

**AWARD**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

Keith A. Williams

and

NASD Case No. 00-04928  
Denver, Colorado

Name of Respondents

Morgan Grant Capital Corp.

Scott Mitchel Goodman

Vladimir Jaime Carvallo

Michael Roberts Marcus

Russell David Ehrens

Howard and Dale Zelin

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**REPRESENTATION OF PARTIES**

Keith A. Williams ("**Claimant**") was represented by Richard A. Nervig, Esq., Law Offices of Richard Nervig, Englewood, Colorado.

Respondent Morgan Grant Capital Corp. ("**Respondent MGC**") did not appear.

Respondent Scott Mitchell Goodman ("**Respondent Goodman**") did not appear.

Respondent Vladimir Jaime Carvallo ("**Respondent**") did not appear.

Respondent Michael Robert Marcus ("**Respondent Marcus**") did not appear.

Respondents Howard & Dale Zelin ("**Respondent Zelins**") did not appear.

**CASE INFORMATION**

The Statement of Claim was filed on or about October 30, 2000. Submission Agreement of Claimant was signed on October 30, 2000.

Statement of Answer was filed by Respondent Marcus on or about January 31, 2001.

Statement of Answer was filed by Respondent Goodman on or about January 29, 2001.

The NASD has no record of Statement of Answer filed by Carvallo, Ehrens, and Zelins.

A Statement of Answer and Uniform Submission Agreement was not filed on behalf of Respondent Morgan Grant Capital Corp. and the claims against Respondent Morgan Grant Capital Corp. are permanently stayed pursuant to the SIPC liquidation of Morgan Grant Capital Corp.

### **CASE SUMMARY**

Claimant alleged that Respondent Goodman executed an unauthorized trade in his account held with MGC without Claimant's knowledge and/or consent. Claimant is asserting claims based upon violations of the Colorado Securities Act, violations of the Colorado Consumer Protection Act ("CCPA") and conversion. Respondents Carvallo, Marcus and Ehrens are named in the instant action as MGC control persons and are alleged to be jointly and severally liable for Claimant's losses pursuant to Section 11-51-604(5), C.R.S. of the Colorado Securities Act and relevant portions of the CCPA.

Respondent Marcus denied the allegations set forth in the Statement of Claim. Respondent Goodman also denied the Statement of Claim.

### **RELIEF REQUESTED**

Claimant originally requested an award in the amount of \$22,900; plus statutory interest, costs and reasonable attorneys' fees pursuant to the Colorado Securities Act and the Colorado Consumer Protection Act; plus trebled actual damages in the amount of approximately \$68,700 pursuant to the CCPA and/or punitive damages due to Respondents' wanton willful and reckless conduct. Claimant revised relief requested at the hearing based upon previous settlements. Claimants requested \$2,400 plus statutory interest and reasonable attorney's fees, discovery costs, plus trebled damages of \$7,200.

Respondents Morgan and Goodman requested that the claim asserted against them be denied in its entirety and that they be awarded their costs and attorney's fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

On or about April 19, 2001 Claimant dismissed his claims as to Respondent Ehrens. On or about September 4, 2001 Claimant settled his claims as to Respondent Marcus and Goodman. Therefore, the panel made no further ruling as to these Respondents.

Prior to the hearing, the Claimant withdrew all claims without prejudice against Howard and Dale Zelin based upon a lack of jurisdiction. Therefore, the Panel made no further rulings as to these Respondents.

A Statement of Answer and Uniform Submission Agreement were not filed on behalf of Respondent MGC and the claims against Respondent MGC are permanently stayed pursuant to the SIPC liquidation of MGC. Therefore, the Panel made no further rulings as to this Respondent.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Carvallo had been properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Carvallo had received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondent Carvallo did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the Code, the Panel has determined that he is bound by the determination of the Panel on all issues submitted.

Prior to the hearing, the Claimant withdrew all claims without prejudice against Howard and Dale Zelin based upon a lack of jurisdiction. Therefore, the Panel made no further rulings as to these Respondents.

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

### AWARD

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

1. In Reviewing the submissions of counsel and after hearing testimony of Claimant and/or after hearing argument of Claimant's counsel, the Panel finds that Respondent Carvallo, directly or indirectly, controlled Goodman, while he was employed with Morgan Grant Capital Corp. Respondent is found to be a control person, pursuant to Colorado statute and that he violated the CSA and CCPA. The Panel was not persuaded by Claimant's claims and arguments regarding the cause of action for conversion. The Panel was not persuaded that the actions of Carvallo were fraudulent. Adequate proof was not presented to the Panel to award punitive damages. Therefore, the panel finds that the Respondent Vladimir Jaime Carvallo is liable for and shall pay to Claimant Keith A. Williams actual damage in the amount of \$2,400 (two thousand four hundred dollars). This award reflects the remaining actual damages after settlement with other Respondents.

