

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

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In the Matter of the Arbitration Between:

Morgan Wilshire Securities, Inc. (Claimant) vs. Vanguard Capital, Gregory Serras, Brian Zaid, Alexys McKenzie, Joseph Ragozzino, John Kayantas, Dimitry Metelkin, Steve Feratovic, Anthony Donaruma, Joquinn Sadler, and Constantine Floropoulos (Respondents)

Case Number: 04-05511

Hearing Site: New York, New York

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Nature of the Dispute: Member vs. Member and Associated Persons.

**REPRESENTATION OF PARTIES**

Morgan Wilshire Securities Inc. hereinafter referred to as ("Claimant"): Michael Finnan, CEO, Morgan Wilshire Securities, Inc. Westbury, NY.

Respondents Vanguard Capital ("Vanguard"), Gregory Serras ("Serras"), and Brian Zaid ("Zaid") hereinafter collectively referred to as ("the Vanguard Respondents"): Jeffery S. Kob, Esq. and Todd S. Hipper, Esq., Attorneys At Law, Coronado, CA.

Respondents Alexys McKenzie ("McKenzie"), John Kayantas ("Kayantas"), and Anthony Donurama ("Donaruma"): George M. Gavalas, Esq., Mineola, NY.

Respondent Joseph Ragozzino ("Ragozzino") did not enter an appearance in this matter.

Respondent Joquinn Sadler ("Sadler") did not enter an appearance in this matter.

Respondent Dimitry A. Metelkin ("Metelkin") did not enter an appearance in this matter.

Respondent Steve Feratovic ("Feratovic") appeared *pro-se*.

Respondent Constantine Floropoulos ("Floropoulos") appeared *pro-se*.

**CASE INFORMATION**

Statement of Claim filed on or about: August 2, 2004.

Claimant's Response to Vanguard Respondents' Statement of Answer filed on or about: October 6, 2004.

Claimant signed the Uniform Submission Agreement: August 9, 2004

Statement of Answer filed by the Vanguard Respondents on or about: September 29, 2004.

Respondent Vanguard did not sign the Uniform Submission Agreement.

Respondent Serras did not sign the Uniform Submission Agreement.  
Respondent Zaid did not sign the Uniform Submission Agreement.

Statement of Answer filed by the Respondent McKenzie on or about: April 29, 2005.  
Respondent McKenzie signed an undated Uniform Submission Agreement.

Statement of Answer and Counterclaim filed by the Respondent Kayantas on or about: April 29, 2005.  
Respondent Kayantas signed the Uniform Submission Agreement: February 9, 2005.

Statement of Answer filed by Respondent Donaruma on or about: April 29, 2005.  
Respondent Donaruma signed the Uniform Submission Agreement: May 6, 2005.

Respondent Ragozzino did not file a Statement of Answer or sign the Uniform Submission Agreement.

Respondent Sadler did not file a Statement of Answer or sign the Uniform Submission Agreement.

Respondent Metelkin did not file a Statement of Answer or sign the Uniform Submission Agreement.

Statement of Answer filed by Respondent Feratovic on or about: December 2, 2004.  
Respondent Feratovic signed the Uniform Submission Agreement: December 2, 2004.

Statement of Answer filed by Respondent Floropoulos on or about: October 1, 2004.  
Respondent Floropoulos signed the Uniform Submission Agreement: October 1, 2004.

### **CASE SUMMARY**

Claimant asserted the following causes of action: slander, corporate raiding, defamation of character, violation of duty of loyalty, violation of firm's procedure, fraud, misrepresentation.

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

Unless specifically admitted in his Answer, Respondent McKenzie denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Respondent Kayantas denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In his Counterclaim, Respondent Kayantas asserted the following causes of action: malicious, wanton, reckless, and surreptitious conduct on the part of Claimant in disregard of Respondent's rights; fraudulent, deceitful and malicious prosecution of the claim to the detriment of the Respondent.

