

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

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In the Matter of the Arbitration Between:

Sandra Jo Kennemer, an individual and as beneficiary of the Sandra Jo Kennemer IRA Cont.,  
the Sandra Jo Kennemer Roll IRA, the Sandra Jo Kennemer IRA Rollover, and the Sandra Jo  
Kennemer IRA (Choice), Claimants v. Wedbush Morgan Securities and Philip R. Crabb,  
Respondents

Case Number: 00-05559

Hearing Site: Los Angeles, California

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**REPRESENTATION OF PARTIES**

For Claimants:

Edward W. Russey, Esq.  
Oswald & Yap  
Irvine, California

For Respondents:

Jodi S. Cohen, Esq.  
Keesal, Young & Logan  
Long Beach, California

**CASE INFORMATION**

Statement of Claim filed: November 28, 2000

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~~Amended Statement of Claim filed: March 27, 2001~~

Claimants' Joint Uniform Submission Agreement signed: December 31, 2000

Respondents' Joint Statement of Answer to Claimants' Initial Statement of Claim filed:  
February 26, 2001

Respondents' Joint Statement of Answer to Claimants' Amended Statement of Claim filed:  
April 10, 2001

Respondent Wedbush Morgan Securities' Uniform Submission Agreement signed:  
February 26, 2001

Respondent Philip R. Crabb's Uniform Submission Agreement signed: February 27, 2001

### **CASE SUMMARY**

Claimants' Initial Statement of Claim alleged breach of contract, breach of fiduciary duty, suitability, negligence, misrepresentation, non-disclosure, and failure to supervise.

Claimants' Amended Statement of Claim alleged front running, market manipulation, violation of NASD Rule 2120, violation of the Racketeer Influenced and Corrupt Organization Act of 1970 (RICO), breach of contract, breach of fiduciary duty, suitability, negligent misrepresentation, misrepresentation, non-disclosure, constructive fraud, and failure to supervise. Claimants also alleged that Respondent Wedbush Morgan Securities was responsible for all of Respondent Crabb's actions under the theory of respondeat superior. The allegations involved options in BioShield Technologies, Inc. (BSTI) as well as other unspecified securities.

Respondents denied the allegations of wrongdoing set forth in Claimants' initial and amended Statements of Claim.

### **RELIEF REQUESTED**

Claimants' Initial Statement of Claim requested \$252,819.00 in compensatory damages, \$100,000.00 in punitive damages, \$12,641.00 in interest and costs, including attorney's fees. Claimants also requested that Philip R. Crabb's license be revoked and that Respondent Crabb be prevented from engaging in security exchange practices.

Claimants' Amended Statement of Claim requested \$252,819.00 in compensatory damages, unspecified damages for lost profits, \$100,000.00 in punitive damages, pre- and post-judgment interest, and costs, including attorney's fees.

Respondents' requested dismissal of both Claimants' Initial and Amended Statements of Claim in their entirety.

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

On March 21, 2001, Claimants filed an Amended Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(a).

On September 21, 2001, Respondents jointly moved the Panel to dismiss the Statement of Claim. On October 22, 2001, a telephonic pre-hearing conference was held, attended by the Panel, Edward W. Russey, Esq. representing Claimants, and Gary L. Holmes, Esq. representing Respondents. After due deliberation, the Panel denied the motion.

On February 26, 2003, Claimant Sandra Jo Kennemer and Claimants' counsel, Edward W. Russey, Esq., signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On February 26, 2003, Respondents' counsel, Jodi S. Cohen, Esq., signed a Waiver Agreement on behalf of Respondents, expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On March 6, 2003, Claimants moved the Panel to be allowed to submit a post-hearing brief. After due deliberation the Panel granted the motion, ordering the Claimant to submit the brief on or before March 12, 2003.

