

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Ted Phipps

and

01-02861
Phoenix, Arizona

Name of Respondents

Heritage West Securities, Inc.
Stewart L. Michaels

REPRESENTATION OF PARTIES

Ted Phipps ("**Claimant**") was represented by Michael Salcido, Esq., Gust Rosenfeld PLC, Phoenix, Arizona.

Heritage West Securities, Inc. ("**Respondent Heritage West**") was represented by Robert D. Mitchell, Esq., Mitchell Law Offices, Phoenix, Arizona until shortly after the pre-hearing conference conducted on February 4, 2002. Prior to the hearing of this matter, Respondent Heritage West was represented by Mr. Michaels and Paul Arutt. Respondent Heritage West was not present at the hearing conducted on June 11, 2002.

Stewart L. Michaels ("**Respondent Michaels**") appeared *pro se*.

CASE INFORMATION

The Statement of Claim was filed on or about May 30, 2001. Submission Agreement of Claimant Ted Phipps was signed on March 26, 2001.

Statement of Answer was filed by Respondents Heritage West Securities, Inc. and Stewart L. Michaels on or about August 24, 2001. Submission Agreement of Respondent Heritage West Securities, Inc. was signed on August 14, 2001 by Paul Arutt. Submission Agreement of Respondent Stewart L. Michaels was signed on August 15, 2001.

CASE SUMMARY

Claimant alleged that Respondents solicited the purchase of unsuitable securities for the Claimant's account. It was also alleged that Respondents made misrepresentations in connection with the

purchases. Claimant further alleged that Respondent Heritage West failed to properly supervise Respondent Michaels.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Claimant was an aggressive investor who was fully aware of the speculative nature of his investments and the possibility for loss. It was also stated that Claimant was fully satisfied when the heightened risk profile of the investments in the account resulted in an aggressive return on his investment, and said little when he lost.

RELIEF REQUESTED

Claimant requested an award of compensatory damages in the amount of \$47,656.04; pre and post award interest until the award is paid in full; "opportunity" or "benefit of the bargain" losses based upon how the Claimant's account would have performed had it been properly managed; disgorgement of all commissions, mark ups, profits and margin interest charged to the account; costs and attorneys' fees, including all filing fees, and expert witness fees; punitive damages in an amount to be determined at the hearing; and for such other and further relief as is deemed just and proper.

Respondents requested that the Arbitration Panel dismiss Claimant's Statement of Claim, and that Claimant take nothing thereunder. Respondents also requested that the Arbitration Panel enter an award in their favor of at least \$10,000.00 for attorneys' fees and costs incurred in defending this matter.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing, Claimant made a motion for entry of default against Respondent Heritage West. The Arbitration Panel denied the motion.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Heritage West Securities, Inc. 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.

The party present at the hearing 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 original(s) 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. The Arbitration Panel adopts the Stipulation between Claimant Ted Phipps and Respondent Stewart Michaels setting forth the terms of a settlement. Pursuant to that settlement Respondent Stewart Michaels shall be and hereby is liable for and shall pay to Claimant Ted Phipps the sum of \$15,000.00 (**Fifteen Thousand Dollars and no Cents**).
2. Respondent Heritage West Securities, Inc. shall be and hereby is liable for and shall pay to Claimant Ted Phipps the sum of \$36,656.04 (**Thirty Six Thousand Six Hundred Fifty Six Dollars and Four Cents**) as compensatory damages.
3. Additional interest shall accrue at the legal rate from and inclusive of the date of this award.
4. 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.
5. 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 = \$175.00

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. In this matter, the member firm is Heritage West Securities, Inc.

Member surcharge = \$ 800.00
Pre-hearing process fee = \$ 600.00

Hearing process fee = \$1,000.00

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(s) with a single arbitrator x \$450.00 = \$ 450.00
Pre-hearing conference(s): May 29, 2002 1 session

Two (2) Pre-hearing session(s) with Panel x \$600.00 = \$1,200.00
Pre-hearing conference(s): February 4, 2002 1 session
March 26, 2002 1 session

Two (2) Hearing sessions x \$600.00 = \$1,200.00
Hearing Date(s): April 16, 2002 1 session
June 11, 2002 1 session

Total Forum Fees = \$2,850.00

The Arbitration Panel has assessed \$0.00 of the forum fees to Ted Phipps.

The Arbitration Panel has assessed \$2,850.00 of the forum fees jointly and severally to Heritage West Securities, Inc. and Stewart L. Michaels.

Fee Summary

Claimant, Ted Phipps, shall be and hereby is liable for:

Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$ 175.00
<u>Less payments</u>	= \$ 775.00
Balance to be refunded by NASD Dispute Resolution, Inc.	= \$ 600.00

Respondent, Heritage West Securities, Inc., shall be and hereby is liable for:

Member Fees	= \$2,400.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$2,400.00
<u>Less payments</u>	= \$1,400.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,000.00

Respondents, Heritage West Securities, Inc. and Stewart L. Michaels, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$2,850.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,850.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Howard R. Gaines, Esq. - Public Arbitrator, Presiding Chair
Ronald Edward Hibbing, Esq. - Public Arbitrator
James E. Stark, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Howard R. Gaines
Howard R. Gaines, Esq.
Public Arbitrator, Presiding Chair

June 20, 2002
Signature Date

/s/ Ronald Edward Hibbing
Ronald Edward Hibbing, Esq.
Public Arbitrator

June 20, 2002
Signature Date

/s/ James E. Stark
James E. Stark, Esq.
Non-Public Arbitrator

June 20, 2002
Signature Date

Respondent, Heritage West Securities, Inc., shall be and hereby is liable for:

Member Fees	= \$2,400.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$2,400.00
<u>Less payments</u>	= \$1,400.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,000.00

Respondents, Heritage West Securities, Inc. and Stewart L. Michaels, shall be and hereby are jointly and severally liable for:


<u>Forum Fees</u>	= \$2,850.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,850.00

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Ronald Edward Hibbing, Esq. - Public Arbitrator
James E. Stark, Esq. - Non-Public Arbitrator

Concurring Arbitrators:



Howard R. Gaines, Esq.
Public Arbitrator, Presiding Chair

6-20-02

Signature Date

Ronald Edward Hibbing, Esq.
Public Arbitrator

Signature Date

James E. Stark, Esq.
Non-Public Arbitrator

Signature Date

NASD Dispute Resolution, Inc.
Arbitration No. 01-02861
Award Page 5 of 5

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Signature Date

June 20, 2002
Signature Date

James E. Stark, Esq.
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Public Arbitrator, Presiding Chair

Signature Date

Ronald Edward Hibbing, Esq.
Public Arbitrator

Signature Date


James E. Stark, Esq.
Non-Public Arbitrator

6/20/02
Signature Date