2. That the Respondent Vladimir Jaime Carvallo is liable for and shall pay to Claimant Keith A. Williams reasonable attorney's fees in the amount of \$960.00 (computed on a contingency fee basis at the rate of 40% of Claimant's actual damages) and discovery costs in the amount of \$179.83. In making this award of attorney's fees and costs, the Panel reviewed and considered the pleadings, evidence and testimony presented at the hearings, motions, and case and statutory law submitted by counsel and find that authority exists for this award of attorney's fees and costs.
3. That the Respondent Vladimir Jaime Carvallo is liable for and shall pay to Claimant Keith A. Williams interest at the Colorado statutory rate of 8% to accrue on the above stated sums from and inclusive of September 10, 2001 until the award is paid in full.
4. That the Panel makes no determination as to Respondent Russell Ehrens as Claimant dismissed all claims against Russell Ehrens on or about April 19, 2001. The Panel makes no determination as to Respondent Michael Marcus as Claimant settled all claims against Michael Marcus on or about September 10, 2001. The Panel makes no determination as to Respondent Scott Goodman as Claimant dismissed all claims against Scott Goodman prior to the hearing. The Panel makes no determination as to Respondents Howard and Dale Zelig as Claimant withdrew all claims against Howard and Dale Zelig prior to the hearing. All claims against Respondent Morgan Grant Capital Corp. are permanently stayed pursuant to the SIPC liquidation of Morgan Grant Capital Corp. Therefore, the Panel made no further rulings as to this Respondent Morgan Grant Capital Corp.
5. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
6. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

#### **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 = \$225.00

#### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Morgan Grant Capital Corp. Due to the stay and membership termination all member fees are waived.

Member surcharge (waived \$1,000.00)	= \$00.00
Pre-hearing process fee (waived \$600.00)	= \$00.00
Hearing process fee (waived \$2,500.00)	= \$00.00

#### **Forum Fees and Assessments**

The Arbitration Panel assesses 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 (1) Pre-hearing session with Panel x \$750.00	= \$750.00
Pre-hearing conference: May 11, 2001	1 session
One (1) Hearing sessions x \$750.00	= \$750.00
Hearing Date: September 10, 2001	1 session
Total Forum Fees	= \$1,500.00

The Arbitration Panel has assessed \$1,500 of the forum fees to Carvallo.

#### **Fee Summary**

Claimant, Keith Williams, shall be and hereby is liable for:

Initial Filing Fee	= \$225.00
<u>Forum Fees</u>	= \$00.00
Total Fees	= \$225.00
<u>Less payments</u>	= \$975.00
Refund Due Claimant	= \$750.00

Respondent, Vladimir Carvallo, shall be and hereby is liable for:

<u>Forum Fees</u>	= \$1,500.00
Total Fees	= \$1,500.00
<u>Less payments</u>	= \$00.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,500.00

Respondent, Morgan Grant Capital Corp, shall be and hereby is liable for:

Member Fees (waived due to stay and member termination.)	= \$3,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$00.00

**All balances are due to NASD Dispute Resolution, Inc.**

**ARBITRATION PANEL**

Mary C. Davis - Public, Presiding Chair  
Samuel Freeman - Public Arbitrator  
Gill D. Cyster -Non-Public Arbitrator

Concurring Arbitrators:

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Mary C. Davis  
Public Arbitrator, Presiding Chair

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Signature Date

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Samuel Freeman  
Public Arbitrator

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Signature Date

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Gill D. Cyster  
Non-Public Arbitrator

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Signature Date

NASD Dispute Resolution, Inc.

Arbitration No. 00-04928

Award Page 6 of 6

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Mary C. Davis - Public, Presiding Chair

Samuel Freeman - Public Arbitrator

Gill D. Cyster - Non-Public Arbitrator

Concurring Arbitrators:

Mary C. Davis

Mary C. Davis

Public Arbitrator, Presiding Chair

11/01/01  
Signature Date

Samuel Freeman

Samuel Freeman

Public Arbitrator

                      
Signature Date

Gill D. Cyster

Gill D. Cyster

Non-Public Arbitrator

                      
Signature Date

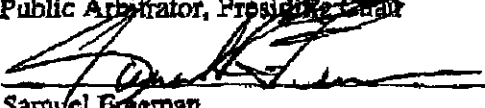
NASD Dispute Resolution, Inc.  
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Award Page 6 of 6

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Gill D. Cyster - Non-Public Arbitrator

Concurring Arbitrators:

Mary C. Davis  
Public Arbitrator, Presiding Chair  
  
Samuel Freeman  
Public Arbitrator

Signature Date

12/29/01  
Signature Date

Gill D. Cyster  
Non-Public Arbitrator

Signature Date

NASD Dispute Resolution, Inc.

Arbitration No. 00-04928

Award Page 6 of 6

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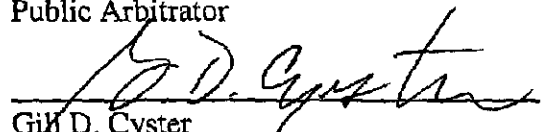
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Mary C. Davis  
Public Arbitrator, Presiding Chair

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Signature Date

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Samuel Freeman  
Public Arbitrator

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

  
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Gill D. Cyster  
Non-Public Arbitrator

10/29/01  
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Signature Date