

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

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In the Matter of the Arbitration Between:

Wedbush Morgan Securities, Inc., Claimant v. Barry Hochstein, Respondent

Case Number: 01-02695

Hearing Site: San Francisco, California

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**REPRESENTATION OF PARTIES**

For Claimant:

Gary L. Holmes, Esq.  
Wedbush Morgan Securities, Inc.  
Los Angeles, California

For Respondent:

Barry Hochstein  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed on or about: May 17, 2001

Claimant Wedbush Morgan Securities, Inc.'s ("WMS") Uniform Submission Agreement signed:  
May 17, 2001

Respondent Barry Hochstein's ("Hochstein") Statement of Answer filed on or about: October  
11, 2001

**CASE SUMMARY**

Claimant alleged the following claims with respect to Respondent's promissory notes dated September 9, 1999 and November 10, 2000: 1) Breach of Contract; 2) Money Lent; and 3) Unjust Enrichment.

Respondent denied Claimant's allegations of wrongdoing and denied any liability to Claimant.

**RELIEF REQUESTED**

Claimant requested damages in the amount of \$62,608.72, plus interest thereon at the margin debit rate charged by WMS, or 8.125% per annum, from February 9, 2001, attorney fees, costs, including but not limited to forum fees, and such other and further relief as the Panel may deem just and proper.

Respondent requested dismissal of Claimant's claims and further requested costs and fees, including any attorney's fees.

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

Respondent Hochstein did not file with NASD Dispute Resolution ("NASD-DR") a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On or about October 21, 2002, the Panel granted Respondent Hochstein's request to adjourn the October 23-25, 2002, hearing dates.

On or about January 14, 2003, the Panel denied Respondent Hochstein's request to adjourn the January 15, 2003 hearing date.

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) Respondent is liable for and shall pay to Claimant the sum of \$30,000.00, in satisfaction of Claimant's claims.
- 2) Respondent is liable for and shall pay to Claimant the sum of \$1,125.00 as reimbursement for 50% of the forum fees assessed against Claimant.
- 3) Each party shall bear its own costs, including attorney's fees.
- 4) All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:  
Initial claim filing fee = \$1,000.00

### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, WMS, is a party and the following fees are assessed:

Member Surcharge	= \$1,000.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$1,500.00</u>
Total Member Fees	= \$3,100.00

### **Adjournment fees**

The Panel waived the adjournment fee in connection with the adjourned hearing dates of October 23-25, 2002.

### **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/Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$750.00/session	= \$750.00
Pre-hearing conference: April 5, 2002 1 session	
(2) Hearing sessions @ \$750.00/session	= \$1,500.00
Hearing: January 15, 2003 2 sessions	
<b>Total Forum Fees</b>	<b>= \$2,250.00</b>

The Panel assessed the \$2,250.00 in forum fees to Claimant.

### **Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

The parties did not incur administrative costs.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 3,100.00
Forum Fees	= \$ 2,250.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$ 6,350.00
<u>Less Payments</u>	= \$(4,850.00)
Balance Due NASD-DR	= \$ 1,500.00

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

**ARBITRATION PANEL**

Michelle Brant	-	Public Arbitrator, Presiding Chair
Lester Friedman, Esq.	-	Public Arbitrator
Ruth V. Glick, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Michelle Brant  
Chair, Public Arbitrator

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

\_\_\_\_\_  
Lester Friedman, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Ruth V. Glick, Esq.  
Non-Public Arbitrator

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

\_\_\_\_\_  
1/24/2003  
Date of Service

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Signature Date

  
Lester Friedman, Esq.  
Public Arbitrator

1/22/03  
Signature Date

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Chair, Public Arbitrator

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Lester Friedman, Esq.  
Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
Ruth V. Glick, Esq.  
Non-Public Arbitrator

1/21/03  
\_\_\_\_\_  
Signature Date

1/24/2003  
\_\_\_\_\_  
Date of Service



## Proof of Service

State of California, County of Los Angeles

I am employed in the county of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is:

**NASD Dispute Resolution, Inc.  
300 South Grand Avenue, Suite 900  
Los Angeles, California 90071.**

On January 24, 2003, I served the following documents described as:

**Award, Cover Letters, and Invoice Statement for Arbitration Case No. 01-02695**  
on the interested parties in this action by placing the true copies thereof enclosed in the sealed envelopes as follows:

**Gary L. Holmes, Esq., Wedbush Morgan Securities Inc., 1000 Wilshire Blvd, 9th Floor, Los Angeles, CA 90017, Fax #: 213-688-6634**

**Barry Hochstein, 1800 Pacific Avenue, Unit 808, San Francisco, CA 94109, Fax #:**

By Certified Mail, I caused each such envelope, with certified class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S Mail in Los Angeles, California, for collection to the office of the addressee following ordinary business practices.

☐ By Personal Service, I caused such envelope to be delivered by hand to the individuals at the addressee(s) listed.

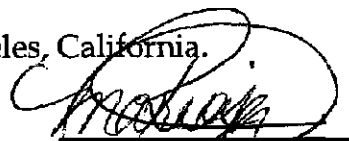
X By overnight courier, I caused the above-referenced documents to be delivered to an overnight courier service (Federal Express) in Los Angeles, California for delivery to the above addressees on next business day.

By facsimile machine, I caused the above-referenced documents to be transmitted to the above-named persons at the numbers above.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (FEDERAL) I declare that I am employed in the office of a member of the bar on this court at whose direction the service was made.

Executed this January 24, 2003, at Los Angeles, California.

  
\_\_\_\_\_  
Maria I. Reyes