

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

James Weil (Claimant) v. Montrose Capital Management, LTD., Alexander, Wescott and Co., Inc., David Jacaruso, John Telfer, Joseph Scotti, Robert Winston, and Epifanio Almodovar (Respondents)

Case Number: 01-01886

Hearing Site: New York, New York

Nature of the Dispute: Customer v. Terminated Members and Associated Persons.

REPRESENTATION OF PARTIES

Claimant James Weil ("Weil") hereinafter referred to as "Claimant": James W. Kennedy, Esq., Paul, Hastings, Janofsky & Walker, LLP, New York, NY.

Respondent Alexander, Wescott and Co., Inc. ("Alexander Wescott"): Carl I. Kaminsky, Esq., New York, NY.

Respondents David Jacaruso ("Jacaruso") and Joseph Scotti ("Scotti"): Stuart Jackson, Esq., Re, Parser & Partners, New York, NY. Previously represented by: Marc J. Bachman, Esq., Gersten, Savage & Kaplowitz, LLP, New York, NY.

Respondent John Telfer ("Telfer") appeared *pro se*.

Respondent Robert Winston ("Winston"): Robert L. Herskovits, Esq., Law Offices of Michael F. Bachner, P.C., New York, NY.

Respondent Epifanio Almodovar ("Almodovar") appeared *pro se*. Previously represented by: Robert M. Vella, Jr., Esq., Pillari & Vella, Esqs., Mineola, NY.

Respondent Montrose Capital Management, LTD ("Montrose") did not make an appearance in this matter.

Montrose, Alexander Wescott, Jacaruso, Scotti, Telfer, Winston, and Almodovar are hereinafter collectively referred to as "Respondents".

CASE INFORMATION

Statement of Claim filed on or about: July 16, 2001.

Opposition to Respondent Winston's Motion for a More Definite Statement filed by Claimant on or about: August 23, 2001.

Claimant signed the Uniform Submission Agreement: April 13, 2001.

Statement of Answer filed by Respondent Alexander Wescott on or about: July 13, 2001.
Respondent Alexander Wescott signed the Uniform Submission Agreement: July 12, 2001.

Joint Statement of Answer and Motion to Dismiss filed by Respondents Jacaruso and Scotti on or about: December 5, 2001.
Respondent Jacaruso did not sign the Uniform Submission Agreement.
Respondent Scotti did not sign the Uniform Submission Agreement.

Statement of Answer and Motion to Dismiss filed by Respondent Telfer on or about: January 30, 2002.
Respondent Telfer signed the Uniform Submission Agreement: January 30, 2002.

Statement of Answer and Motion for a More Definite Statement filed by Respondent Winston on or about: July 26, 2001.
Respondent Winston did not sign the Uniform Submission Agreement.

Statement of Answer filed by Respondent Almodovar on or about: September 26, 2001.
Respondent Almodovar signed the Uniform Submission Agreement: May 30, 2001.

Respondent Montrose did not file a Statement of Answer or sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: federal securities fraud; common law fraud; breach of contract; breach of duty of good faith and fair dealing; negligence and breach of duty of supervision; breach of fiduciary duty; and failure to execute trading instructions. Claimant's claim involved shares of NXGen.

Unless specifically admitted in its Answer, Respondent Alexander Wescott denied the allegations made in the Statement of Claim.

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

Unless specifically admitted in his Answer and Motion to Dismiss, Respondent Telfer denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer and Motion for a More Definite Statement, Respondent Winston denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Respondent Almodovar denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$337,500.00; attorneys' fees and expenses; forum and hearing fees, and other expenses and costs incurred; and such other and further remedies that the Panel deems just, proper, and equitable. In his Opposition to Respondent Winston's Motion for a More Definite Statement, Claimant requested that the motion be denied in its entirety.

Respondent Alexander Wescott requested that Claimant's claim be denied in its entirety, together with such other and further relief that the Panel may deem just, proper, and appropriate.

Respondents Jacaruso and Scotti requested that Claimant's Statement of Claim be dismissed in its entirety and for such other and further relief that the Panel may deem proper.

Respondent Telfer requested that the Panel dismiss the Statement of Claim in its entirety with prejudice; and that all references to this arbitration be expunged from his CRD record.

