

**AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant

Dorothy M. Mechenberg

v.

04-07986

Denver, Colorado

Respondent

Multi-Financial Securities Corporation, as  
Successor in interest to Vestex Corporation

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Nature of Dispute: Associated Person v. Member

**REPRESENTATION OF PARTIES**

Dorothy M. Mechenberg ("**Claimant**") was represented by Stuart N. Bennett, Esq., and Patrick Compton, Esq., of Lindquist & Vennum, PLLP, Denver, Colorado.

Multi-Financial Securities Corporation, as Successor in interest to Vestex Corporation, ("**Respondent**") was represented by William D. Nelson, Esq., of Rothgerber Johnson & Lyons, LLP, Denver, Colorado.

**CASE INFORMATION**

The Statement of Claim was filed on or about December 15, 2004. The Submission Agreement of Claimant was signed on or about December 14, 2004.

The Statement of Answer was filed by Respondent, Multi-Financial Securities Corporation, on or about February 17, 2005. The Submission Agreement of Respondent, Multi-Financial Securities Corporation, was signed on or about January 11, 2005.

**CASE SUMMARY**

Claimant asserted causes of action including the following: breach of employment contract, and receipt of commissions. The causes of action related to Claimant's allegation that Respondent failed to pay commissions due Claimant for annuity and securities business while associated with Respondent as required by the Registered Representative Agreement of June 6, 2003. Claimant alleged that she was forced to resign because of the alleged use of unapproved sales literature, including marketing CDs, which Claimant purchased to develop additional clients. Claimant also alleged that Respondent negligently advised her that the CDs were compliant with NASD rules and regulations, when in fact they were not, and thus cannot be used and are essentially worthless.

Respondent denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim failed to state a claim for relief against Respondent; Claimant's claims are barred, or in the alternative limited, under the doctrines of comparative fault and comparative negligence; and Claimant failed to mitigate her damages.

### **RELIEF REQUESTED**

Claimant requested an award of \$24,875.57 in compensatory damages, plus costs of \$6,438.29, attorneys' fees of \$10,000, interest, unspecified statutory penalties awardable under the Wage Claim Act, and any other relief the panel deemed just and equitable.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

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

In Respondent's Statement of Answer, it requested a hearing of this matter pursuant to Rule 10203(a) of NASD Code of Arbitration Procedure ("Code").

On or about June 29, 2005, Claimant notified NASD that she had withdrawn her Wage Claim Act in its entirety, but was proceeding with her remaining claims against Respondent.

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 originals remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony at the pre-hearing conference call, and the evidence presented, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Multi-Financial Securities Corporation, as Successor in interest to Vestex Corporation, is liable for and shall pay to Claimant, Dorothy M. Mechenberg, the sum of Two Thousand Nine Hundred Forty Two Dollars and Forty Five No Cents (\$2,942.45) in compensatory damages;
2. Respondent, Multi-Financial Securities Corporation, as Successor in interest to Vestex Corporation, is liable for and shall pay to Claimant, Dorothy M. Mechenberg, interest on the

above-referenced sum at the rate of 5% per annum from and including October 6, 2003, through and including the date this Award is paid in full;

3. 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; and
4. 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.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 175

#### **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, the member firm is Multi-Financial Securities Corporation.

Member surcharge = \$ 875

#### **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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with the Chairperson x \$ 450 = \$ 900

Pre-hearing conferences:	05/04/2005	1 session
	07/19/2005	1 session

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Total Forum Fees = \$ 900

The Arbitration Panel has assessed \$ 450 of the forum fees to Dorothy M. Mechenberg.

The Arbitration Panel has assessed \$ 450 of the forum fees to Multi-Financial Securities Corporation, as Successor in interest to Vestex Corporation.

**FEE SUMMARY**

Claimant, Dorothy M. Mechenberg, is liable for:

Initial Filing Fee	= \$ 175
Forum Fees	= \$ 450
<hr/> Total Fees	= \$ 625
Less payments	= \$ 1,050
<hr/> Balance Refunded By NASD Dispute Resolution	= \$ 425

Respondent, Multi-Financial Securities Corporation, as Successor in interest to Vestex Corporation, is liable for:

Member Fees	= \$ 875
Forum Fees	= \$ 450
<hr/> Total Fees	= \$ 1,325
Less payments	= \$ 1,625
<hr/> Balance Refunded By NASD Dispute Resolution	= \$ 300

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

**ARBITRATOR**

Leon C. Tupy – Non-Public Arbitrator, Presiding Chair

Arbitrator's Signature:

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Leon C. Tupy  
Non-Public Arbitrator, Presiding Chair

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

9/1/05  
Date of Service (NASD use only)

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