

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

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In the Matter of the Arbitration Between:  
Wedbush Morgan Securities Inc., Claimant v. Robert E. Tschan II, Respondent

Case Number: 04-05590

Hearing Site: Las Vegas, Nevada

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Nature of the Dispute: Member v. Associated Person

**REPRESENTATION OF PARTIES**

For Claimant:

Gary Holmes, Esq.  
Wedbush Morgan Securities  
Inc.  
Los Angeles, California

For Respondent:

Robert E. Tschan, II  
Pro Se  
Henderson, Nevada

**CASE INFORMATION**

Statement of Claim filed: August 3, 2004

Claimant's Uniform Submission Agreement signed: August 2, 2004

Statement of Answer filed by Respondent: January 6, 2005

**CASE SUMMARY**

Claimant alleged breach of contract, money lent, open book account, breach of oral contract, negligence, contribution, and unjust enrichment. Claimant's allegations involved amounts due and owing pursuant to various promissory notes executed by Respondent and Respondent's failure to honor an oral agreement to pay Claimant 25% of all legal fees and amounts awarded in connection with NASD Arb. No. 01-07091 (Barry et al. v. Wedbush Morgan Securities Inc. and Robert E. Tschan, II).

Respondent denied the allegations of wrongdoing set forth in Claimant's Statement of Claim.

**RELIEF REQUESTED**

Claimant requested \$100,000.00 in compensatory damages, pre- and post-judgment interest at the maximum legal rate, and costs, including attorney's fees and forum fees.

Respondent requested dismissal of Claimant's Statement of Claim in its entirety.

**OTHER ISSUES CONSIDERED AND DECIDED**

*Respondent's Failure to File a Uniform Submission Agreement*

Respondent Robert E. Tschan, II did not file with NASD Dispute Resolution a properly executed submission agreement, but he is required to submit to arbitration pursuant to NASD's Code of Arbitration Procedure, and he is bound by the determination of the Panel on all issues submitted.

*Respondent's Failure to Appear at the Hearing*

Upon review of the file and the representations made by Claimant, the undersigned Panel determined that Respondent Robert E. Tschan, II was properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with NASD's Code of Arbitration Procedure. In particular, the Panel took note of the following:

1. On August 13, 2004, NASD served Claimant's Statement of Claim on Respondent via certified mail, return receipt requested. On December 6, 2004, Respondent signed the return receipt requested card, thereby acknowledging his receipt of the Statement of Claim. The U.S. Postal Service subsequently returned this card to NASD.
2. On October 5, 2004, NASD sent Respondent:
  - (a) a list of fifteen potential arbitrators and their arbitrator disclosure reports; and
  - (b) a letter stating that NASD had not received Respondent's Answer and that the case would continue to proceed with or without his Answer

via certified mail, return receipt requested. On October 7, 2004, Respondent signed the certified mail, return receipt requested card, thereby acknowledging his receipt of these documents. The U.S. Postal Service subsequently returned this card to NASD.

3. On November 12, 2004, NASD sent Respondent a letter notifying him of the date and time of the initial pre-hearing conference in this matter. This letter was sent via certified mail, return receipt requested. On December 6, 2004, Respondent signed the return receipt requested card, thereby acknowledging his receipt of this letter. The U.S. Postal Service subsequently returned this card to NASD.
4. On April 27, 2005, the parties and the Panel participated in a pre-hearing conference during which all participants agreed that the evidentiary hearing would take place on August 17-19, 2005.

5. On July 7, 2005, NASD sent Respondent a letter notifying him of the location of the August 17-19, 2005 evidentiary hearing (the "hearing notification letter"). The letter was sent to a new address that had been provided by Respondent in a fax dated June 13, 2005 but received by NASD on June 19, 2005. The U.S. Postal Service did not return the hearing notification letter to NASD.

