

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

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In the Matter of the Arbitration Between:

Barry Wood and Jean Wood (Claimants) v. McDonald Investments, Inc. and Ward Caldbick (Respondents)

Case Number: 03-05559

Hearing Site: Buffalo, New York

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Nature of the Dispute: Customers v. Member and Associated Person.

**REPRESENTATION OF PARTIES**

Claimants Barry Wood ("B. Wood") and Jean Wood ("J. Wood") hereinafter collectively referred to as "Claimants": Joanne Schultz, Esq., Williamsville, NY. Previously represented by: Donald G. McGrath, Esq., McGrath & Polvino, PLLC, Williamsville, NY.

Respondents McDonald Investments, Inc. ("McDonald Investments") and Ward Caldbick ("Caldbick") hereinafter collectively referred to as "Respondents": Henry G. Grendell, Esq., Calfee, Halter & Griswold, LLP, Cleveland, OH.

**CASE INFORMATION**

Statement of Claim filed on or about: July 21, 2003.

Amended Statement of Claim filed on or about: November 13, 2003.

Claimants signed the Uniform Submission Agreement: June 14, 2003.

Joint Statement of Answer filed by Respondents on or about: September 23, 2003.

Joint Amended Answering Statement filed by the Respondents on or about: November 26, 2003.

Respondent McDonald Investments signed the Uniform Submission Agreement: August 18, 2003.

Respondent Caldbick signed the Uniform Submission Agreement: September 22, 2003.

**CASE SUMMARY**

In their Statement of Claim and Amended Statement of Claim, Claimants asserted the following causes of action: excessive trading; unsuitability; failure to follow customer directives; engaging in deceptive acts and practices; failing to follow ERISA rules; breach of contract; breach of duty; violations of federal and state securities laws; violations of state consumer protection laws; breach of fiduciary duty; violation of ERISA rules; violation of NASD rules; and failure to supervise. Claimants' claims

involved common stocks, including but not limited to Dell Computer, Vodaphone Group, Spring, and Fidelity Advisors Technology Fund.

Unless specifically admitted in their Answer and Amended Answering Statement, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In their Statement of Claim and Amended Statement of Claim, Claimants requested compensatory damages in the amount of \$477,165.00, plus twelve months interest at 9%, or \$42,944.85; appropriate earnings and appreciation from the date of this filing; punitive damages; costs, expenses, and disbursements, including reasonable attorneys' fees, pursuant to New York General Business Law §349; and for such other and further relief as the Arbitration Panel deems just and proper.

In their Answer and Amended Answering Statement, Respondents requested that the Statement of Claim be dismissed and that the Claimants be assessed all hearing fees and expenses, along with Respondents' attorneys' fees.

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

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 the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are denied in their entirety.
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Ward Caldbick's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Caldbick must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.

### **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

#### **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, McDonald Investments, Inc. is a party.

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

#### **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 28, 2004 1 session

Six (6) Hearing sessions @ \$1,125.00 = \$6,750.00

Hearing Dates: August 9, 2004 2 sessions

August 10, 2004 2 sessions

August 11, 2004 2 sessions

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Total Forum Fees = \$7,875.00

1. The Panel has assessed \$3,937.50 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$3,937.50 of the forum fees jointly and severally against Respondents.

### **Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee = \$ 300.00

Forum Fees = \$3,937.50

Total Fees = \$4,237.50

Less payments = \$1,575.00

Balance Due NASD Dispute Resolution = \$2,662.50

2. Respondent McDonald Investments is solely liable for:

<u>Member Fees</u>	= \$5,200.00
<u>Total Fees</u>	= \$5,200.00
<u>Less payments</u>	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$3,937.50
<u>Total Fees</u>	= \$3,937.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,937.50

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

**ARBITRATION PANEL**

George B. Melrose	-	Public Arbitrator, Presiding Chairperson
Robert H. Rushowy	-	Public Arbitrator
Patrick M. Markey	-	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.



George B. Melrose  
Public Arbitrator, Presiding Chairperson

8/25/04

Signature Date

\_\_\_\_\_  
Robert H. Rushowy  
Public Arbitrator

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

\_\_\_\_\_  
Patrick M. Markey  
Non-Public Arbitrator

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

AUGUST 25, 2004

Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

George B. Mahose	-	Public Arbitrator, Presiding Chairperson
Robert H. Rushowy	-	Public Arbitrator
Patrick M. Markey	-	Non-Public Arbitrator

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George B. Mahose  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
\_\_\_\_\_  
Robert H. Rushowy  
Public Arbitrator

*August 24, 2004*  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Patrick M. Markey  
Non-Public Arbitrator

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

AUGUST 25, 2004  
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Date of Service (For NASD Dispute Resolution use only)

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Robert H. Rushowy	-	Public Arbitrator
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**Concurring Arbitrators' Signatures**

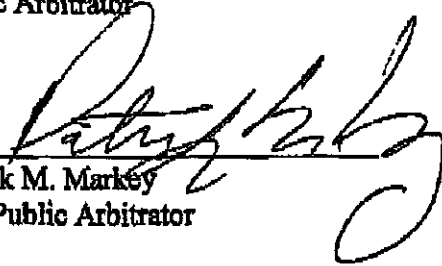
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Public Arbitrator, Presiding Chairperson

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Signature Date

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Robert H. Rushowy  
Public Arbitrator

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Signature Date

  
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Non-Public Arbitrator

8/25/04  
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AUGUST 25, 2004  
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