

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

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In the Matter of the Arbitration Between:

Linda A. McBain and Robert H. Kozlowski, Individually and as Trustees of the Robert Kozlowski and Linda McBain Living Trust, Claimants v. Wedbush Morgan Securities Inc., Respondent

Case Number: 04-07255

Hearing Site: San Francisco, California

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Nature of the Dispute: Customers vs. Member

**REPRESENTATION OF PARTIES**

For Claimants:

Brett A. Alcala  
Alcala Law Firm  
San Mateo, California

For Respondent:

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

**CASE INFORMATION**

Statement of Claim filed: October 12, 2004

Claimants' Pre-Hearing Brief filed: February 21, 2006

Claimants' Uniform Submission Agreement signed: September 23, 2004

Statement of Answer filed by Respondent Wedbush Morgan Securities Inc. ("Wedbush"): December 8, 2004

Respondent's Arbitration Brief filed: February 21, 2006

**CASE SUMMARY**

Claimants alleged the following claims with respect to investments in various securities, including but not limited to investments in Lucent Technologies, Accrue Software and Talk Com: 1) Breach of Contract; 2) Negligence & Negligent Misrepresentation; 3) Breach of Fiduciary Duty; 4); Unsuitability; and 5) Failure to Supervise.

Respondent denied Claimants' allegations of wrongdoing and denied any liability to Claimant. Respondent also asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested:

1. Compensatory damages in the amount of \$211,088.78;
2. Pre-award and post-award interest from the date of the alleged actions as allowed by law; and
3. Attorneys' fees and costs as allowed by law.

Respondent requested:

1. Dismissal of Claimants' claims in their entirety;
2. An award of attorney's fees, expenses and forum fees;
3. An order that all references to the claims in the Statement of Claim be expunged from CRD records; and
4. Such other relief as the Panel may deem just and proper.

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

On December 16, 2004, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100 the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

Respondent Wedbush did not file with NASD Dispute Resolution ("NASD-DR") a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered Claimants' Claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

During the arbitration hearing, the Panel reviewed and considered the positions of the parties relative to Respondent's Motion to Dismiss. The Panel denied the Motion.

During the arbitration hearing, the Panel was asked to rule on the Respondent's objection to the use of the 100% Fidelity Investment Grade Bond Fund by the Claimants during their presentation relating to damage awards. The Panel indicated to the Respondent that it would rule on this objection after the arbitration hearing. The Panel has denied this objection.

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. All claims by Claimants are dismissed.
2. Wedbush needs to improve its compliance procedures for its Investment Executives. This ruling is not a direct cause of the losses sustained by the Claimants.
3. Respondent Wedbush's request that all references to the claims in the Statement of Claim be expunged from CRD records is denied.
4. Each party shall bear its own costs, including attorney's fees.
5. All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$300.00
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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, Wedbush is a party and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

#### **Adjournment Fees**

The following adjournment fees are assessed:

The Panel granted Respondent's request to postpone the January 30 – February 2, 2006, hearing dates and assessed the \$1,125.00 postponement fee to Respondent.

**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/Panel. The following fees are assessed:

(1) Pre-hearing conference session with a single arbitrator @ \$450.00/session	=	\$450.00
Pre-hearing conference: November 4, 2005	1 session	
(1) Pre-hearing conference session with the Panel @ \$1,125.00/session	=	\$1,125.00
Pre-hearing conference: May 3, 2005	1 session	
(5) Hearing sessions @ \$1,125.00/session	=	\$5,625.00
Hearing Dates: March 6, 2006	2 sessions	
March 7, 2006	2 sessions	
March 8, 2006	1 session	

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<b>Total Forum Fees</b>	<b>=</b>	<b>\$7,200.00</b>
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The Panel assessed \$3,600.00 in forum fees to Claimants, jointly and severally.

The Panel assessed \$3,600.00 in forum fees to Respondent.

**Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:	
Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 3,600.00
Total Fees	= \$ 3,900.00
Less Payments	= \$( 1,425.00)
<b>Balance Due NASD-DR</b>	<b>= \$ 2,475.00</b>
2. Respondent is charged with the following fees and costs:	
Member Fees	= \$ 5,200.00
Adjournment Fee	= \$ 1,125.00
Forum Fees	= \$ 3,600.00
Total Fees	= \$ 9,925.00
Less Payments	= \$( 5,200.00)
<b>Balance Due NASD-DR</b>	<b>= \$ 4,725.00</b>

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

**ARBITRATION PANEL**

Herbert Liberman	-	Public Arbitrator, Presiding Chair
Colleen C. Hammer, Esq.	-	Public Arbitrator
Jarrott T. Miller	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Herbert Liberman  
Chair, Public Arbitrator

3/10/06  
Signature Date

Colleen C. Hammer, Esq.  
Public Arbitrator

Signature Date

Jarrott T. Miller  
Non-Public Arbitrator

Signature Date

3/13/06  
Date of Service

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Colleen C. Hammer, Esq.  
Jarrott T. Miller

- Public Arbitrator, Presiding Chair  
- Public Arbitrator  
- Non-Public Arbitrator

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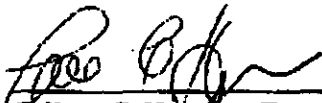
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3/15/06  
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Date of Service