

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

**Jack A. Davis, the Jack A. Davis "A" Trust, and the Jack A. Davis "B" Trust, Claimants v.
Legacy Financial Services, Inc., Respondent**

Case Number: 04-08502

Hearing Site: San Diego, California

Nature of the Dispute: Customers v. Member

REPRESENTATION OF PARTIES

For Claimants:

**Richard A. Nervig, Esq.
Richard A. Nervig, PC
Fallbrook, California**

For Respondent:

**Jonathan A. Boynton, Esq.
Post Kirby Noonan & Sweat LLP
San Diego, California**

CASE INFORMATION

Initial Statement of Claim filed: December 14, 2004

First Amended Statement of Claim filed: January 13, 2005

**Claimants Jack A. Davis, the Jack A. Davis "A" Trust, and the Jack A. Davis "B" Trust's Joint
Uniform Submission Agreement signed but not dated**

**Denise D. Stevens as attorney in fact for Jack A. Davis' Uniform Submission Agreement signed
but not dated**

Statement of Answer filed by Respondent: February 11, 2005

Respondent's Uniform Submission Agreement signed: February 7, 2005

CASE SUMMARY

In the Statements of Claim, Claimants alleged failure to supervise, unsuitability, breach of fiduciary duty, fraud, and constructive fraud, involving securities in Alpha Telcom, Inc.

Respondent denied the allegations of wrongdoing set forth in the Claimants' Initial Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statements of Claim, Claimants requested \$185,000.00 in compensatory damages, well managed account damages, unspecified punitive damages, statutory interest, and costs, including attorney's fees.

Respondent requested dismissal of the Claimants' Initial Statement of Claim in its entirety and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On January 13, 2005, Claimants filed a First Amended Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(b). The Panel accepted the filing of Claimants' First Amended Statement of Claim.

On December 22, 2004 and January 26, 2006, 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 waivers 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.

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 is liable to and shall pay Claimants the sum of \$17,500.00 in compensatory damages.
- 2) Respondent is liable to and shall pay Claimants the sum of \$300.00 as reimbursement for the Initial Claim Filing Fee.
- 3) Except as awarded above, the parties shall bear their respective costs, including attorney's fees.
- 4) 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	= \$ 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, the member firm Legacy Financial Services, Inc. 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:

February 6-8, 2006 hearing adjournment requested by Respondent	= \$ 1,125.00
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The Panel assessed \$1,125.00 of the adjournment fees to Respondent.

Forum Fees and Assessments

The Panel 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 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 Decision on a discovery-related motion on the papers with three arbitrators = \$ 600.00
Claimant submitted 1 discovery-related motion

1 Pre-hearing conference session with a single arbitrator @ \$450.00/session = \$ 450.00
Pre-hearing conference: March 14, 2006 1 session

2 Pre-hearing conference sessions with the Panel @ \$1,125.00/session = \$ 2,250.00
Pre-hearing conferences: April 7, 2005 1 session
September 23, 2005 1 session

5 Hearing sessions @ \$1,125.00/session = \$ 5,625.00
Hearings: May 1, 2006 2 sessions
May 2, 2006 2 sessions
May 3, 2006 1 session

Total Forum Fees = \$ 8,925.00

The Panel assessed \$8,925.00 of the forum fees to Respondent.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Less payments</u>	= \$(1,425.00)
Refund Due Claimants	= \$(1,125.00)

2. Respondent is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Adjournment Fee	= \$ 1,125.00
<u>Forum Fees</u>	<u>= \$ 8,925.00</u>
Total Fees	= \$15,250.00
<u>Less payments</u>	<u>= \$(5,200.00)</u>
Balance Due NASD Dispute Resolution	= \$10,050.00

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.

ARBITRATION PANEL

Stephen R. Clark	-	Public Arbitrator, Presiding Chair
Joseph J. Woodford	-	Public Arbitrator
Carl Van Winkle	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Stephen R. Clark
Chair, Public Arbitrator

Signature Date

Joseph J. Woodford
Public Arbitrator

Signature Date

Carl Van Winkle
Non-Public Arbitrator

Signature Date

Date of Service

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Signature Date


Joseph J. Woodford
Public Arbitrator

5-4-06
Signature Date

Carl Van Winkle
Non-Public Arbitrator

Signature Date

5-5-06
Date of Service

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Signature Date

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Signature Date

5/10/06
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