*Panel's Ruling on Claimant's Request for Default Procedures*

On December 9, 2004, Claimant submitted a letter to NASD requesting that this matter proceed under NASD Code of Arbitration Rule 10314(e), which is the rule concerning default procedures. On January 6, 2005, Respondent submitted a response to Claimant's submission. On January 26, 2005, the Panel issued an Order stating that the Respondent's submission had been received and was deemed by the Panel to be an Answer/response to the Statement of Claim. Accordingly, the Panel denied Claimant's request to have this case proceed under NASD's default procedures.

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**

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

- 1) Respondent Robert E. Tschan, II is liable to and shall pay Claimant Wedbush Morgan Securities Inc. the sum of \$100,000.00 in compensatory damages.
- 2) Respondent Robert E. Tschan, II is liable to and shall pay Claimant Wedbush Morgan Securities Inc. interest at the rate of 6.125% per annum on \$11,000.00 from August 19, 2003 until payment of this Award is made in full.
- 3) Respondent Robert E. Tschan, II is liable to and shall pay Claimant Wedbush Morgan Securities Inc. interest at the rate of 6.125% on \$89,000.00 from October 1, 2003 until payment of this Award is made in full.
- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$1,000.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Wedbush Morgan Securities Inc. is a party, and the following fees are assessed:

Member Surcharge	= \$1,100.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$1,700.00
<b>Total Member Fees</b>	<b>= \$3,550.00</b>

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

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

Two (2) pre-hearing conference sessions with the Panel @ \$750.00/session	= \$1,500.00
Pre-hearing conferences:     December 8, 2004                     1 session	
April 27, 2005                     1 session	
One (1) hearing session @ \$750.00/session	= \$ 750.00
Hearings:                     August 17, 2005                     1 session	
<b>Total Forum Fees</b>	<b>= \$2,250.00</b>

The Panel assessed \$2,250.00 of the forum fees to Respondent Robert E. Tschan, II.

**Fee Summary**

1. Claimant Wedbush Morgan Securities Inc. is charged with the following fees and costs:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 3,550.00
Total Fees	= \$ 4,550.00
Less payments	= \$(6,350.00)
<b>Refund Due Claimant</b>	<b>= \$(1,800.00)</b>

2. Respondent Robert E. Tschan, II is charged with the following fees and costs:

Forum Fees	= \$ 2,250.00
Less payments	= \$ (0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,250.00</b>

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

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**ARBITRATION PANEL**

*Michael B. Latkin, Esq.*

*Public Arbitrator, Presiding Chair*

*R. Peter Faris*

*Public Arbitrator*

*Steven A. Budin*

*Non-Public Arbitrator*

**Concurring Arbitrators' Signatures**



Michael B. Latkin, Esq.  
Chair, Public Arbitrator

8-18-05

Signature Date

R. Peter Faris  
Public Arbitrator

Signature Date

Steven A. Budin  
Non-Public Arbitrator

Signature Date

8/19/05  
Date of Service

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<b><i>Michael B. Laikin, Esq.</i></b>	-	<b><i>Public Arbitrator, Presiding Chair</i></b>
<b><i>R. Peter Faris</i></b>	-	<b><i>Public Arbitrator</i></b>
<b><i>Steven A. Budin</i></b>	-	<b><i>Non-Public Arbitrator</i></b>

**Concurring Arbitrators' Signatures**

Michael B. Laikin, Esq.  
Chair, Public Arbitrator

Signature Date



R. Peter Faris  
Public Arbitrator

8/18/05  
Signature Date

Steven A. Budin  
Non-Public Arbitrator

Signature Date

8/19/05  
Date of Service

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<i>R. Peter Faris</i>	-	<i>Public Arbitrator</i>
<i>Steven A. Budin</i>	-	<i>Non-Public Arbitrator</i>

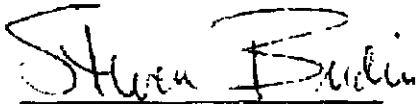
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Steven A. Budin  
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