

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

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In the Matter of the Arbitration Between:

Edward C. and Juanita F. Scowcroft, JTWROS  
and Juanita F. Scowcroft Trust dated 9/28/00,  
Claimants,

Case Number: 03-06042

Hearing Site: St. Louis, Missouri

v.

McLaughlin, Piven, Vogel Securities, Inc. and  
Richard S. Nalbandian,  
Respondents.

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

**REPRESENTATION OF PARTIES**

Edward C. and Juanita F. Scowcroft, JTWROS and Juanita F. Scowcroft Trust dated 9/28/00, (the "Scowcrofts"), hereinafter collectively referred to as "Claimants": Daniel E. Reuter, Esq. of the Reuter Law Firm, located in St. Louis, Missouri. Claimants were later represented by Richard B. Fosher, Esq. of Oakes & Fosher, LLC, located in St. Louis, Missouri.

McLaughlin, Piven, Vogel Securities, Inc. ("MPV") and Richard S. Nalbandian ("Nalbandian"), hereinafter collectively referred to as "Respondents": Mark G. Vaughn, Esq. of the Law Offices of Joseph D'Elia, located in Huntington, New York.

**CASE INFORMATION**

Statement of Claim filed on or about August 18, 2003. Juanita Scowcroft signed the Uniform Submission Agreement on August 8, 2003. A Death Certificate for Edward C. Scowcroft was received on August 29, 2003.

Statement of Answer filed by Respondents, MPV and Nalbandian, on February 23, 2004. Respondents, MPV and Nalbandian, jointly signed the Uniform Submission Agreement on February 20, 2004 and February 19, 2004, respectively.

Claimants' Motion to File First Amended Statement of Claim and First Amended Statement of Claim filed on August 10, 2005.

Respondents' Response to Claimants' Motion to File First Amended Statement of Claim filed on August 25, 2005.

Claimants' Reply to Respondents' Response to Claimants' Motion to File First Amended Statement of Claim filed on September 15, 2005.

Respondents' Response to Claimants' First Amended Statement of Claim filed on November 17, 2005.

### CASE SUMMARY

Claimants asserted the following causes of action: negligence, excessive trading of mutual funds, bonds and unit investment trusts, breach of fiduciary duty, churning, misrepresentations, fraud, suitability, omission and Respondeat Superior. The causes of action relate to various securities including, AOL, Amazon.Com, Applied Materials, Cisco Systems, Micron Electronics, Oracle, Sun Microsystems and Yahoo. Claimants asserted that these were high-risk and speculative investments, they were inconsistent with the Scowcrofts' financial needs and conservative objectives and Claimants did not authorize such trades.

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

1. That all relevant acts, omissions, investment decisions and activities were taken by the Claimants knowingly and intentionally with full knowledge of the risks and opportunity costs of such investments.
2. If Claimants suffered any loss by virtue of the allegations contained in the Statement of Claim, which is denied, to the extent Claimants were not solely responsible, such loss was as the result of causes, such as natural market forces and fluctuations, or by the acts, omissions, investment decisions, representations, misrepresentations, negligence, breaches of contract, violations of the securities laws of the United States or the State of New York or Missouri or the like acts of third parties who are not parties hereto and over whom MPV had no control. If any such act did occur, it was committed outside of the scope of any employ with Nalbandian or MPV and without any culpable conduct, participation, contribution, acquiescence, ratification, permission or knowledge, either constructive or actual, on behalf of Respondents.
3. Claimants, by conscious and deliberate decision, solely in order to maximize the return on their investments, assumed the risk of any and all losses referred to or alleged in the First Amended Statement of Claim to have been suffered by Claimants herein.
4. Claimants received a confirmation of the transaction, a prospectus and a monthly account statement reporting that, pursuant to their instructions and with their consent, the transactions itemized therein had been made for their accounts, and the units referred to had been purchased or sold, and that those purchased remained on deposit in their account. MPV pleads as a defense laches, waiver and estoppel.
5. Respondents at no time made any representations or guarantees for any investments, nor did they make any representations or guarantees as to the price that they Claimants' securities would trade at any time in the future, or if they could be traded, or the date, time and price at which said securities could be sold.
6. Respondents executed the Claimants' instructions, after full and complete discussions with Claimants, and performed their obligations as reasonable and prudent securities representatives should, and further acted in accordance with the procedures and standards generally accepted and followed in the securities business.
7. Claimants' unsuitability claims fails because the elements of an unsuitability claim based upon fraudulent conduct are not present in this case.
8. Respondent acted in good faith and did not act with intent to deceive or act recklessly with respect to the Claimants, nor was there any conspiracy, scheme or intent to defraud Claimants.
9. Claimants did not reasonably rely on any statements of omissions attributable to the Respondents.

