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AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

**Glen Swartz and Eugene Stombler,
Claimants and Counter-Respondents,**

and

**William Allen, Mark Evers, Richard Griffard,
Richard Schauwecker, and David Mulligan,
Claimants,**

and

**Victoria Montano, Alexander Montano, and
Amy Montano**

Respondents and Counter-Claimants

and

Consolidated Case Nos. 95-04735 and 95-05927

Daniel C. Montano,

Respondent, Counter-Claimant, and Third-Party Claimant,

and

**Montano Securities Corporation,
Adam Montano, Anne-Marie Montano, Judy Pelton,
Jeffrey Stubbett, Mark Voorhis, Dennis Lynn Brown,
Lynne Bolduc, David Lopes, Mark Lane, Pride Financial Group,
and Brookstreet Securities Corporation,**

Respondents,

and

Mark Lane,

Third Party Respondent.

REPRESENTATION OF PARTIES

Claimants Glen Swartz, Eugene Stompler, William Allen, Mark Evers, Richard Griffard, Richard Schauwecker, and David Mulligan (hereinafter collectively referred to as "Claimants") were represented by Robert V. Cornish, Jr., Esq. of Prime Financial Services located in Poughkeepsie, New York.

Respondent Montano Securities Corporation ("MSC") was represented by Daniel C. Montano.

Respondent Daniel C. Montano appeared pro se.

Respondent Victoria Montano appeared pro se.

Respondent Alexander Montano appeared pro se.

Respondent Amy Montano appeared pro se.

As further discussed in *Other Issues Considered and Decided*, Respondents Adam Montano, Marie Montano, Judy Pelton, Jeffrey Stubbett, Dennis Lynn Brown, Lynne Bolduc, Pride Financial Group and Brookstreet Securities Corp. were dismissed from this matter prior to hearing and Brookstreet Securities Corp. was dismissed from this matter.

As further discussed in *Other Issues Considered and Decided*, Respondents Mark Moorhus and David Lopes, and Third-Party Respondent Mark Lane did not appear at the hearing and were unrepresented.

CASE INFORMATION

Claimants Glen Swartz and Eugene Stompler's Statement of Claim was filed on or about October 5, 1995.

Claimants William Allen, Mark Evers, Richard Griffard, Richard Schauwecker, and David Mulligan's Statement of Claim was filed on or about December 15, 1995.

Claimant Swartz's Submission Agreement was signed on September 19, 1995.

Claimant Stompler's Submission Agreement was signed on September 19, 1995.

Claimant Allen's Submission Agreement was signed on December 4, 1995.

Claimant Evers' Submission Agreement was signed on December 14, 1995.

Claimant Griffard's Submission Agreement was signed on December 4, 1995.

Claimant Schauwecker's Submission Agreement was signed on December 4, 1995.

Claimant Mulligan's Submission Agreement was signed on December 14, 1995.

Respondent Daniel C. Montano's Statement of Answer, Counterclaim, and Third-Party Claim was filed on or about January 29, 1996.

Respondent Victoria Montano's Statement of Answer was filed on or about January 30, 1996.

Respondent Alexander Montano's Statement of Answer was filed on or about January 29, 1996.

Respondent Amy Montano's Statement of Answer was filed on or about January 28, 1996.

Respondent Alexander Montano's Submission Agreement was signed on January 30, 1996.

NASD Regulation, Inc. Office of Dispute Resolution has no record that Respondents MSC, Daniel C. Montano, Victoria Montano, and Amy Montano filed properly executed submission agreements.

HEARING INFORMATION

A telephonic pre-hearing conference to address Respondents' Motion to Dismiss was held on July 31, 1996 for one (1) session.

The hearing was held on: November 11, 1996 for three (3) sessions; November 12, 1996 for two (2) sessions; November 14, 1996 for two (2) sessions; November 15, 1996 for (1) session; March 3, 1997 for two (2) sessions; March 4, 1997 for two (2) sessions; March 5, 1997 for two (2) sessions; March 6, 1997 for two (2) sessions; March 7, 1997 for two (2) sessions; July 21, 1997 for two (2) sessions; and July 22, 1997 for two (2) sessions.

The hearing was held in Milwaukee, Wisconsin.

