

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Omar Zambrano

Case Number: 02-06834

Names of the Respondents  
Martinez-Ayme Securities  
Alvaro Caballero

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

Claimant Omar Zambrano ("Zambrano") appeared pro se.

For Respondent Martinez-Ayme Securities ("MAS"): Nancy Van Sant, Esq., Sacher, Zelman, Van Sant, Paul, Beiley, Hartman & Waldman, P.A., Miami, Florida.

Respondent Alvaro Caballero ("Caballero") appeared pro se.

**CASE INFORMATION**

Statement of Claim filed on or about: November 5, 2002.

Claimant signed the Uniform Submission Agreement: November 5, 2002.

Statement of Answer filed by Respondent MAS on or about: February 21, 2003.

Respondent MAS did not file an executed Uniform Submission Agreement.

Respondent Caballero did not file a Statement of Answer or an executed Uniform Submission Agreement.

Motion to Dismiss filed by Respondent MAS on or about: December 13, 2002.

Response to Motion to Dismiss and Request for Sanctions filed by Claimant on or about: December 26, 2002.

Reply to Motion to Dismiss and Request for Sanctions filed by Respondent MAS on or about: February 21, 2003.

Motion to Bar Answers and Defenses filed by Claimant on or about: April 23, 2003.

Opposition to Motion to Bar Answers and Defenses filed by Respondent MAS on or about: February 27, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) breach of contract; 2) unsuitability; 3) fraud and misrepresentation; 4) negligence; 5) civil theft; and 6) check kiting. The causes of action relate to the purchase and sale of shares of stock in Handspring, Inc., AMERN Access Tech., Inc., Rambus, Inc., Verticalnet, Inc., Redback Network, Inc., Palm, Inc., Yahoo, Inc., XO Communications, Inc., Infospace.com, Inc., Sycamore Networks, Inc., TTR, Inc., Enron

Corp., CMGI, Inc., and Nexell Therapeutics, Inc. The causes of action also relate to a check that was issued in settlement of prior claims between Claimant and Respondent Caballero.

Unless specifically admitted in its Answer, Respondent MAS denied the allegations made in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$8,915.00 from Respondents MAS and Caballero, compensatory damages of \$2,500.00 from Respondent Caballero, plus treble damages of \$5,000.00 for civil theft and check kiting from Respondent Caballero, interest, attorney's fees, and the costs of this proceeding.

Respondent MAS requested that all claims against it be dismissed and such other and further relief as is deemed just and proper.

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

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

Upon review of the file and the representations made by the Claimant and Respondent Caballero, the Arbitrator determined that Respondent Caballero has been properly served with the Statement of Claim in accordance with the NASD Code of Arbitration Procedure (the "Code").

The Arbitrator denied Respondent MAS' Motion to Dismiss by Order dated April 11, 2003.

As set forth in the Arbitrator's Order dated April 30, 2003, the Arbitrator denied Claimant's Motion to Bar the Answer and Defenses of Respondent MAS and declined to rule upon Claimant's Motion to Bar the Answer and Affirmative Defenses of Respondent Caballero.

On or about August 22, 2003, Claimant advised NASD Dispute Resolution that he had settled his dispute with Respondent MAS. Thereafter, all claims against Respondent MAS were withdrawn with prejudice.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Caballero is liable and shall pay to Claimant the sum of \$3,865.00 in compensatory damages, plus pre-judgment interest of \$592.43 from February 1, 2002 until the date of the hearing. Damages are awarded based upon the claims of breach of contract, unsuitability and fraud.
2. Respondent Caballero is liable and shall pay to Claimant the sum of \$113.57 representing reimbursement of costs paid by Claimant in preparation for the evidentiary hearing in this matter. These costs include fees for postage and photocopies.
3. Any and all claims for relief not specifically addressed herein, including Claimant's request for attorneys' fees and treble damages, are 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	= \$125.00
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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 person at the time of the events giving rise to the dispute. Accordingly, MAS is a member firm and was a party.

Member surcharge	= \$425.00
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#### **Adjournment Fees**

No adjournments were granted during these proceedings for which fees were assessed.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred during this proceeding.

#### **Forum Fees and Assessments**

The Arbitrator has assessed forum fees for each session conducted. A session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with the Arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$450.00
Pre-hearing conference: April 28, 2003	1 session

One (1) Hearing session with a single arbitrator @ \$450.00	= \$450.00
Hearing Date: October 7, 2003	1 session
Total Forum Fees	= \$900.00

The Arbitrator has assessed \$225.00 of the forum fees to Respondent MAS.  
The Arbitrator has assessed \$675.00 of the forum fees to Respondent Caballero.

#### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative fees were incurred during this proceeding.

#### **Fee Summary**

1. Claimant is solely liable for:	
Initial Filing Fee	= \$125.00
Total Fees	= \$125.00
Less payments	= \$125.00
Balance Due NASD Dispute Resolution	= \$ 0.00
2. Respondent MAS is solely liable for:	
Member Fees	= \$425.00
Forum Fees	= \$225.00
Total Fees	= \$650.00
Less payments	= \$650.00
Balance Due NASD Dispute Resolution	= \$ 0.00
3. Respondent Caballero is solely liable for:	
Forum Fees	= \$675.00
Total Fees	= \$675.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$675.00

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

#### **ARBITRATOR**

David A. Weintraub, Esq.

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Public Arbitrator, Presiding Chairperson

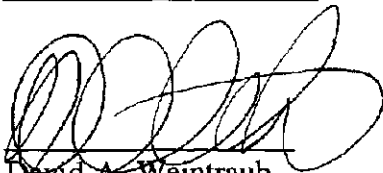
**Arbitrator's Signature**

/s/  
David A. Weintraub  
Public Arbitrator, Presiding Chairperson

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Signature Date

November 4, 2003  
Date of Service (For NASD Dispute Resolution office use only)

Arbitrator's Signature

A handwritten signature in black ink, appearing to read 'David A. Weintraub', written over a horizontal line.

David A. Weintraub

Public Arbitrator, Presiding Chairperson

11/4/03

Signature Date

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Date of Service (For NASD Dispute Resolution office use only)