

**Award
FINRA Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant:

David Wolfson Living Trust UAD 4/2/90

Case Number: 09-01512

Name of the Respondents:

Stockcross Financial Services, Inc.

Thomas B. Cooper

Peter L. Boom

Hearing Site: Los Angeles, California

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

REPRESENTATION OF PARTIES

**Claimant, David Wolfson Living Trust UAD 4/2/90, hereinafter referred to as "Claimant":
Brandon S. Reif, Esq., Brandon S. Reif & Attorneys, APC, Los Angeles, California**

Respondents, Stockcross Financial Services, Inc. ("Stockcross"), Thomas B. Cooper ("Cooper"), and Peter L. Boom ("Boom"), hereinafter collectively referred to as "Respondents": George H. Kupper, Esq., Stockcross Financial Services, Inc., Beverly Hills, California

CASE INFORMATION

Statement of Claim filed: March 17, 2009

Claimant signed the Submission Agreement: March 26, 2009

Statement of Answer filed by Respondents on or about: May 19, 2009

Respondent Stockcross signed the Submission Agreement: May 15, 2009

Respondent Cooper signed the Submission Agreement: May 12, 2009

Respondent Boom signed the Submission Agreement: May 15, 2009

CASE SUMMARY

Claimant asserted the following causes of action:

1. Breach of fiduciary duty;
2. Common law fraud;
3. Constructive fraud (California Civil Code § 1573);
4. Elder abuse;
5. Negligence;
6. Violation of federal and state securities laws, statutory and common law, and NASD/FINRA rules and regulations;
7. Violation of California's Civil Code and Business and Professional Code;
8. Breach of written contract;
9. Failure to supervise; and
10. Respondeat superior.

The causes of action relate to investments in shares in General Motors Acceptance Corporation Corporate Bonds, Federal National Mortgage Association Preferred Series, General Motors Acceptance Corporation Smart Notes, and Government National Mortgage Association (GNMA) Mortgage Pass-Through purchased on margin.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. General and compensatory damages in an amount according to proof and not less than \$319,797.56;
2. Disgorgement of all commissions and fees paid to the Respondents in an amount according to proof;
3. Statutory and treble damages in an amount according to proof;
4. Lost opportunity costs in an amount according to proof;
5. Declaratory relief that the margin debt incurred in Claimant's account is null and void;
6. Punitive damages in an amount according to proof;
7. Attorneys' fees and costs of suit;
8. Pre-judgment and post-judgment interest at the legal rate on all sums recovered; and,
9. Other and further relief that the Panel deems just and appropriate.

In their answer, Respondents requested that all demands for damages, attorneys' fees, costs and other related fees, be dismissed with prejudice, and that Respondent Boom be dismissed by Claimant as a named respondent based on the misrepresentation as to his duties and conduct.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On January 21, 2009, Claimant submitted an informal Document Request to Respondents. (Claimant's Exhibit #62)

On March 17, 2009, Claimant's Counsel requested FINRA to grant Expedited Proceedings based on David Wolfson's age (96) and serious illness (Claimant's Exhibit #1).

In April 2009, Claimant's Counsel moved for sanctions against Stockcross Financial Services, Inc., Mr. Thomas B. Cooper and Mr. Peter L. Boorn (hereafter, Respondents) for not responding to its document and information requests. Claimant's Counsel requested Respondents produce the items requested pursuant to Rule 12212 of the Code of Arbitration Procedure (Code) and Notices to Members (NTM) 99-90. Thereafter, Claimant stated he was forced to file a Motion to Compel Respondents' compliance with its discovery obligation.

On July 8, 2009, the Panel held an Initial Pre-Hearing telephonic Conference (IPHC) with the parties. The Panel granted Claimant's request for Expedited Hearing Status. Prior to the close of the IPHC, the Arbitration Chairperson expressed the importance of the parties' full cooperation in the exchange of documents and information pursuant to Rule 12506 (b)(1) to effectuate an efficient hearing that would not compromise fairness to the parties or the case's Expedited Hearing Status.

On July 27, 2009, the Arbitration Chairperson and the parties discussed Claimant's Motion to Compel for seven (7) hours.

On September 8, 2009, Respondents filed an Emergency Motion to Address the Unauthorized Release of Respondents' Stenographic Transcripts to the Claimant's Counsel via FINRA. On September 9, 2009, Claimant filed an opposition to the motion. The Panel deferred ruling on Respondents' motion to the conclusion of the evidentiary hearing. At the evidentiary hearing, Respondents moved to sanction Claimant for not paying his share of costs for use of the transcripts. The Panel deferred ruling until the conclusion of the case.

