

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

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In the Matter of the Arbitration Between:

Gary K. Liebschner, (Claimant) vs. Michael Patterson, Inc., Michael Patterson, Dain Rauscher Incorporated, Robert Bales, Quantum Capital Corporation, Thomas Dooley III, Ernest Dahlen III, and Adolphus Dubose Jr., (Respondents)

Case Number: 00-02283

Hearing Site: Columbus, Ohio

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**REPRESENTATION OF PARTIES**

Claimant, Gary K. Liebschner, hereinafter referred to as "Claimant": Earle R. Frost, Jr., Esq., Frost & Danchak LLP, Columbus, OH.

Respondents, Michael Patterson, Inc. ("MPI") and Michael Patterson ("Patterson"): Ronald K. Nims, J.D., CPA, Nims Law Offices, L.P.A., Powell, OH.

Respondent, Dain Rauscher Incorporated ("Dain"), did not appear at the hearings in this matter. Previously represented by: Ellen B. Sessions, Esq., Jenkins & Gilchrist, Dallas, TX.

Respondent, Robert Bales ("Bales"), did not make an appearance in this matter.

Respondents, Quantum Capital Corporation ("QCC") and Thomas Dooley III ("Dooley"), did not appear at the hearings in this matter. Previously represented by: Benjamin B. Segel, Esq., a sole practitioner, Columbus, OH.

Respondent, Ernest Dahlen III ("Dahlen"), appeared *pro se*.

Respondent, Adolphus DuBose, Jr. ("DuBose"), W. Sean Kelleher, Esq., a sole practitioner, Worthington, OH. DuBose originally appeared *pro se*.

**CASE INFORMATION**

Statement of Claim filed on or about: May 25, 2000.

Amended Statement of Claim filed on or about: May 15, 2002.

Reply to Dain's Motion to Dismiss filed by Claimant on or about: August 28, 2000.

Claimant signed the Uniform Submission Agreement: May 13, 2000.

Joint Statement of Answer filed by MPI and Patterson on or about: August 9, 2002.  
MPI did not sign a Uniform Submission Agreement.  
Patterson did not sign a Uniform Submission Agreement.

Bales did not file a Statement of Answer or sign a Uniform Submission Agreement.

Statement of Answer and Motion to Dismiss filed by Dain on or about: July 26, 2000.  
Dain signed the Uniform Submission Agreement: July 21, 2000.

Joint Statement of Answer filed by QCC and Dooley on or about: June 27, 2002.  
QCC did not sign a Uniform Submission Agreement.  
Dooley did not sign a Uniform Submission Agreement.

Statement of Answer filed by Dahlen on or about: July 1, 2002.  
Dahlen signed the Uniform Submission Agreement: July 1, 2002.

Statement of Answer filed by DuBose on or about: May 18, 2002.  
DuBose signed the Uniform Submission Agreement: May 18, 2002.

#### CASE SUMMARY

Claimant asserted the following causes of action: unauthorized trades; failure to provide Claimant with competent and professional services; breach of contractual and legal duties; violation of Rules of the NASD and the New York Stock Exchange; unsuitability; failure to supervise; misrepresentations and omissions of material facts; breach of fiduciary duty; and failure to know your customer. Claimant's claim involved the stocks of Life Diagnostics, Inc. and Stearns & Lehman, Inc., unspecified bank stocks, Orange County bonds, and FHLMC REMICs.

Unless specifically admitted in their Answer, MPI and Patterson denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted the following defenses: Patterson was not the registered representative that dealt with Claimant; Claimant's signed account form on file with MPI stated that Claimant's investment objective was "growth and speculation"; the use of an account form to ascertain a client's financial circumstances and investment objectives is standard throughout the industry and reliance on such documents is reasonable; Patterson was not aware of and could not reasonably be expected to have been aware through normal supervisory processes, if a registered representative engaged in fraudulent misrepresentations and/or unapproved trades as alleged by Claimant; Claimant received confirmations of each trade and account statements from MPI's clearing firm and did not timely inform Patterson, other supervisory personnel of MPI, and/or any authorities of the trades which are claimed to be inappropriate, misdenominated as

unsolicited, and/or unauthorized; and Patterson was an officer and shareholder of MPI and does not have personal liability for claims against MPI.

Unless specifically admitted in his Answer, Dahlen denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted the following defenses: Dahlen had no control over Claimant's account or the registered representatives associated with the account; Dahlen gave no investment advice to Claimant, and has never met or spoken with Claimant; Dahlen had no responsibility in determining Claimant's suitability for a purchase involving high yield securities; and no activity initiated by Dahlen was the cause of any loss Claimant may have experienced.

Unless specifically admitted in his Answer, DuBose denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted the following defenses: DuBose mailed Claimant a personal "activity letter" each quarter telling him it was one of his duties as Compliance Officer to ascertain that Claimant's account was being serviced satisfactorily and asked Claimant to call DuBose with any constructive criticism on how MPI could serve him better; DuBose never received one phone call or letter from Claimant stating that he was unhappy with his account; Claimant's new account form showed that his investment goals were growth and speculation, and Claimant's net worth indicated that he could assume some risk; and as a Compliance Officer, DuBose did all the things required of him as outlined in MPI's written supervisory procedures.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$852,018, plus Federal tax losses incurred by Claimant, interest at the legal rate in Ohio of 10% to the date of Award, costs, expenses, punitive damages, disgorgement of profits, and such other relief as the Panel deems just and proper.

MPI and Patterson requested that the Statement of Claim be dismissed, with costs assessed against Claimant.

Dahlen requested that he be dismissed from this arbitration, that no fees or costs become due as against him, and that reference to this arbitration not appear on his Central Registration Depository records.

DuBose requested that he be dismissed from this arbitration.

