

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Donald W. Thomas, individually and as Trustee of the Thomas Revocable Trust and D.W. Thomas Companies, Inc., Claimants v. Wedbush Morgan Securities Inc., Respondent

Case Number: 01-01755

Hearing Site: Los Angeles, California

REPRESENTATION OF PARTIES

For Claimants/Counter-Respondents:

Jeff Dennis Ferentz, Esq.
Greenbaum & Ferentz LLP
Newport Beach, California

For Respondent/Counterclaimant:

Terry Ross, Esq.
Keesal, Young & Logan
Long Beach, California

CASE INFORMATION

Statement of Claim filed: April 5, 2001

Claimants Donald W. Thomas', an individual and as Trustee of the Thomas Revocable Trust and D.W. Thomas Companies, Inc.'s Uniform Submission Agreements each signed: March 14, 2001

Statement of Answer and Counterclaim filed by Respondent/Counter-Claimant: June 25, 2001

Respondent's Uniform Submission Agreement signed: June 25, 2001

CASE SUMMARY

Claimant alleged breach of fiduciary duty, constructive fraud, negligence, failure to supervise, violation of California Welfare & Institutions Code, Section 15600 *et seq.* (elder abuse), violation of California Civil Code Sec. 3345 (unfair or deceptive practices against senior citizens), violation of state and federal securities laws, and violation of NASD and NYSE rules. Claimants' allegations involved the failure to hedge Claimants' concentrated position in Terayon Communications Systems stock and the purchases of unspecified stock in the technology sector.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and filed a Counterclaim alleging fraud and misrepresentation.

RELIEF REQUESTED

Claimant requested \$10,000,000.00 in compensatory damages, unspecified punitive damages, treble damages, interest, and costs, including attorney's fees.

Respondent/Counter-Claimant requested dismissal of the Claimant's Statement of Claim in its entirety, unspecified compensatory damages, and \$100,000.00 in punitive damages.

OTHER ISSUES CONSIDERED AND DECIDED

On March 1, 2002, Respondent moved the Panel to dismiss the Statement of Claim. On April 5, 2002, a telephonic pre-hearing conference was held, attended by Philip M. Aidikoff, Esq. on behalf of the Claimants, Jerry S. Phillips, Esq. on behalf of the Respondent, and the Panel. After due deliberation the Panel denied the motion.

During the hearing, Respondent Wedbush Morgan Securities, Inc. requested that the panel order expungement of all reference to the above-captioned arbitration from Respondents' registration records maintained by the NASD Central Registration Depository ("CRD") as well as from the CRD records of its brokers, Peter Olmstead and Dreux McNairy. The Panel granted Respondent's request as to its own CRD record, but has no authority to grant the request as to Mssrs. Olmstead and McNairy due to the fact that they were never named as parties to this matter.

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, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Wedbush Morgan Securities, Inc.'s registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Wedbush Morgan Securities, Inc. must obtain confirmation from a court of competent jurisdiction before the CRD will execute the

expungement directive.

- 4) 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	= \$ 600.00
Respondent's Counterclaim	= \$ 1,000.00

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 Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 3,000.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 5,000.00</u>
Total Member Fees	= \$ 8,600.00

Adjournment Fees

The following adjournment fees are assessed:

May 6-10, 2002 adjournment requested by Claimants	= \$ 1,200.00
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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:

Two (2) Pre-hearing conference sessions with a single arbitrator @ \$ 450.00/session	= \$ 900.00
Pre-hearing conferences:	
April 19, 2002	1 session
October 22, 2002	1 session

Two (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences:	
October 4, 2001	1 session
April 5, 2002	1 session

Thirteen (13) Hearing sessions @ \$1,200.00/session = \$15,600.00

Hearings:	November 12, 2002	2 sessions
	November 13, 2002	2 sessions
	November 14, 2002	2 sessions
	November 15, 2002	1 session
	January 8, 2003	2 sessions
	January 9, 2003	2 sessions
	January 10, 2003	2 sessions

Total Forum Fees = \$18,900.00

The Panel assessed the entire balance of \$18,900.00 of the forum fees jointly and severally to Claimants Donald W. Thomas, individually and as Trustee of the Thomas Revocable Trust and D.W. Thomas Companies, Inc.

Fee Summary

1. Claimants Donald W. Thomas, individually and as Trustee of the Thomas Revocable Trust and D.W. Thomas Companies, Inc. are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 600.00
Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$18,900.00
<u>Total Fees</u>	<u>= \$20,700.00</u>
Less payment by D.W. Thomas Company, Inc.	= \$(1,800.00)
<u>Less payment by Donald W. Thomas</u>	<u>= \$(1,000.00)</u>
Balance Due NASD Dispute Resolution	= \$17,900.00

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

Counterclaim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 8,600.00
<u>Total Fees</u>	<u>= \$ 9,600.00</u>
<u>Less payments</u>	<u>= \$(8,600.00)</u>
Balance Due NASD Dispute Resolution	= \$ 1,000.00

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

<i>James W. Han, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Cheryl W. Gitlin</i>	-	<i>Public Arbitrator</i>
<i>Roberta Haft</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

James W. Han, Esq.
Chair, Public Arbitrator

Signature Date

Cheryl W. Gitlin
Public Arbitrator

Signature Date

Roberta Haft
Non-Public Arbitrator

Signature Date

Date of Service

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Cheryl W. Gitlin

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Public Arbitrator, Presiding Chair

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures



James W. Han, Esq.
Chair, Public Arbitrator

1/14/2003
Signature Date

Cheryl W. Gitlin
Public Arbitrator

Signature Date

Roberta Haft
Non-Public Arbitrator

Signature Date

1/14/03
Date of Service

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Cheryl W. Gitlin
Roberta Haft

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Public Arbitrator
Non-Public Arbitrator

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Chair, Public Arbitrator

Signature Date

Cheryl W. Gitlin
Public Arbitrator

Signature Date


Roberta Haft
Non-Public Arbitrator

1-13-03
Signature Date

1/14/03
Date of Service

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James W. Han, Esq.
Cheryl W. Giffin
Roberta Haft

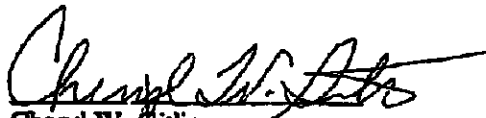
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