

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Mark B. Frost

and

04-05192  
Nashville, Tennessee

Name of Respondent

Westcott Securities, LLC

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Nature of the Dispute: Associated Person vs. Member.

**REPRESENTATION OF PARTIES**

Mark B. Frost ("**Claimant**") was represented by Timothy L. Warnock, Esq. and Amy E. Neff, Esq., Bowen Riley Warnock & Jacobson, PLC, Nashville, Tennessee.

Westcott Securities, LLC ("**Respondent**") was originally represented by Robert S. Patterson, Esq., Boulton Cummings Connors Berry PLC, Nashville, Tennessee. Mr. Patterson withdrew from representation of Respondent on or about December 19, 2005. Respondent did not appear at the hearing on this matter.

**CASE INFORMATION**

The Statement of Claim was filed on or about July 21, 2004. Amended Statement of Claim was filed on or about August 4, 2005. Submission Agreement of Claimant Mark B. Frost was signed on July 28, 2004.

Statement of Answer was filed by Respondent Westcott Securities, LLC on or about August 1, 2005. Response to Amended Statement of Claim was filed on or about August 24, 2005. Submission Agreement of Respondent Westcott Securities, LLC was signed on July 29, 2005 by William S. Kilroy.

**CASE SUMMARY**

Claimant alleged that Respondent breached the Independent Contractor Sales Associate Agreement entered into by the parties by failing to compensate him for services as set forth in the agreement.

Respondent denied the allegations set forth in the Statement of Claim and Amended Statement of Claim. Respondent specifically stated as follows:

Westcott Securities LLC denies that it breached its contract with Mark Frost. Its contractual obligation was to direct PODS Inc. to assign certain warrants. Mark Frost was its agent designated with authority to direct the assignment of warrants. Mark Frost in fact directed the assignment of the warrants.

Westcott Securities LLC denies that it is the cause of the damages sought by Mark Frost. Its contract with Mark Frost acknowledged Mark Frost's participation in the PODS transaction. Its course of dealing with Mark Frosty was to authorize Mark Frost to act as its agent in effecting the PODS transaction. As a matter of contractual rights, neither Westcott Securities LLC nor Mark Frost had the power to control to whom PODS Inc. issued the warrant. Insofar as PODS Inc. issued the warrant other than as Mark Frost desired, Mark Frost bears the sole and exclusive responsibility for his claimed damages.

#### **RELIEF REQUESTED**

Claimant requested an award of unspecified compensatory damages, pre-award interest, attorneys' fees and the costs incurred in this proceeding and delivery of a fully-executed Stock Purchase Warrant.

At the hearing, Claimant requested the following relief:

1. A finding that Westcott breached the Independent Contractor Sales Associate Agreement by failing to assign all of the PODS Warrants to Frost.
2. A finding that Westcott failed to supervise the PODS transaction and Frost and, as a direct and proximate result, violated applicable federal and state securities laws and regulations, by allowing Dennis (a non-registered person) to cause the PODS Warrants to be issued as commissions/compensation to WoodRock (a non-registered entity).
3. An Order from the Panel directing Westcott to perform its obligations to Frost under the Independent Contractor Sales Associate Agreement and applicable federal and state securities laws and regulations.
4. A notification from the Panel to the appropriate regulatory authorities of the above findings and Order.

Respondent requested that the claims asserted in this matter be denied.

### **OTHER ISSUES CONSIDERED & DECIDED**

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Westcott Securities, LLC has 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 parties have 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 (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. Westcott breached the Independent Contractor Sales Associate Agreement by failing to assign all of the PODS Warrants to Frost.
2. Westcott failed to supervise the PODS transaction and Frost and, as a direct and proximate result, violated applicable federal and state securities laws and regulations, by allowing Dennis (a non-registered person) to cause the PODS Warrants to be issued as commissions/compensation to WoodRock (a non-registered entity).
3. Westcott shall perform its obligations to Frost under the Independent Contractor Sales Associate Agreement and applicable federal and state securities laws and regulations.
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, not specifically awarded or otherwise provided for above.

### **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 = \$250.00

### **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(s) is Westcott Securities, LLC.

Member surcharge	\$	1,500.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	2,200.00
Total Member Fees	\$	4,450.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

Hearing Date(s), August 23-25, 2005, adjournment requested jointly by the parties. Fee split equally. \$1,000.00  
Hearing Date(s), February 28 – March 2, 2006, adjournment requested by Claimant. Fee waived. \$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:

1 Pre-hearing session(s) with Panel	x	1,000.00	\$	1,000.00
February 8, 2005	1	session		
1 Hearing sessions	x	1,000.00	\$	1,000.00
July 19, 2006	1	session		
Total Forum Fees			\$	2,000.00

The Arbitration Panel has assessed \$2,000.00 of the forum fees to Westcott Securities, LLC.

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Arbitration No. 04-05192  
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### Fee Summary

Claimant, Mark B. Frost, is liable for:

Initial Filing Fee	= \$	250.00
Adjournment Fee	= \$	500.00
Total Fees	= \$	750.00
<u>Less payments</u>	= \$	-1,750.00
Balance to be refunded by NASD Dispute Resolution	= \$	-1,000.00

Respondent, Westcott Securities, LLC, is liable for:

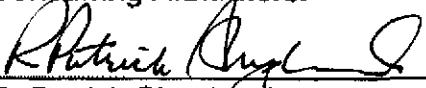
Member Fees	= \$	4,450.00
Adjournment Fee	= \$	500.00
<u>Forum Fees</u>	= \$	2,000.00
Total Fees	= \$	6,950.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	6,950.00

All balances are due to NASD Dispute Resolution

### ARBITRATION PANEL

R. Patrick Shepherd – Non- Public Arbitrator, Presiding Chair  
Brendan E. Finucane, Sr. – Non-Public Arbitrator  
W. Bruce Franklin - Non-Public Arbitrator

Concurring Arbitrators:

  
R. Patrick Shepherd  
Non-Public Arbitrator, Presiding Chair

7/20/06  
Signature Date

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Brendan E. Finucane, Sr.  
Non-Public Arbitrator

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

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W. Bruce Franklin  
Non-Public Arbitrator

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Signature Date

7/26/06  
Date of Service (For NASD office use only)

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Non-Public Arbitrator

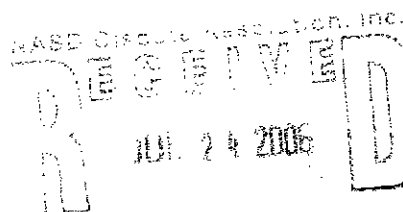
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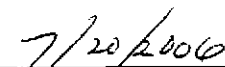
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