

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Wedbush Morgan Securities Inc., Claimant v. Richard A. Russo, Sr., Respondent

Case Number: 05-02572

Hearing Site: Los Angeles, California

Nature of the Dispute: Member v. Associated Person

REPRESENTATION OF PARTIES

For Claimant Wedbush Morgan
Securities Inc. ("Wedbush"):

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

For Respondent Richard A. Russo, Sr.
("Russo"):

Jonathan Schwartz, Esq.
Law Offices of Jonathan Schwartz, Esq.
Marina del Rey, California

CASE INFORMATION

Statement of Claim filed: May 10, 2005

Wedbush's Uniform Submission Agreement signed: undated

Statement of Answer filed by Russo: July 28, 2005

Russo's Uniform Submission Agreement signed: October 23, 2005

CASE SUMMARY

In the Statement of Claim, Wedbush alleged that Russo is liable for indemnification for an arbitration award issued against Wedbush in a previous arbitration.

Russo denied the allegations of wrongdoing set forth in Wedbush's Statement of Claim.

RELIEF REQUESTED

Wedbush requested \$50,000.00 in compensatory damages and costs.

Russo requested dismissal of Wedbush's Statement of Claim in its entirety and costs.

OTHER ISSUES CONSIDERED AND DECIDED

In Russo's Answer, he included a section entitled "Cross-Claims Against Wedbush and McKinnon." However, Russo did not include any allegations or requests for damages, and thus, the Panel declined to accept the filing of any claims other than those set forth in the Statement of Claim.

At the evidentiary hearing, Wedbush increased the amount requested in compensatory damages to \$75,000.00.

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) The panel found that Wedbush was the Respondent in a prior NYSE arbitration. The Statement of Claim in the NYSE arbitration alleged, among other things, misconduct by Russo, who was a Wedbush broker, and a claim for failure to supervise against Wedbush. Wedbush was the sole respondent in the NYSE arbitration. Russo was not named in the NYSE arbitration. Russo testified at the NYSE arbitration, but was not allowed to attend the remainder of the hearing. The NYSE panel awarded Claimant \$100,000.00 against Wedbush. The NYSE award did not provide reasons for the panel's decisions. Wedbush paid the NYSE award.

In the present NASD arbitration, Wedbush asserted several theories of recovery against Russo for its payment of the NYSE award, including equitable indemnity, contractual indemnity, and recoupment/reimbursement. Wedbush contended that the NYSE award was based on vicarious liability under the theory of respondeat superior, resulting from Russo's misconduct while employed by Wedbush. Wedbush made additional legal and equitable arguments, including the applicability of res judicata to support its contention that Russo's misconduct was the basis for the NYSE award and the cause of Wedbush's liability to the Claimant in the NYSE award.

Russo asserted due process issues, including a theory that he was an "indispensable party" in the NYSE arbitration, and therefore, by virtue of his absence in the NYSE arbitration, the present NASD panel, as a matter of law, could not give any evidentiary weight to the NYSE award.

The panel relied solely on the legal authorities provided by the parties in briefs and in arguments without independent legal research.

Wedbush, as Claimant, bears the burden of proof to prove by a preponderance of the evidence that it is entitled to recover against Respondent. The panel determined that the NYSE award was relevant and when coupled with additional evidence introduced by Wedbush suggested that Russo's alleged misconduct was a factor in the NYSE award. However, the Claimant in the NYSE arbitration also alleged a direct claim of failure to supervise against Wedbush. Evidence presented in the arbitration could be viewed to suggest that Wedbush's failure to supervise was also a factor in the NYSE award. Given the state of the evidence in the record, including a not insignificant level of speculative evidence, the panel determined that Wedbush did not meet its burden of proof in this arbitration.

The panel and parties acknowledged that an NASD arbitration panel is an equity tribunal and notwithstanding its determination that Wedbush did not meet its burden of proof on the legal claims, the panel could nonetheless allocate the NYSE award between the parties under equitable principles. The panel determined that any attempt to allocate the NYSE award between the parties would be highly speculative and the panel declined to do so.

- 2) Wedbush's claims are denied in their entirety.
- 3) 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	= \$ 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 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
Total Member Fees	= \$ 3,550.00

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 Pre-hearing conference session with one arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: June 26, 2006 1 session	

1 Pre-hearing conference session with the Panel @ \$750.00/session	= \$ 750.00
Pre-hearing conference: October 10, 2005 1 session	

3 Hearing sessions @ \$750.00/session	= \$ 2,250.00
Hearings: July 17, 2006 2 sessions	
July 19, 2006 1 session	

Total Forum Fees	= \$ 3,450.00
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1. The Panel assessed \$1,725.00 of the forum fees to Wedbush.
2. The Panel assessed \$1,725.00 of the forum fees to Russo.

Fee Summary

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

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 3,550.00
Forum Fees	= \$ 1,725.00
Total Fees	= \$ 6,275.00
Less payments	= \$(4,225.00)
Balance Due NASD Dispute Resolution	= \$ 2,050.00

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

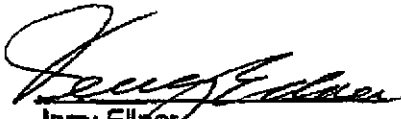
Forum Fees	= \$ 1,725.00
Total Fees	= \$ 1,725.00
Less payments	= \$(625.00)
Balance Due NASD Dispute Resolution	= \$ 1,100.00

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

Jerry Ellner	-	Public Arbitrator, Presiding Chair
John E. Ohashi	-	Public Arbitrator
Paul H. White	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Jerry Ellner
Chair, Public Arbitrator

July 27, 2006
Signature Date

John E. Ohashi
Public Arbitrator

Signature Date

Paul H. White
Non-Public Arbitrator

Signature Date

7/28/06
Date of Service

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John E. Ohashi
Public Arbitrator

Signature Date

7/28/06

Signature Date

Paul H. White
Non-Public Arbitrator

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Signature Date



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