The parties 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, testimony, and evidence presented at the hearing, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents Wedbush Morgan Securities and Philip R. Crabb are jointly and severally liable to and shall pay Claimants the sum of \$79,091.86 in compensatory damages.
- 2) The Panel specifically denies Claimants' claims of front-running and market manipulation upon a finding that there is insufficient evidence to support these allegations.
- 3) Respondents Wedbush Morgan Securities and Philip R. Crabb are jointly and severally liable to and shall pay Claimant interest in the amount of 5% per annum on \$79,091.86 from August 31, 2000, until payment of this Award is made in full.
- 4) Claimants' request for punitive damages is denied.
- 5) The parties shall bear their respective costs, including attorney's fees.
- 6) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Wedbush Morgan Securities is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 2,500.00</u>
<b>Total Member Fees</b>	<b>= \$ 4,600.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

December 4-7, 2001, adjournment requested by Respondents	= \$ 1,125.00
July 16-19, 2002, adjournment requested by Respondents	= \$ 1,500.00
August 19-22, 2002, adjournment requested by Claimants	= \$ 1,125.00

**Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session = \$ 450.00  
Pre-hearing conference: November 15, 2001 1 session

Two (2) Pre-hearing conference sessions with the Panel @ \$1,125.00/session = \$ 2,250.00  
Pre-hearing conferences: June 18, 2001 1 session  
October 21, 2001 1 session

Eight (8) Hearing sessions @ \$1,125.00/session = \$ 9,000.00  
Hearings: March 3, 2003 2 sessions  
March 4, 2003 2 sessions  
March 5, 2003 2 sessions  
March 6, 2003 2 sessions

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**Total Forum Fees = \$11,700.00**

1. The Panel assessed \$5,850.00 of the forum fees jointly and severally to Claimants Sandra Jo Kennemer, an individual, the Sandra Jo Kennemer IRA Cont., the Sandra Jo Kennemer Roll IRA, the Sandra Jo Kennemer IRA Rollover, and the Sandra Jo Kennemer IRA (Choice).
2. The Panel assessed \$5,850.00 of the forum fees jointly and severally to Respondents Wedbush Morgan Securities and Philip R. Crabb.

**Fee Summary**

1. Claimants Sandra Jo Kennemer, an individual, the Sandra Jo Kennemer IRA Cont., the Sandra Jo Kennemer Roll IRA, the Sandra Jo Kennemer IRA Rollover, and the Sandra Jo Kennemer IRA (Choice) are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 1,125.00
Forum Fees	= \$ 5,850.00
Total Fees	= \$ 7,275.00
Less payments	= \$( 3,250.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 4,025.00</b>

2. Respondent Wedbush Morgan Securities is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
Less payments	= \$(4,600.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents Wedbush Morgan Securities and Philip R. Crabb are charged jointly and severally with the following fees and costs:

Adjournment Fees	= \$ 2,625.00
Forum Fees	= \$ 5,850.00
Total Fees	= \$ 8,475.00
Less payments by Wedbush Morgan Securities	= \$( 750.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 7,725.00</b>

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

**ARBITRATION PANEL**

<b>Robert J. Kilpatrick, JD</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>Susan Vernon Wood, Esq.</b>	-	<b>Public Arbitrator</b>
<b>Dean Schneider</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**

  
Robert J. Kilpatrick, JD  
Chair, Public Arbitrator

3-18-03  
Signature Date

Susan Vernon Wood, Esq.  
Public Arbitrator

Signature Date

Dean Schneider  
Non-Public Arbitrator

Signature Date

2/19/03  
Date of Service

**ARBITRATION PANEL**

**Robert J. Kilpatrick, JD**  
**Susan Vernon Wood, Esq.**  
**Dean Schneider**

**Public Arbitrator, Presiding Chair**  
**Public Arbitrator**  
**Non-Public Arbitrator**

**Consenting Arbitrators' Signatures**

**Robert J. Kilpatrick, JD**  
**Chair, Public Arbitrator**

**Signature Date**

**Susan Vernon Wood, Esq.**  
**Public Arbitrator**

**Signature Date**

  
**Dean Schneider**  
**Non-Public Arbitrator**

**3-18-03**  
**Signature Date**

**3/19/03**  
**Date of Service**



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<b>Robert J. Kilpatrick, JD</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>Susan Vernon Wood, Esq.</b>	-	<b>Public Arbitrator</b>
<b>Dean Schneider</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**

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Robert J. Kilpatrick, JD  
Chair, Public Arbitrator

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Signature Date

  
Susan Vernon Wood, Esq.  
Public Arbitrator

4-11-03  
Signature Date

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Dean Schneider  
Non-Public Arbitrator

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Signature Date