

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

---

In the Matter of the Arbitration Between:

Joan Levin, Claimant v. Wedbush Morgan Securities, Inc., Respondent

Case Number: 05-00794

Hearing Site: San Francisco, California

---

Nature of the Dispute: Customer v. Member

**REPRESENTATION OF PARTIES**

For Claimant:

Richard A. Stephens, Esq.  
Attorney at Law  
Boca Raton, Florida

For Respondent:

Stephen Young, Esq.  
Audette Paul Morales, Esq.  
Keesal, Young and Logan  
Long Beach, California

**CASE INFORMATION**

Statement of Claim filed: February 9, 2005

Claimant's Uniform Submission Agreement signed: January 26, 2005

Statement of Answer filed by Respondent: April 7, 2005

Reply to Statement of Answer filed by Claimant: April 21, 2005

**CASE SUMMARY**

Claimant alleged unauthorized trading, churning, negligence, failure to supervise, misrepresentations/non-disclosures, breach of fiduciary duty, and breach of contract. Claimant's allegations involved various unspecified securities.

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

### **RELIEF REQUESTED**

Claimant requested \$1,500,000.00 in compensatory damages, unspecified punitive damages, pre-judgment interest, costs, and a disciplinary referral to NASD.

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

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

Respondent Wedbush Morgan Securities, Inc., did not file with NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the *NASD Code of Arbitration Procedure* and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On April 19, 2005, Claimant and Claimant's 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 Claimant 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.

On March 20, 2006, Claimant filed an Emergency Motion to Compel Discovery and for Contempt Sanctions. On March 22, 2006, Respondent filed an Opposition. After considering the written submissions, the Chairperson granted Claimant's motion and ordered Respondent to pay \$500.00 in sanctions. These sanctions are to be paid to Claimant.

On March 13, 2006, Respondent filed a Motion to Dismiss based on Statute of Limitations. On March 13, 2006, Claimant requested that the Panel not consider any dispositive motions prior to the evidentiary hearing. On March 14, 2006, Respondent filed an objection to Claimant's request. On March 15, 2006, Claimant filed a reply in support of her request. On March 16, 2006, after due deliberation in executive session, the Panel decided that dispositive motions would not be considered prior to the evidentiary hearings scheduled to begin on April 3, 2006.

At the beginning of the evidentiary hearing on April 3, 2006, the parties argued Respondent's Motion to Dismiss based on Statute of Limitations. After due deliberation, the Panel denied the motion without prejudice. After Claimant completed her case-in-chief, Respondent moved again for dismissal of Claimant's claims based on statute of limitations. The Panel deferred its decision until after Respondent presented its defenses to Claimant's case-in-chief. On the last

day of hearing, the parties stipulated to the admission of documentary evidence. After due deliberation in executive session, the Panel decided to grant Respondent's Motion to Dismiss based on Statute of Limitations.

During the hearing, Respondent moved to preclude the testimony of Claimant's expert witness Robert H. Maloney. Claimant opposed. After due deliberation, the Panel denied Respondent's motion to preclude.

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) Claimant's claims are dismissed with prejudice based on statute of limitations.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) 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	= \$ 500.00
--------------------------	-------------

#### **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	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 5,000.00</u>
<b>Total Member Fees</b>	<b>= \$ 8,550.00</b>

**Forum Fees and Assessments**

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion decided 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:

(2) Decisions on discovery-related motions on the papers  
with one arbitrator @ \$200.00 = \$ 400.00

Claimant submitted one discovery-related motions

Respondent submitted one discovery-related motion

(1) Pre-hearing conference session with a single arbitrator @ \$ 450.00/session = \$ 450.00  
Pre-hearing conference: February 1, 2006 1 session

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session = \$ 1,200.00  
Pre-hearing conference: June 23, 2005 1 session

(9) Hearing sessions @ \$1,200.00/session = \$10,800.00

Hearings: April 3, 2006 2 sessions  
April 4, 2006 2 sessions  
April 5, 2006 2 sessions  
April 6, 2006 2 sessions  
April 7, 2006 1 session

---

**Total Forum Fees = \$12,850.00**

1. The Panel assessed \$6,325.00 of the forum fees to Claimant.
2. The Panel assessed \$6,525.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= \$ 6,325.00
Total Fees	= \$ 6,825.00
<u>Less payments</u>	= \$(1,700.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 5,125.00</b>

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

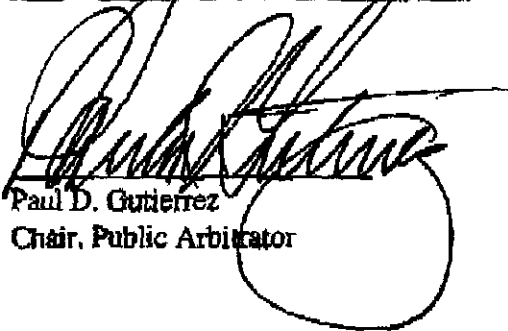
Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 6,525.00
Total Fees	= \$15,075.00
<u>Less payments</u>	= \$ (8,550.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 6,525.00</b>

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.

ARBITRATION PANEL

Paul D. Gutierrez	-	Public Arbitrator, Presiding Chair
Carol M. Clements	-	Public Arbitrator
Alan Richard Carlisle	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Paul D. Gutierrez  
Chair, Public Arbitrator

April 11, 2006  
Signature Date

\_\_\_\_\_  
Carol M. Clements  
Public Arbitrator

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

\_\_\_\_\_  
Alan Richard Carlisle  
Non-Public Arbitrator

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

4/12/06  
Date of Service

ARBITRATION PANEL

Paul D. Gutierrez	-	Public Arbitrator, Presiding Chair
Carol M. Clements	-	Public Arbitrator
Alan Richard Carlisle	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Paul D. Gutierrez  
Chair, Public Arbitrator

CPMCh  
Carol M. Clements  
Public Arbitrator

\_\_\_\_\_  
Alan Richard Carlisle  
Non-Public Arbitrator

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

4/12/06  
Signature Date

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

4/12/06  
Date of Service

**ARBITRATION PANEL**

Paul D. Gutierrez	-	Public Arbitrator, Presiding Chair
Carol M. Clements	-	Public Arbitrator
Alan Richard Carlisle	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Paul D. Gutierrez  
Chair, Public Arbitrator

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

\_\_\_\_\_  
Carol M. Clements  
Public Arbitrator

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

Alan Richard Carlisle  
Alan Richard Carlisle  
Non-Public Arbitrator

4/11/06  
Signature Date

4/12/06  
Date of Service