CASE SUMMARY

Claimants alleged that they were all shareholders and students of Montano Securities Corporation. Claimants contended that the Respondents, led by Daniel Montano, devised a malevolent scheme where retirees, non-working mothers and displaced professionals were trained to be stockbrokers. Claimants represented that Respondents offered classes through which an individual could sit for a Series 7 Examination. Claimants asserted that Respondents used their classes and trading floors as vehicles to offer and sell virtually worthless shares of MSC at inflated prices. Claimants maintained that Respondents failed to perform due diligence on the securities issued by their own broker-dealer. Claimants alleged that Respondents offered and sold MSC shares in violation of state and federal securities registration provisions and in violation of a SEC Cease and Desist Order. Claimants contended that Respondents offered and sold MSC shares to its students without regard for their financial situations and objectives. Claimants represented that Respondents' Series 7 training sessions were merely extended-play "infomercials" directed to an audience vulnerable to Respondents.

Based on these allegations, Claimants asserted the following causes of action: (1) sales of unregistered securities under federal law and state law; (2) deceptive advertising in violation of federal securities law and NASD regulations; (3) misrepresentations and omissions of material facts in violation of rule 10b-5 and California law; (4) failure to supervise brokerage activities; (5) conversion under California law; and (6) breach of duty as officers and directors under California law.

Respondents Daniel C. Montano, Victoria Montano, Alexander Montano, and Amy Montano denied all liability to Claimants in their respective Statements of Answer.

Respondent Daniel C. Montano contended that he was employed by MSC as its president and Chief Executive Officer. Respondent Montano alleged that the Claimants' claims were all completely without merit and unsupported by any evidence. Respondent Montano contended that, although he was aware the Claimants were investing in shares of MSC, Claimants were all sophisticated investors who were capable of understanding the risks of investing in MSC. Respondent Montano represented that MSC always complied with all federal securities law and NASD Regulations. Respondent Montano asserted that MSC had thousands of satisfied students who became stockbrokers with MSC or other securities firms. Respondent Montano maintained that MSC has a very high standard of success and enjoyed a great reputation with the NASD and within the securities industry for the quality of MSC's training program. Respondent Montano alleged that the NASD lacked subject matter jurisdiction over this matter because a shareholders' class action suit does not fall within NASD jurisdiction. In his Third-Party Claim, Respondent Daniel Montano requested an award against Third-Party Respondent Mark Lane ("Lane") for the amount of money Lane was advanced by MSC in an amount over \$50,000. Respondent Montano also brought claims against Lane for interference with a transaction that would have saved MSC in an amount of approximately \$6,000,000, and for the personal losses of \$3,000,000 experienced by Montano and

his wife, as shareholders in MSC. In his Counterclaim, Respondent Montano brought an action against Claimants Swartz and Stompler, as well as their attorney, for damages in an amount of \$42,000,000 Respondent Montano also brought an action against Claimants Swartz and Stompler, as well as their attorney, for illegal use of confidential personal data in the amount of \$300,000.

Respondent Victoria Montano alleged that she was employed by MSC as Corporate Secretary and, in this capacity, never spoke to any of the Claimants. Respondent Montano contended that she was never involved in the sale of any securities to Claimants and only acted as a clerk in the registration of shares. Respondent Montano also alleged that the NASD lacked subject matter jurisdiction over this matter because a shareholders' class action suit does not fall within NASD jurisdiction.

Respondent Alexander Montano alleged that he was employed by MSC as its Chief Operations Officer and was responsible for supervising MSC's activities with the general public, execution of customer orders, NASDAQ Market Making and various other related activities. Respondent Montano contended that, during the course of his employment, he never met or spoke with any of the Claimants. Respondent Montano represented that he never participated in the solicitation of individuals to invest in shares of MSC and denied that he made any misrepresentations or omissions of material fact to Claimants. Respondent Montano also alleged that the NASD lacked subject matter jurisdiction over this matter because a shareholders' class action suit does not fall within NASD jurisdiction.

Respondent Amy Montano alleged that in her capacity as head of Syndicate and Administration at MSC she handled administrative functions such as managing employees, phone systems, and equipment. Respondent Montano denied that she talked to any of the Claimants and had no knowledge of any securities being sold to Claimants. Respondent Montano also alleged that the NASD lacked subject matter jurisdiction over this matter because a shareholders' class action suit does not fall within NASD jurisdiction.