Unless specifically admitted in his Answer, Respondent Donaruma denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Respondent Feratovic denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Respondent Floropoulos denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages against the Respondents in an amount sufficient to compensate it for the actual, consequential and incidental damages suffered as a result of such misconduct to include but not limited to:

- a. Recoup all commissions from ill-gotten gains from all brokers prior trailing 12 months and all commissions generated from the "Claimant's" clients.
- b. Recoup losses from customer complaints, settlements and arbitrations.
- c. An award of punitive damages against "Respondents" as well as any fees or other costs incurred in connection with the prosecution of this matter.

The Vanguard Respondents requested that:

- a. Any and all claims against Respondents be dismissed summarily;
- b. Claimant shall take nothing as to Respondents by Claimant's Statement of Claim;
- c. For such other relief as the arbitrators deem just and proper.

Respondent McKenzie requested that judgment be entered dismissing the Statement of Claim herein, together with costs and disbursements of this action and for such other and further relief as the court may deem just and proper.

Respondent Kayantas requested judgment be entered dismissing the statement of claim herein, together with costs and disbursements of this action; and further demands judgment on the counterclaim as follows:

- a. On the first cause of action of the counterclaim, the amount of Twenty Five Thousand (\$25,000.00) Dollars plus interest;
- b. On the second cause of action of the counterclaim, the amount of One Hundred Thousand (\$100,000.00) Dollars;
- c. For such other and further relief as the panel may deem just and proper.

Respondent Donaruma requested judgment be entered dismissing the statement of claim herein, together with costs and disbursements of this action and for such other and further relief as the panel may deem just and proper.

Respondent Feratovic requested that:

- a. Any and all claims against Respondent be dismissed;
- b. Claimant shall take nothing as to Respondent by Claimant's Statement of Claim; and
- c. for such other relief as the arbitrators deem just and proper.

Respondent Floropoulos requested that:

- a. Any and all claims against Respondent be dismissed;

- b. Claimant shall take nothing as to Respondent by Claimant's Statement of Claim; and
- c. for such other relief as the arbitrators deem just and proper.

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

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators determined that Respondents Ragozzino, Sadler and Metelkin have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents Ragozzino, Sadler and Metelkin did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

Respondents Vanguard, Serras and Zaid 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.

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, 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. Claimant's claim is denied in its entirety.
2. Respondent Kayantas's Counterclaim is denied in its entirety.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Vanguard's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Vanguard must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents. Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact: The claim, allegation, or information is false.
4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Serras' registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Serras must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD

with all appropriate documents. Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact: The claim, allegation, or information is false.

5. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Zaid's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Zaid must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents. Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact: The claim, allegation, or information is false.
6. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent McKenzie's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent McKenzie must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents. Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact: The claim, allegation, or information is false.
7. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Ragozzino's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Ragozzino must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents. Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact: The claim, allegation, or information is false.
8. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Kayantas' registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Kayantas must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents. Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact: The claim, allegation, or information is false.
9. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Metelkin's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Metelkin must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award

containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents. Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact: The claim, allegation, or information is false.

10. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Feratovic's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Feratovic must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents. Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact: The claim, allegation, or information is false.
11. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Donaruma's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Donaruma must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents. Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact: The claim, allegation, or information is false.
12. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Sadler's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Sadler must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents. Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact: The claim, allegation, or information is false.
13. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Floropoulos' registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Floropoulos must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents. Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact: The claim, allegation, or information is false.
14. Any and all relief not specifically addressed herein 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	= \$ 500.00
Respondent Kayantas' Counter 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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Morgan Wilshire Securities, Inc. is a party.

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	= \$ 2,750.00
Total Member fees	= \$ 5,000.00

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Respondent Vanguard is a party.

