically admitted in its Answer, Respondent Bradford denied the allegations made in the Statement of Claim and asserted Respondent Bradford handled the transfer of the account within the appropriate time parameters set out by the rules and did not refuse any proper order.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages of not more than \$920,743.26 together with accruing prejudgment interest thereon; attorneys' fees and costs of this arbitration; that all filing and session fees be assessed to the Respondents as the Panel deemed appropriate; and, exemplary damages of not less than \$250,000.00

Respondent Buckman requested the Panel dismiss the proceeding in its entirety, and award Respondent Buckman its costs, disbursements and attorneys' fees incurred herein, that all forum fees be assessed against Claimant, as well as such other and further relief as the Panel deemed appropriate.

Respondent Bradford requested an award in its favor together with recovery of its costs and such other and further relief as the Panel deemed appropriate under the circumstances.

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

Respondent Buckman 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 (the "Code") 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 agreed that the Award in this matter may be executed in counterpart copies.

On or about March 18, 2002, Claimant advised NASD Dispute Resolution, Inc. that he had reached a settlement agreement with Respondent Buckman and, as such, had dismissed Respondent Buckman from this proceeding, with prejudice.

During the evidentiary hearing in this matter, the arbitration panel granted Claimant's motion to amend the Statement of Claim to substitute J.C. Bradford & Co. n/k/a UBS PaineWebber, Inc. as successor in place of J.C. Bradford & Co. as a Respondent.

### AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent Bradford is liable and shall pay to Claimant the sum of \$408,195.00 in compensatory damages, plus interest at the rate of 7% per annum from March 24, 2000 until the date of payment of the Award.

Respondent Bradford is liable and shall pay to Claimant the sum of \$10,647.03 in costs.

Respondent Bradford is liable and shall pay to Claimant the sum of \$500.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution, Inc.

Any and all requests for relief not specifically addressed herein, including Claimant's request for exemplary damages, are 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	= \$500.00
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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 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 parties.

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

**Adjournment Fees**

Adjournments requested during these proceedings:

There were no adjournments requested during these proceedings.

**Forum Fees and Assessments**

The panel 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(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One Pre-hearing session with Panel x \$1,200.00	= \$1,200.00
Pre-hearing conference: August 15, 2001	1 session
Ten Hearing sessions x \$1,200.00	= \$12,000.00
Hearing Dates:	
February 11, 2002	2 sessions
February 12, 2002	2 sessions
February 13, 2002	2 sessions
March 19, 2002	2 sessions
March 20, 2002	2 sessions
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Total Forum Fees	= \$13,200.00

The panel has assessed the total forum fees of \$13,200.00 to Respondent Bradford.

**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
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Total Fees	= \$500.00
Less payments	= \$500.00
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Balance Due NASD Dispute Resolution, Inc.	= \$0.00

Respondent Bradford be and hereby is solely liable for:	
Member Fees	= \$7,600.00



Forum Fees	= \$13,200.00
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Total Fees	= \$20,800.00
Less payments	= \$7,600.00
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Balance Due NASD Dispute Resolution, Inc.	= \$13,200.00

Respondent Buckman be and hereby is solely liable for:

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

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

**ARBITRATION PANEL**

James J. Dalton, II, Esq.	-	Public Arbitrator, Presiding Chair
Ellwood F. Oakley, III, Esq.	-	Public Arbitrator
Barbara Marie Bantivoglio	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
James J. Dalton, II, Esq.  
Public Arbitrator, Presiding Chair

  
Signature Date

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Ellwood F. Oakley, III, Esq.  
Public Arbitrator

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

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Barbara Marie Bantivoglio  
Non-Public Arbitrator

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

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

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EL ARBITRATION

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Total Fees	= \$20,800.00
Less payments	= \$7,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$13,200.00

Respondent Buckman be and hereby is solely liable for:

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

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James J. Dalton, II, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

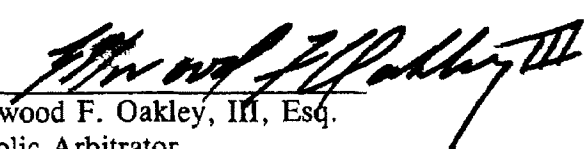
Ellwood F. Oakley, III, Esq.  
Public Arbitrator

Signature Date

Barbara Marie Bantivoglio  
Non-Public Arbitrator

Signature Date

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4/30/02  
Signature Date

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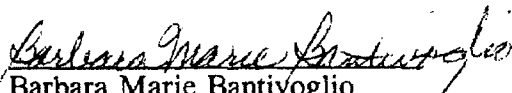
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