RELIEF REQUESTED

At the conclusion of the hearing, Claimants requested an award against all Respondents, jointly and severally, for: compensatory damages in the amount of \$112,500.00; interest in the amount of \$17,245.00; attorney fees in the amount of \$37,500.00; and punitive damages in the amount of \$337,500.00. Claimants also requested that all administrative costs of this proceeding be assessed against Respondents. In pleadings, Claimants asserted that an award of punitive damages is appropriate under Missouri, New Jersey, and California law.

Respondents Daniel C. Montano, Victoria Montano, Alexander Montano, and Amy Montano requested that the claims asserted against them be dismissed in their entirety with prejudice.

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Respondent Daniel C. Montano also requested: an award of damages against Mark Lane in an amount of \$9,050,000; damages against Claimants Swartz and Stompler, as well as their attorney, in an amount of \$42,000,000, plus additional damages in an amount of \$300,000.

Respondents Victoria Montano and Amy Montano also requested damages against Claimants and/or their attorney in the amount of \$10,000.

OTHER ISSUES CONSIDERED AND DECIDED

After carefully considering the pleadings and arguments of the parties at the telephonic pre-hearing conference, the arbitration panel issued an Interim Order dismissing Respondents Anne-Marie Montano and Adam Montano from this matter with prejudice.

Claimants withdrew their claims against Respondent Judy Pelton with prejudice on or about March 17, 1997.

Claimants withdrew their claims against Respondent Jeffrey Stubbert with prejudice on or about October 21, 1996.

Claimants withdrew their claims against Respondent Dennis Lynn Brown with prejudice on or about October 23, 1996.

Claimants withdrew their claims against Respondent Lynne Bolduc with prejudice on or about December 19, 1996.

Claimants withdrew their claims against Respondent Brookstreet Securities Corporation without prejudice on or about June 6, 1996.

Claimants withdrew their claims against Respondent Pride Financial Group without prejudice on or about August 2, 1996.

Claimants originally named Mark Lane as a Respondent. Respondent Mark Lane was dismissed from this matter by Claimants with prejudice on or about December 18, 1995. Mark Lane was subsequently named as a Third-Party Respondent by Daniel C. Montano. Upon review of the file and the representations made by or on behalf of the parties, the undersigned arbitrators have determined that Third-Party Respondent Mark Lane has not been properly served with the Third-Party Claim pursuant to §§ 10302 and 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Third-Party Respondent Mark Lane has not received due notice of the hearing as required under § 10318 of the Code and that this matter

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would not proceed with respect to Third-Party Respondent Lane. Accordingly, all claims against Third-Party Respondent Mark Lane are hereby dismissed in their entirety without prejudice to the right of any party to reassert these claims in a new or different action.

Upon review of the file and the representations made by or on behalf of the parties, the undersigned arbitrators have determined that Respondents Mark Voorhis and David Lopes have not been properly served with the Statement of Claim pursuant to §§ 10302 and 10314 of the Code. The undersigned arbitrators have also determined that Respondents Mark Voorhis and David Lopes have not received due notice of the hearing as required under § 10318 of the Code and that this matter would not proceed with respect to Respondents Voorhis and Lopes. Accordingly, all claims against Respondents Mark Voorhis and David Lopes are hereby dismissed in their entirety without prejudice to the right of any party to reassert these claims in a new or different action.

Respondents Montano Securities Corporation, Daniel C. Montano, Victoria Montano, and Amy Montano did not file with NASD Regulation, Inc. Office of Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to §10301 of the Code and having answered the claim and appeared at the hearing are bound by the determination of the arbitration panel on all issues submitted.