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.

PANEL FINDINGS AND CONCLUSIONS

Analysis

The Panel reviewed all case documents such as pleadings, answers, motions, responses, and other relevant documents to determine whether sanctions were appropriate for Respondents' non-compliance with the Arbitration Chairperson's

Discovery Order of July 27, 2009. We began with consideration of Claimant's informal document request on January 21, 2009 and the effect Respondents' non-compliance had on Claimant, the arbitration, and the case's Expedited Hearing Status contrasted with the Code, Discovery Guide and NTM 99-90.

Claimant submitted an Informal Document Request to Respondents on January 21, 2009. Some of the documents (items) Claimant sought included: all agreements with the customer; all commission runs related to the customer's account, and all exception reports and supervisory activity reviews relating to the customer's account. Claimant's Counsel sought production of these items pursuant to Rule 12212 and NTM 99-90. The NTM 99-90 published by NASD in October 2004 highlights the efficiency of arbitration cases without compromising fairness. It states Arbitrators must help ensure that discovery deadlines in NASD's Code are honored and enforce legitimate information requests. When the aggrieved party addresses during the IPHC that his or her discovery requests have not been dealt with as required by the Code, Arbitrators should place resolution of such outstanding discovery issues as a priority over subsequent discovery requests served by the non-complying party. The non-complying party should be admonished and in appropriate cases, sanctions should be considered.

Rule 12212 of the Code authorizes the Panel to sanction a party for failure to comply with any provision of the Code, or any Order of the Panel or single Arbitrator authorized to act on behalf of the Panel. Rule 12507 (b)(2) states a party must act in good faith when responding to discovery requests. "Good faith" means that a party must use its best efforts to produce all documents or information required or agreed to be produced. Rule 12508(a) states if a party objects to producing any document described in Document Production Lists 1 or 2, any other applicable Production List, or any document or information requested under Rule 12507, it must specifically identify which document or requested information it is objecting to and why.

The following items are examples extrapolated from Claimant's Motion to Compel.

"The Panel reviewed Respondents' reply to Claimant's request for all agreements with the customer, including but not limited to account opening documents, cash, margin, and open agreements, trading authorizations, powers of attorney, or discretionary authorization agreements, and the new account forms under List 1, Item #1."

Respondents' reply: please refer to documents provided in response to Original 1A and B above.

The Panel was perplexed with Respondents' reply and its reference to 1A and B above. Respondents refer Claimant to a previous response in an unidentified document and failed to identify the document and information that is the subject of its objection. Respondents' response was found inadequate and inconsistent with Rule 12507 (b)(2); Respondents did not demonstrate good faith in their effort to provide a thorough search and response to Claimant's request. Moreover, Claimant's explanation for compelling the response is evasiveness, nonresponsive and incomplete. Claimant calls for the production of the option agreement(s) that Cooper had Claimant complete, all margin

disclosure documents and documents denoting that Claimant received copies of the agreements and disclosures.

Next is Respondents' objection to Claimant's request for "communications, including any documents and electronic communications, exchanged between you and any person regarding the Claimant," under Claimant's request #2.

Here, Respondents' reply is a twofold objection that Claimant's request in item #2 is beyond the scope of this arbitration and it violates attorney client work product protection. Respondents failed to identify the document and information it objected to or state the reason for its objection. Moreover, Claimant's explanation for compelling the response contravene Respondents' objection stating the records are not beyond the scope of the arbitration as the requests facially relates to Claimant. There are a number of categories of records responsive to this request that would not invade privilege. To illustrate, there is no recognized privilege within the compliance, operations, cashing, margin, and trading departments. If Respondents claim privilege, a privilege log must be provided so that Claimant's Counsel can test the veracity of the privilege assertion.

Next is Respondents' reply to Claimant's request for all notes by the firm/Associated Person(s) or on his/her behalf, including entries in any diary or calendar, relating to the customer's account(s) at issue under List 1 item #6.

Respondents' reply is a twofold objection, "none" and Respondents' objection on the basis of attorney client communication privilege. Respondents did not identify the document or information it is objecting to or a reason for its objection. The response is inconsistent with Rules 12507 and 12508. Respondents provide a generic response to Claimant's request and do not demonstrate good faith effort in its search or reply to Claimant's request. Moreover, Claimant's explanation for compelling a response for its request is the same as noted under List 1, item #2.