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

On or about May 30, 2001, Claimant filed a Notice of Dismissal, wherein he dismissed all claims against Respondent Dain, without prejudice.

By letter dated January 16, 2003, Claimant advised NASD Dispute Resolution that he was dismissing his claims against Respondents QCC and Dooley.

During the hearings in this matter, Claimant advised the Panel that he had entered into a settlement agreement with Respondent Dahlen.

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Bales has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Bales present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent Patterson did not appear at the hearings in this matter, although he was represented by counsel. Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Patterson received due notice of the hearing, and that arbitration of the matter would proceed without Patterson present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

MPI, Patterson, Bales, QCC, and Dooley did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and are 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. The Panel finds that Respondents Bales, MPI, and Patterson engaged in fraud, breach of fiduciary duty, churning, unauthorized trading, and unsuitable investments.

2. Bales, MPI, and Patterson are jointly and severally liable for and shall pay to Claimant the sum of \$637,000.00 as compensatory damages, plus interest at the Ohio statutory rate of 10% accruing from the date this arbitration was filed until the date of payment in full.
3. Bales, MPI, and Patterson are jointly and severally liable for and shall pay to Claimant the sum of \$637,000.00 as punitive damages. Ohio law permits punitive damages to be awarded in tort and fraud claims when the conduct is willful or malicious. The Panel finds Bales' and Patterson's conduct in this matter to be fraudulent and malicious.
4. Bales, MPI, and Patterson are jointly and severally liable for and shall pay to Claimant the sum of \$216,500.00 as attorneys' fees. Under Ohio law, attorneys' fees can be awarded when punitive damages are awarded.
5. The Panel finds that Respondent DuBose engaged in breach of fiduciary duty and negligence.
6. DuBose is solely liable for and shall pay to Claimant the sum of \$20,000.00 as compensatory damages, plus interest at the Ohio statutory rate of 10% accruing from the date this arbitration was filed until the date of payment in full.
7. Bales, MPI, Patterson, and DuBose are jointly and severally liable for and shall pay to Claimant the sum of \$375.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution.
8. All other requests for relief are hereby 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	= \$ 375.00
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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 person at the time of the events giving rise to the dispute. In this matter, Michael Patterson, Inc., Dain Rauscher Incorporated, and Quantum Capital Corporation are parties.

#### **Michael Patterson, Inc.**

Member surcharge = \$2,000.00

#### **Dain Rauscher Incorporated**

Member surcharge = \$2,000.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$3,500.00

#### **Quantum Capital Corporation**

Member surcharge = \$2,000.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$3,500.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

Oct. 10, 11 & 12, 2001, adjournment by Claimant = WAIVED

### **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: January 17, 2001 1 session

July 18, 2002 1 session

Four (4) Hearing sessions x \$1,200.00 = \$4,800.00

Hearing Dates: January 22, 2003 2 sessions

January 24, 2003 2 sessions

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Total Forum Fees = \$7,200.00

The Panel has assessed all of the forum fees jointly and severally against Bales, Patterson, MPI, and DuBose.

**Fee Summary**

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 375.00
Total Fees	= \$ 375.00
<u>Less payments</u>	= \$1,575.00
Refund Due Claimant	= \$1,200.00

*As stated in the "Award" section above, Bales, Patterson, and DuBose are jointly and severally liable and shall reimburse Claimant for the \$375.00 filing fee.*

2. MPI is solely liable for:

<u>Member Fees</u>	= \$2,000.00
Total Fees	= \$2,000.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$2,000.00

3. Dain is solely liable for:

<u>Member Fees</u>	= \$6,100.00
Total Fees	= \$6,100.00
<u>Less payments</u>	= \$6,100.00
Balance Due NASD Dispute Resolution	= \$ 0.00

4. QCC is solely liable for:

<u>Member Fees</u>	= \$6,100.00
Total Fees	= \$6,100.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$6,100.00

5. Bales, Patterson, MPI, and DuBose are jointly and severally liable for:

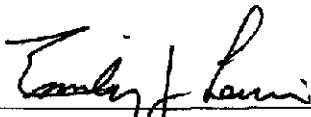
<u>Forum Fees</u>	= \$7,200.00
Total Fees	= \$7,200.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$7,200.00

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

**ARBITRATION PANEL**

Emily J. Lewis, Esq.	-	Public Arbitrator, Presiding Chair
Victoria J. Frye	-	Public Arbitrator
Robert P. Weisberger	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Emily J. Lewis, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Victoria J. Frye  
Public Arbitrator

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

**Dissenting Arbitrator's Signature**

Arbitrator Weisberger dissents from imposing any liability on Respondent DuBose.

\_\_\_\_\_  
Robert P. Weisberger  
Non-Public Arbitrator

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

April 16, 2003

Date of Service (For NASD Dispute Resolution use only)



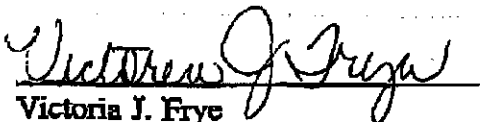
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Public Arbitrator, Presiding Chair

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Signature Date

  
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Victoria J. Frye  
Public Arbitrator

\_\_\_\_\_  
4/1/03  
Signature Date

**Dissenting Arbitrator's Signature**

Arbitrator Weisberger dissents from imposing any liability on Respondent DuBose.

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Robert P. Weisberger  
Non-Public Arbitrator

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Signature Date

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Victoria J. Frye	-	Public Arbitrator
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Emily J. Lewis, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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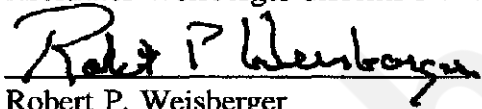
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4/3/03  
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