Respondent Winston requested that the Panel dismiss the Statement of Claim in its entirety and order that all references to the arbitration be expunged from his Form U-5 as maintained with the Central Registration Depository; order that Claimant provide a detailed factual basis for the allegations referenced above; and such other and further relief that the Panel deems just and proper.

Respondent Almodovar requested that the Panel dismiss Claimants Statement of Claim in its entirety; award his costs associated with the defense of this action, including but not limited to attorneys' fees; and other and further relief as the Panel deems just, proper, and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Jacaruso, Scotti, and Winston did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

On or about December 7, 2001, Montrose filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code in the United States District Court for the Southern District of New York. Therefore, all claims against Montrose are stayed.

On or about November 22, 2002, the Panel ruled that all claims against Respondent Telfer are dismissed with prejudice. The Panel's ruling was based on its understanding that the Claimant and all appearing Respondents are in agreement that the action against Respondent Telfer be dismissed with prejudice.

Pursuant to the Court Order dated September 9, 2002, this matter was stayed as to all Respondents. On or about October 24, 2002, the Court Order was modified staying this case only as to Respondent Winston. On or about January 23, 2003, NASD Dispute Resolution was notified that the Court Order staying this case against Respondent Winston was lifted.

NASD Dispute Resolution has been unable to reschedule this matter since the postponement of the April 2002 hearings. On or about July 26, 2004, NASD Dispute Resolution inquired of the parties as to the status of this matter. To date, NASD Dispute Resolution has not received a response and the Panel has determined to dismiss this matter without prejudice for Claimant's failure to prosecute.

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, and Claimant's lack of prosecution, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their entirety.
2. Any and all relief not specifically addressed herein is 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	= \$300.00
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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 firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Alexander, Wescott and Co., Inc.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

April 17-19, 2002, adjournment by Claimant	= Waived
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Forum Fees and Assessments

The Panel has assessed forum 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:

One (1) Pre-hearing session with Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: January 7, 2002 1 session	
Total Forum Fees	= \$1,125.00

1. The Panel has assessed \$562.50 of the forum fees against Claimant.
2. The Panel has assessed \$562.50 of the forum fees against jointly and severally against Respondents Alexander Wescott, Jacaruso, Scotti, Telfer, Winston, and Almodovar.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 862.50
Less payments	= \$1,425.00
Refund Due Claimant	= \$ 562.50
2. Respondent Alexander Wescott is solely liable for:

Member Fees	= \$4,600.00
Total Fees	= \$4,600.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$4,600.00

3. Respondents Alexander Wescott, Jacaruso, Scotti, Telfer, Winston, and Almodovar are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 562.50
<u>Total Fees</u>	= \$ 562.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 562.50

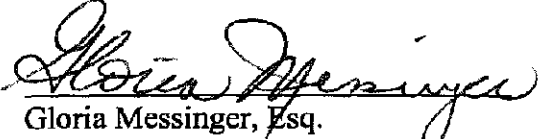
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Gloria Messinger, Esq.	-	Public Arbitrator, Presiding Chairperson
Sam Antar	-	Public Arbitrator
Bernard A. Kesselman, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.


Gloria Messinger, Esq.
Public Arbitrator, Presiding Chairperson

September 17, 2004
Signature Date

Sam Antar
Public Arbitrator

Signature Date

Bernard A. Kesselman, Esq.
Non-Public Arbitrator

Signature Date

September 23, 2004
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Gloria Messinger, Esq.	-	Public Arbitrator, Presiding Chairperson
Sam Antar	-	Public Arbitrator
Bernard A. Kesselman, Esq.	-	Non-Public Arbitrator

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Gloria Messinger, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Sam Antar

Public Arbitrator



Signature Date

Bernard A. Kesselman, Esq.
Non-Public Arbitrator

Signature Date

September 23, 2004
Date of Service (For NASD Dispute Resolution use only)

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Gloria Messinger, Esq.	-	Public Arbitrator, Presiding Chairperson
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Gloria Messinger, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Sam Antar
Public Arbitrator

Signature Date



Bernard A. Kesselman, Esq.
Non-Public Arbitrator

9/22/04

Signature Date

September 23, 2004
Date of Service (For NASD Dispute Resolution use only)