Next is Respondents' reply to Claimant's request for communications, such as electronic communications, letters, prospectuses, logs, diaries, calendars and computers, recordings and notes of telephone calls or conversations under # 1(e). Respondents' reply: "Enclosed is a copy of Mr. Cooper's holding pages for Mr. Wolfson."

The Panel took exception to Respondents' response to Claimant's item # 1(e) wherein Respondents provided only part of the information requested, Mr. Cooper's holding pages for Mr. Wolfson. Claimant's request sought communications relative to the customer's account(s) at issue. This included Respondents' communication with Mr. Cox on April 7, 2009 and Respondents' response to Mr. Cox on May 11, 2009. Respondents withheld this information from Claimant and provided only a partial response to Claimant's request. It appears Respondents' actions or in-action were intentional as evidence shows the documents and information Claimant requested such as "letters" were in Respondents' possession on or before May 11, 2009 which if provided would have avoided the need for Claimant to propound a Motion to Compel the documents.

Respondents provide an incomplete response to Claimant's request in contravention with Rules 12507 and 12508. Moreover, Claimant's explanation for compelling a response is the holding page represents only one category of responsive information.

Communications, including notes, calendars, recordings created by non-legal personnel, particularly those documented contemporaneously with the events at issue are material and relevant. Respondents do not demonstrate good faith effort in seeking the documents and information Claimant's requested.

The final example is Respondents' response to Claimant's request for "those portions of examination reports following an examination or an inspection conducted by a state or federal agency-regulatory organization that focused on Associated Persons, Thomas B. Cooper and Peter L. Boorn or the transaction(s) at issue or that discussed alleged improper behavior in the branch against other individuals similar to the improper conduct alleged in the statement of claim under List 5 item 4. Respondents' reply is a twofold objection. The first objection is ambiguity and vagueness and second, Respondents state the related material is attorney/client work product. Respondents did not identify the document and information in its objection or state the reason for its objection and therefore, contravenes Rule 12507 (b)(2) and Rule 12508.

The Panel took exception with Respondents' response when Claimant introduced into evidence Claimant's Exhibit #62 evidence of an Exception Report from an examination conducted by the New York Stock Exchange (NYSE) at Respondents' Beverly Hills, California office wherein it found Respondents not in complete compliance with NYSE Rule 342.16 (Supervision of Registered Representatives) and Federal Reserve Board Regulation T Section 220.3(e) (General Provisions) for the period January through March 2005. Based on this evidence the Panel made an inference that Respondents had or should have had the report in its possession in March 2005, four years prior to Claimant's Motion to Compel. Claimant would not have filed a Motion to Compel this information but for Respondents' failure to comply with its discovery obligation and lack of good faith, conduct contrary to Rule 12506 (b)(1).

As the Panel continued a review of the papers submitted by the parties, the Panel discovered the Informal Document Request Claimant sent to Respondents on January 21, 2009. It contained the same request, List 1 item #1, and item #6, listed in Claimant's Motion to Compel on July 27, 2009 and is included in the Arbitrator Chairperson's Order of Production. Further review of the papers revealed, a letter from Maurice O. Cox, FINRA Principal Examiner, dated April 7, 2009 addressed to Andrew Reich, CFO and Director of Stockcross' Beverly Hills, CA. Office (Claimant's Exhibit #73). Mr. Cox had requested Respondents to provide the same document and information Claimant requested on January 21, 2009 and compelled on July 27, 2009. An Order of Production was issued by the Arbitrator Chairperson on the same day. What distinguishes Claimant's request from Mr. Cox's is Respondents' written reply (Claimant's Exhibit 74) to Mr. Cox on May 11, 2009. In its reply Respondents state: "Many supporting documents are provided to you within the body of this case file" (Claimant's Exhibit #76). The Panel made an inference based on Claimant's documentary evidence that Respondents had possession of the documents and information (List 1, item #1 and item #6) Claimant requested on January 21, 2009 and July 27, 2009 as early as May 11, 2009. Five months after Claimant's initial document and information request, and two months before, Claimant was forced to compel production of the same requests on July 27, 2009. It is clear Claimant would not have had to file a Motion to Compel the production of these items but for Respondents' failure to comply with its discovery

obligation and violation of Rule 12506 (b)(1), its commitment to search and respond to discovery requests in good faith.

