

---

**Award**  
**NASD Dispute Resolution**

---

In the Matter of the Arbitration Between:

Name of the Claimant

Berhardine Timmerscheidt, individually, and as  
Custodian of the Berhardine Timmerscheidt IRA

Case Number: 02-06934

Names of the Respondents

Weatherly Securities Corp.  
Michael K. McNulty

Hearing Site: Tampa, Florida

---

Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Berhardine Timmerscheidt, individually, and as Custodian of the Berhardine Timmerscheidt IRA, hereinafter referred to as "Claimant": Jeffrey P. Coleman, Esq., Coleman Law Firm, Clearwater, Florida.

Respondent Michael K. McNulty ("McNulty"), appeared pro se.

Respondent Weatherly Securities Corp. ("WSC"), did not appear.

**CASE INFORMATION**

Statement of Claim filed on or about: November 14, 2002.

Claimant signed the Uniform Submission Agreement.

Statement of Answer filed by Respondent McNulty on or about: April 2, 2003.

Respondent McNulty did not file an executed Uniform Submission Agreement.

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

Motion to Compel the filing of a More Definite Statement of Answer and/or Motion to Preclude filed by Claimant on or about: March 29, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) violation of Florida Statute, Chapter 517; 2) negligence; 3) negligent supervision; 4) gross negligence; 5) breach of fiduciary duty; 6) unsuitability; and, 7) violation of common law. The causes of action relate to the purchase and sale of various, unspecified stocks in Claimant's accounts.

Unless specifically admitted in his Answer, Respondent McNulty denied the allegations made in the Statement of Claim but did not assert any affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages between \$100,000.00 and \$499,999.00, additional unspecified compensatory damages incurred but not yet determined, disgorgement of fees and/or commissions, interest, punitive damages, a determination that Claimant is entitled to attorney's fees in an amount to be determined by a court of competent jurisdiction, costs, expenses and disbursements and such other relief as the Panel deemed proper.

Respondent McNulty did not delineate a relief request.

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

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

Respondent McNulty did not appear at the evidentiary hearing in this matter. Upon review of the file and the representations made by the Claimant, the Panel determined that Respondent McNulty had been properly served with the Statement of Claim and received due notice of the hearing, and that the arbitration of this matter would proceed without said Respondent present, in accordance with the Code.

On or about May 5, 2003, NASD Dispute Resolution was provided with notification that Respondent WSC had filed for bankruptcy protection and that the Securities Investor Protection Corporation had begun proceedings to protect customers' accounts maintained at WSC. As a result of this notification, all matters pertaining to Respondent WSC were indefinitely stayed.

Claimant's Motion to Compel the filing of a More Definite Statement of Answer and/or Motion to Preclude was not ruled on by the Panel prior to the evidentiary hearing. At the hearing, the Panel deemed this motion to be moot since Respondent McNulty did not appear.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten 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:

The Panel finds that Respondent McNulty damaged Claimant during the scope and course of his employment at Weatherly Securities Corp. Therefore, the Panel finds Respondent McNulty liable for violation of Florida Statutes, Chapter 517, including churning, misrepresentations and omissions, and shall pay to Claimant compensatory damages in the amount of \$158,571.00, plus post-judgment interest at the rate of 7% per annum from April 28, 2004 until the date of payment of the Award.

Respondent McNulty is liable and shall pay to Claimant attorney's fees, pursuant to Florida Statutes, Chapter 517, et. seq., in an amount to be determined by a court of competent jurisdiction.

Respondent McNulty is liable and shall pay to Claimant costs in the amount of \$5,017.75.

Respondent McNulty is liable and shall pay to Claimant the sum of \$300.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

NASD Dispute Resolution 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.

No member fees were assessed in this matter.

#### Adjournment Fees

Adjournment granted during these proceedings for which fees were assessed:

November 4 -5, 2003, adjournment requested by Respondent McNulty = \$1,125.00

#### Injunctive Relief Fees

No injunctive relief fees were incurred during this proceeding.

#### Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 the Panel @ \$1,125.00 = \$1,125.00  
Pre-hearing conference: July 22, 2003 1 session

Two (2) Hearing sessions with the Panel @ \$1,125.00 = \$2,250.00  
Hearing Dates: April 28, 2004 2 sessions  
Total Forum Fees = \$3,375.00

The Panel has assessed the total forum fees of \$3,375.00 to Respondent McNulty.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee = \$ 300.00  
Total Fees = \$ 300.00  
Less payments = \$ 300.00  
Balance Due NASD Dispute Resolution = \$ 0.00

Respondent McNulty is solely liable for:

Adjournment Fee = \$ 1,125.00  
Forum Fees = \$ 3,375.00  
Total Fees = \$ 4,500.00  
Less payments = \$ 0.00  
Balance Due NASD Dispute Resolution = \$ 4,500.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

*Russell W. Merriman, Esq.* - *Public Arbitrator, Presiding Chairperson*  
*Paul E. Merritt* - *Public Arbitrator*  
*Terrence W. Grant* - *Non-Public Arbitrator*

**Concurring Arbitrators' Signatures**

/s/  
Russell W. Merriman, Esq.  
Public Arbitrator, Presiding Chairperson

04/30/04  
Signature Date

NASD Dispute Resolution  
Arbitration No. 02-06934  
Award Page 5

/s/  
Paul E. Merritt  
Public Arbitrator

04/29/04  
Signature Date

/s/  
Terrence W. Grant  
Non-Public Arbitrator

04/29/04  
Signature Date

04/30/04  
Date of Service (For NASD Dispute Resolution office use only)