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	= \$ 2,750.00
Total Member fees	= \$ 5,000.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

October 18, 19 & 20, 2005 adjournment by Claimant	
Claimant's share	= \$ 111.11
Respondent Vanguard's share	= \$ 111.11
Respondent Serras' share	= \$ 111.11
Respondent Zaid's share	= \$ 111.11
Respondent McKenzie's share	= \$ 111.11
Respondent Kayantas' share	= \$ 111.11
Respondent Donaruma's share	= \$ 111.11
Respondent Feratovic's share	= \$ 111.11
Respondent Floropoulos' share	= \$ 111.11

### **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, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$1,125.00 per session	= \$ 1,125.00
Pre-hearing conference: April 4, 2005 1 session	
Four (4) Hearing sessions @ \$1,125.00 per session	= \$ 4,500.00
Hearing Dates: November 7, 2005 2 sessions	

November 8, 2005    2 sessions

Total Forum Fees = \$ 5,625.00

1. The Panel has assessed \$5,625.00 of the forum fees to the Claimant.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
Member Fees	= \$ 5,000.00
Adjournment Fee	= \$ 111.11
Forum Fees	= \$ 5,625.00
Total Fees	= \$ 11,236.11
Less payments	= \$ 5,950.00
Balance Due NASD Dispute Resolution	= \$ 5,286.11

2. Respondent Vanguard is solely liable for:

Member Fees	= \$ 5,000.00
Adjournment Fee	= \$ 111.11
Total Fees	= \$ 5,111.11
Less payments	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 661.11

3. Respondent Serras is solely liable for:

Adjournment Fees	= \$ 111.11
Total Fees	= \$ 111.11
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 111.11

4. Respondent Zaid is solely liable for:

Adjournment Fees	= \$ 111.11
Total Fees	= \$ 111.11
Less payment	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 111.11

5. Respondent McKenzie is solely liable for:

Adjournment Fees	= \$ 111.11
Total Fees	= \$ 111.11
Less payment	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 111.11

6. Respondent Kayantas is solely liable for:

Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 111.11
Total Fees	= \$ 411.11
Less payments	= \$ .00
Balance Due NASD Dispute Resolution	= \$ 411.11

7. Respondents Donaruma is solely liable for:



<u>Adjournment Fees</u>	= \$	111.11
Total Fees	= \$	111.11
<u>Less payments</u>	= \$	.00
Balance Due NASD Dispute Resolution	= \$	111.11

8. Respondent Feratovic is solely liable for:

<u>Adjournment Fees</u>	= \$	111.11
Total Fees	= \$	111.11
<u>Less payments</u>	= \$	.00
Balance Due NASD Dispute Resolution	= \$	111.11

9. Respondent Floropoulos is solely liable for:

<u>Adjournment Fees</u>	= \$	111.11
Total Fees	= \$	111.11
<u>Less payments</u>	= \$	.00
Balance Due NASD Dispute Resolution	= \$	111.11

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

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NASD REGULATION

012/012

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**ARBITRATION PANEL**

Cecilia B. Loving, Esq.	- Public Arbitrator, Presiding Chairperson
Richard Adam Young, JD.	- Public Arbitrator
Louis Wald, Esq.	- 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, which is my award.

Cecilia Loving

Cecilia B. Loving, Esq.  
Public Arbitrator, Presiding Chairperson

11-23-05  
Signature Date

Richard Adam Young, JD.  
Public Arbitrator

Signature Date

Louis Wald, Esq.  
Non-Public Arbitrator

Signature Date

November 25, 2005  
Date of Service (For NASD Dispute Resolution use only)

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**ARBITRATION PANEL**

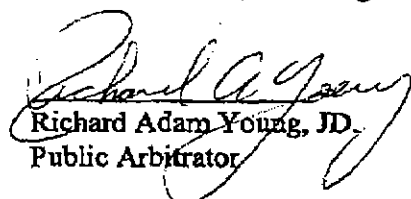
Cecilia B. Loving, Esq.	- Public Arbitrator, Presiding Chairperson
Richard Adam Young, JD.	- Public Arbitrator
Louis Wald, Esq.	- Non-Public Arbitrator

**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, which is my award.

\_\_\_\_\_  
Cecilia B. Loving, Esq.  
Public Arbitrator, Presiding Chairperson

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

  
Richard Adam Young, JD.  
Public Arbitrator

November 23, 2005  
Signature Date

\_\_\_\_\_  
Louis Wald, Esq.  
Non-Public Arbitrator

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

November 25, 2005  
Date of Service (For NASD Dispute Resolution use only)