Summary

On July 27, 2009, the Arbitration Chairperson ordered Respondents to produce the documents and information Claimant requested in its Motion to Compel. Wherein Claimant requested documents and information that were not accessible Respondents would provide an affirmation regarding the efforts of its search. Respondents were ordered to produce and deliver the documents to Claimant no later than 5:00 p.m. (PDT) August 5, 2009. The Order included Claimant's request for Customer Agreements. Albeit, in their possession Respondents did not produce Customer Agreement (Revised 05/03) or Customer Agreement (Revised 12/03) until they appeared as Exhibits B and C on September 8, 2009 in Respondents' Reply to Claimant's Motion in Limine to Exclude Recorded Telephone Conversations and David Wolfson's Deposition Transcript contrary to the Arbitration Chairperson's Order. Claimant moved for sanctions. Although Respondents opposed, the Panel imposed sanctions against Respondents on October 13, 2009, with a prohibition from using or referring to in any manner during the remainder of the proceeding documents and information Respondents were unable to recall if or when it provided a response to Claimant's request.

The evidence presented in Panel Findings Issues show Respondents deliberately and intentionally withheld documents and information Claimant requested as early as January 21, 2009. On at least two occasions evidence shows that documents and information withheld from Claimant were provided to a FINRA Principal Investigator even though when Claimant requested the information Respondents' reply was "None" as noted in this document. The objections Respondents raise as privilege are questionable wherein Respondents provided the information to Principal Investigator, Mr. Cox. Moreover, the Panel ordered Respondents to provide a privilege log so Claimant's Counsel could test the veracity of the privilege assertions.

On September 9, 2009, Claimant filed a Motion for Sanctions for Respondents' Non-Compliance with the July 27, 2009 Discovery Order issued by the Chairperson. On September 15, 2009, Respondents filed a reply to Claimant's motion. The Panel heard oral argument from the parties on the motion at a pre-hearing conference conducted on October 12, 2009. After due deliberation of the pleadings and oral argument, the Panel issued an order on October 13, 2009 unanimously finding that Respondents intentionally did not respond to the Chairperson's July 27, 2009 Order, and ordering Respondents to pay Claimant's counsel's fees, costs and expenses in the amount of \$4,000.00 as sanctions. The Panel ordered that Respondents were prohibited from using or referring to in any manner during the remainder of this proceeding the documents and information Respondents did not disclose or failed to produce, such as documents and information Respondents were unable to recall if or when it provided a response to Claimant's request. For example, #2 request by Claimant: "Communications, including any documents and electronic communications, exchanged between you and any person regarding the Claimant." Respondents were unable to recall but later produced an Option Application signed by Claimant and Customer Agreement revisions are other examples. In their reply during the hearing, Respondents were unable or did not remember whether or not they provided a response. During the last week of evidentiary

hearings, Respondents inadvertently produced some of the information prohibited in effort to substantiate some of their testimony. At the evidentiary hearing, Claimant moved to sanction Respondents for failure to adhere to previous discovery orders for the purpose of fully misleading the Panel. The Panel deferred ruling until the conclusion of the case.

Respondents seem to take FINRA's Code, Discovery Guide, and Notice to Members very lightly and respond to discovery requests in a manner suitable to their own discretion as to when the information is provided. These are but a few examples of Respondents' non-compliance to discovery requests, rules, and guidelines. Respondents purposely did not respond to the Arbitration Chairperson's Order of Production. For the reasons noted herein, the Panel en banc ruled the sanctions for Respondents appropriate.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant is liable to and shall pay Respondents the sum of \$2,968.75 as sanctions for use of Respondents' transcripts for one week.
2. Respondents are jointly and severally liable to and shall pay Claimant the sum of \$10,000.00 as sanctions for failure to adhere to discovery orders.
3. Respondents are jointly and severally liable to and shall pay Claimant compensatory damages in the sum of \$319,798.00.
4. Respondents are jointly and severally liable to and shall pay Claimant treble damages in the sum of \$959,394.00 pursuant to Financial Elderly Abuse Act: *California Welfare & Institutions Code § 15600, et seq.*
5. Respondents are jointly and severally liable to and shall pay Claimant pre-judgment interest in the sum of \$21,320.00 for the period beginning March 17, 2009, the date the Statement of Claim was filed, through November 30, 2009.
6. Respondents are jointly and severally liable to and shall pay Claimant post-judgment interest on the sum of \$1,279,192.00 at the rate of 10% per annum beginning from the date the award is served until the date the award is paid.
7. Respondents are jointly and severally liable to and shall pay Claimant attorneys' fees in the sum of \$233,944.00 pursuant to the Federal Arbitration Act, 9 U.S.C.A. §§ 1-14.
8. Respondents are jointly and severally liable to and shall pay Claimant costs in the sum of \$21,064.35.
9. Respondents are jointly and severally liable to and shall pay Claimant expert witness fees for Richard L. Sandow in the amount of \$30,018.21 and for Michael J. Stewart in the amount of \$31,623.00, for the total sum of \$61,641.21.