10. Any claims Claimants might have against Respondents are barred because Claimants: 1) knew, or in the exercise of the required degree of care and due diligence should have known, of the existence of those matters alleged to constitute violations of law that form the claims; 2) acted in willful disregard of those facts and matters alleged to constitute violations or causes of action by having taken benefits under the agreements and contracts complained of; and 3) ratified all of the matters alleged to constitute violations or causes of action.
11. Respondents are not liable to Claimants because they made all necessary and required disclosures to the Claimants, concerning the investments at issue or otherwise, and Respondents did not breach any other duties owed to Claimants, if any such other duties existed.
12. The actions of Respondents were not the proximate cause of Claimants' alleged damages.
13. Claimants' claims, to the extent that they relate to securities purchased more than six years before the commencement of arbitration, are improper pursuant to § 10304 of the NASD Code and should be denied.

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

The Panel allowed Claimants' Amended Statement of Claim filed on August 10, 2005, which included an increase in compensatory damages of \$750,000.00 sought by the Claimants.

### **RELIEF REQUESTED**

Claimants requested \$750,000.00 in compensatory damages, unspecified punitive damages, pre-judgment and post-judgment interest, attorney's fees and costs, all forum fees and for such other and further relief as Panel deems proper. Claimants further requests that because of the egregious nature of Respondents' actions, that this matter be referred for disciplinary action.

Respondents, MPV and Nalbandian, requested that the Panel dismiss the claims in their entirety, order the expungement of this matter from the CRD records of Respondent Nalbandian, and order Claimants to pay applicable fees.

### **AWARD**

After considering the pleadings, 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. Respondents, McLaughlin, Piven, Vogel Securities, Inc. and Richard S. Nalbandian, are jointly and severally liable for and shall pay Claimants, Edward C. and Juanita F. Scowcroft, JTWROS and Juanita F. Scowcroft Trust dated 9/28/00, the sum of \$83,297.00 as compensatory damages.
2. Respondents, McLaughlin, Piven, Vogel Securities, Inc. and Richard S. Nalbandian, are jointly and severally liable for and shall pay Claimants, Edward C. and Juanita F. Scowcroft, JTWROS and Juanita F. Scowcroft Trust dated 9/28/00, the sum of \$41,962.00 as attorney's fees. In deciding to award attorney's fees, the Panel considered the pleadings filed by counsel, as well as the arguments presented on behalf of the parties, and determined that authority existed for an award of attorney's fees to the Claimants.

3. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
4. Any and all relief not specifically addressed herein, including punitive damages, 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 = \$ 375.00

#### **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, McLaughlin, Piven, Vogel Securities, Inc. is a party and is assessed the following fees:

Member surcharge = \$ 2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 4,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

March 1-3, 2005, adjournment by both parties = \$ 1,125.00  
(waived by the Panel)

January 17-20, 2006, adjournment by the Panel = \$ 1,500.00  
(waived by Panel)

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

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, which 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: December 20, 2005 1 session

Four (4) Pre-hearing sessions with Panel @ \$1,200.00 = \$ 4,800.00  
Pre-hearing conferences: May 27, 2004 1 session  
March 1, 2005 1 session  
October 24, 2005 1 session  
February 6, 2006 1 session

Eight (8) Hearing sessions @ \$1,200.00 = \$ 9,600.00  
Hearing Dates: July 31, 2006 2 sessions  
August 1, 2006 3 sessions  
August 2, 2006 2 sessions

August 3, 2006 1 session

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Total Forum Fees = \$14,850.00

1. The Panel has assessed 100% of the total forum fees in the amount of \$14,850.00 jointly and severally to Respondents, McLaughlin, Piven, Vogel Securities, Inc. and Richard S. Nalbandian.

**Fee Summary**

1. Claimants, Edward C. and Juanita F. Scowcroft, JTWROS and Juanita F. Scowcroft Trust dated 9/28/00, are jointly liable for:

Initial Filing Fee	= \$ 375.00
<u>Less payments</u>	= \$ 1,425.00
Refund Due from NASD Dispute Resolution	= \$ 1,050.00

2. Respondent, McLaughlin, Piven, Vogel Securities, Inc. is solely liable for:

Member Fees	= \$ 7,000.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 1,800.00

3. Respondents, McLaughlin, Piven, Vogel Securities, Inc. and Richard S. Nalbandian, are jointly and severally liable for:

Forum Fees	= \$14,850.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$14,850.00

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

**ARBITRATION PANEL**

Terry F. Peppard, Esq.	-	Public Arbitrator, Presiding Chairperson
Anthony J. Soukenik, Esq.	-	Public Arbitrator
David J. Wagener	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Terry F. Peppard, Esq.  
Terry F. Peppard, Esq.  
Public Arbitrator, Presiding Chairperson

8/11/06  
Signature Date

/s/ Anthony J. Soukenik, Esq.  
Anthony J. Soukenik, Esq.  
Public Arbitrator

8/14/06  
Signature Date

/s/ David J. Wagener  
David J. Wagener  
Non-Public Arbitrator

8/11/06  
Signature Date

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Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution  
 Arbitration No. 03-06042  
Award Page 5 of 6

August 3, 2006 1 session

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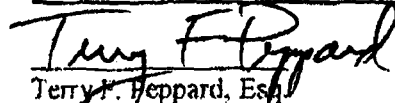
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