

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

William C. Mitchell and Roseann Mitchell (Claimants) v. Butler Wick & Co., Inc and Marc Presley (Respondents)

Case Number: 04-01522

Hearing Site: Cleveland, Ohio

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

REPRESENTATION OF PARTIES

Claimants William C. Mitchell ("William Mitchell") and Roseann Mitchell ("Roseann Mitchell") hereinafter collectively referred to as "Claimants": James S. Jones, Esq., Portland, OH.

Respondents Butler Wick & Co., Inc. ("Butler Wick") and Marc Presley ("Presley") hereinafter collectively referred to as "Respondents": Michael Gross, Esq., Ulmer & Berne LLP, Cleveland, OH.

CASE INFORMATION

Statement of Claim filed on or about: March 1, 2004.

Claimants filed a Motion to Strike Respondents Motion to Dismiss: May 12, 2004.

Claimants filed a Reply to Respondents Response to Claimants Motion to Strike.

Claimants signed the Uniform Submission Agreement: March 1, 2004.

Joint Statement of Answer and Motion to Dismiss filed by Respondents on or about: April 27, 2004.

Respondents filed a Response to Motion to Strike Respondents' Motion to Dismiss: June 4, 2004.

Respondent Butler Wick did not submit a Uniform Submission Agreement:

Respondent Presley did not submit a Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitability, breach of fiduciary duty, intentional misrepresentation, and failure to supervise. The causes of action relate to various internet and telecommunications stocks.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$72,235.56; lost opportunity costs of 6% per annum or \$16,379.15; punitive damages of \$144,471.12; attorney's fees and costs.

Respondents requested dismissal of the Statement of Claim in its entirety; expungement of all references to this matter from Respondent's Presley's CRD record and any other relief the Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Butler Wick and Presley did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

On or about October 14, 2004, the Panel denied Respondents' Motion to Dismiss.

By letter dated May 18, 2005, the parties notified NASD Dispute Resolution that they had settled this matter.

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

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. Claimants' claims are dismissed with prejudice in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Marc Presley'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 Marc Presley 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. In this matter, Butler Wick & Co., Inc. is a party.

Member Surcharge = \$1,700.00

Pre-Hearing Process Fee = \$ 750.00

Hearing Process Fee = \$2,750.00

Total Member Fees = \$5,200.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 = \$ 450.00

Pre-hearing conference: April 28, 2005 1 session

Two (2) Pre-hearing conference sessions with the Panel @ \$1,125.00/session = \$2,250.00

Pre-hearing conferences: September 8, 2004 1 session

October 12, 2004 1 session

Total Forum Fees = \$2,700.00

1. The Panel assessed \$562.50 of the forum fees jointly and severally to Claimants for the September 8, 2004 pre-hearing conference.
2. The Panel assessed \$562.50 of the forum fees jointly and severally to Respondents for the September 8, 2004 pre-hearing conference.
3. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure, Claimants have been assessed \$525.00 of the forum fees for the remaining conference calls.
4. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure, Respondent Butler Wick has been assessed \$525.00 of the forum fees for the remaining conference calls.
5. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure, Respondent Presley has assessed \$525.00 of the forum fees for the remaining conference calls.

Fee Summary

1. Claimants William and Roseann Mitchell are jointly and severally liable for:

Initial Filing Fees = \$ 300.00

Forum Fees = \$ 1,087.50

Total Fees	= \$ 1,387.50
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Refund Due Claimants	= \$ 37.50

2. Respondent Butler Wick is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 525.00</u>
Total Fees	= \$ 5,725.00
<u>Less payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 525.00

3. Respondent Presley is solely liable for:

<u>Forum Fees</u>	<u>= \$ 525.00</u>
Total Fees	= \$ 525.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 525.00

4. Respondents are jointly and severally liable for:


<u>Forum Fees</u>	<u>= \$ 562.50</u>
Total Fees	= \$ 562.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 562.50

All balances are due and payable to NASD Dispute Resolution.

ARBITRATION PANEL

Ellen Keller	-	Public Arbitrator, Presiding Chair
Elmer Cowan	-	Public Arbitrator
Thaddeus J. Shalek	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Ellen Keller
Public Arbitrator, Presiding Chair

1/30/06
Signature ~~Date~~

Elmer Cowan
Public Arbitrator

Signature Date

Thaddeus J. Shalek
Industry Arbitrator

Signature Date

April 18, 2006
Date of Service (For NASD office use only)

ARBITRATION PANEL

Ellen Keller	-	Public Arbitrator, Presiding Chair
Elmer Cowan	-	Public Arbitrator
Thaddeus J. Shalek	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Ellen Keller
Public Arbitrator, Presiding Chair

Signature Date


Elmer Cowan
Public Arbitrator

JAN 26 2006
Signature Date

Thaddeus J. Shalek
Industry Arbitrator

Signature Date

April 18, 2006
Date of Service (For NASD office use only)

ARBITRATION PANEL

Ellen Keller	-	Public Arbitrator, Presiding Chair
Elmer Cowan	-	Public Arbitrator
Thaddeus J. Shalek	-	Non-Public Arbitrator


Concurring Arbitrators' Signatures

Ellen Keller
Public Arbitrator, Presiding Chair

Signature Date

Elmer Cowan
Public Arbitrator

Signature Date


Thaddeus J. Shalek
Industry Arbitrator

2/25/06
Signature Date

April 18, 2006
Date of Service (For NASD office use only)