10. The balance on Claimant's margin account, in the approximate sum of \$37,000.00, is exonerated.

11. Any and all relief not specifically addressed herein is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution assessed a filing fee* for each claim:

Initial claim filing fee = \$ 1,575.00

**The filing fee is made up of a non-refundable and a refundable portion.*

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 persons at the time of the events giving rise to the dispute. Accordingly, as a party, Stockcross Financial Services, Inc. is assessed the following:

Member surcharge = \$ 2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 4,000.00

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

Two (2) Decisions on discovery-related motions on the papers
with one (1) arbitrator @ \$200.00/decision = \$ 400.00

Claimant submitted one (1) discovery-related motion

Respondents submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees = \$ 400.00

The Panel has assessed \$400.00 of the discovery-related motion fees to Respondent Stockcross.

Contested Motion for Issuance of a Subpoena Fees

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) Decision on a contested motion for the issuance of a subpoena
One (1) arbitrator @ \$200.00 = \$ 200.00

Total Contested Motion for Issuance of Subpoenas Fees = \$ 200.00

The Panel has assessed \$200.00 of the contested motion for issuance of subpoenas fees to Respondent Stockcross.

Hearing Session Fees and Assessments

The Panel has assessed hearing session 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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00/session = \$ 900.00
Pre-hearing conference: July 27, 2009 2 sessions

Three (3) Pre-hearing sessions with Panel @ \$1,200.00/session = \$ 3,600.00
Pre-hearing conferences: July 8, 2009 1 session
August 4, 2009 1 session
October 12, 2009 1 session

Twenty-six (26) Hearing sessions @ \$1,200.00/session = \$31,200.00
Hearing Dates: August 24, 2009 2 sessions
August 25, 2009 2 sessions
August 26, 2009 2 sessions
August 27, 2009 2 sessions
August 28, 2009 2 sessions
October 19, 2009 2 sessions
October 20, 2009 2 sessions
October 21, 2009 2 sessions
October 22, 2009 2 sessions
October 23, 2009 2 sessions
November 10, 2009 2 sessions
November 11, 2009 2 sessions
November 13, 2009 2 sessions

Total Hearing Session Fees = \$35,700.00


The Panel has assessed \$35,700.00 of the hearing session fees solely to Respondent Stockcross.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

Thomas R. Watkins - Public Arbitrator, Presiding Chairperson
Herbert Murez - Public Arbitrator
John B. Wells - Non-Public Arbitrator

Concurring Arbitrators' Signatures



Thomas R. Watkins
Public Arbitrator, Presiding Chairperson



Signature Date

Herbert Murez
Public Arbitrator

Signature Date

John B. Wells
Non-Public Arbitrator

Signature Date



Date of Service (For FINRA Dispute Resolution use only)

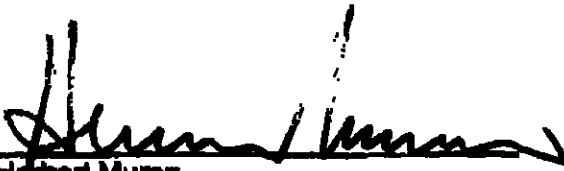
ARBITRATION PANEL

Thomas R. Watkins - Public Arbitrator, Presiding Chairperson
Herbert Murez - Public Arbitrator
John B. Wells - Non-Public Arbitrator

Consenting Arbitrators' Signatures

Thomas R. Watkins
Public Arbitrator, Presiding Chairperson

Signature Date



Herbert Murez
Public Arbitrator



Signature Date

John B. Wells
Non-Public Arbitrator

Signature Date



Date of Service (For FINRA Dispute Resolution use only)

ARBITRATION PANEL

Thomas R. Watkins - Public Arbitrator, Presiding Chairperson
Herbert Murez - Public Arbitrator
John B. Wells - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Thomas R. Watkins
Public Arbitrator, Presiding Chairperson

Signature Date

Herbert Murez
Public Arbitrator

Signature Date



John B. Wells
Non-Public Arbitrator



Signature Date



Date of Service (For FINRA Dispute Resolution use only)