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, signed and conformed copies of the Award while the original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- (1) Respondents Montano Securities Corporation, Daniel C. Montano, Victoria Montano, Alexander Montano and Amy Montano are jointly and severally liable for and shall pay to Claimants Glen Swartz, Eugene Stompler, William Allen, Mark Evers, Richard Griffard, Richard Schauwecker and David Mulligan compensatory damages in the amount of One Hundred Twelve Thousand Five Hundred Dollars and No Cents (\$112,500.00), plus interest at 6% which shall begin to accrue on October 5, 1995 and shall continue to accrue until the date this award is served on the parties;
- (2) Respondents Montano Securities Corporation, Daniel C. Montano, Victoria Montano, Alexander Montano and Amy Montano are jointly and severally liable for and shall pay to Claimants Glen Swartz, Eugene Stompler, William Allen, Mark Evers, Richard Griffard, Richard Schauwecker and David Mulligan their attorney fees in the amount of Thirty Seven Thousand Five Hundred Dollars and No Cents (\$37,500.00);
- (3) Respondent Daniel C. Montano is liable for and shall pay to Claimants Glen Swartz, Eugene Stompler, William Allen, Mark Evers, Richard Griffard, Richard Schauwecker and David Mulligan punitive damages in the amount of One Hundred Thousand Dollars and No Cents (\$100,000.00);
- (4) Respondents Victoria Montano, Alexander Montano, and Amy Montano are jointly and severally liable for and shall pay to Claimants Glen Swartz, Eugene Stompler, William Allen, Mark Evers, Richard Griffard, Richard Schauwecker and David Mulligan punitive damages in the amount of Twelve Thousand Five Hundred Dollars and No Cents (\$12,500.00);
- (5) The panel finds that its award of punitive damages and attorney fees is appropriate under the law of the State of Wisconsin. With respect to the award of punitive damages, the undersigned arbitrators have made the following findings of fact: (1) that Respondents made material misrepresentations of fact to Claimants; (2) that these misrepresentations were intended to deceive Claimants; (3) that the Claimants reasonably relied on Respondents' misrepresentations to their detriment; and (4) that a causal connection exists between Respondents' misrepresentations and Claimants' damages;
- (6) That all Counterclaims and/or requests for relief made by Respondents against Claimants Glen Swartz, Eugene Stompler, William Allen, Mark Evers, Richard Griffard, Richard

Schauwecker and David Mulligan, as well as their attorney, Robert V. Cornish, Jr., are hereby dismissed in their entirety with prejudice; and

- (7) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically enumerated are hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$1,500 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) pre-hearing conference x \$300 = \$300 in forum fees. There were twenty-two (22) hearing sessions x \$1,500 = \$33,000 in forum fees. Total forum fees = \$33,300. Pursuant to § 10205(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to § 10205(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$500 previously deposited by Claimants and shall refund the remainder of all monies previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimants which is the amount of \$450.

Pursuant to § 10205(c) of the Code, Respondent Daniel C. Montano is liable for and shall pay the non-refundable filing fees previously assessed in connection with Respondent Montano's Third-Party Claim and Counterclaim in the amount of \$1,000 (\$500 + \$500).

Pursuant to § 10205(c) of the Code, Respondent Victoria Montano is liable for and shall pay the non-refundable filing fees previously assessed in connection with Respondent Montano's Counterclaim in the amount of \$500.

Pursuant to § 10205(c) of the Code, Respondent Amy Montano is liable for and shall pay the non-refundable filing fees previously assessed in connection with Respondent Montano's Counterclaim in the amount of \$500.

Pursuant to § 10205(c) of the Code, Respondent Anne-Marie Montano is liable for and shall pay the non-refundable filing fees previously assessed in connection with Respondent Montano's Counterclaim in the amount of \$500.

Pursuant to § 10205(c) of the Code, Respondent Daniel C. Montano is liable for and shall pay forum fees in the amount of \$26,640 (80% total forum fees).

Pursuant to § 10205(c) of the Code, Respondents Victoria Montano, Alexander Montano and Amy

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Montano are jointly and severally liable for and shall pay forum fees in the amount of \$6,660 (20% total forum fees).

Pursuant to § 10333 of the Code, Respondent Brookstreet Securities Corporation is liable for and shall pay the member surcharge in the amount of \$350. Pursuant to § 10205(c) of the Code, Respondent Brookstreet Securities Corporation is liable for and shall pay postponement fees in the amount of \$750.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures

/s/ Frederick P. Kessler
Hon. Frederick P. Kessler
Chairperson
Public Arbitrator

August 11, 1997
Dated:

/s/ Barry Goldman
Barry Goldman, Esq.
Panelist
Public Arbitrator

August 11, 1997
Dated: Barry Goldman, Esq.

/s/ Ramona V. Larson
Ramona V. Larson
Panelist
Industry Arbitrator

August 13, 1997
Dated:

For NASD use only:
Date Award was served on the parties: August 22, 1997

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DISCIPLINARY REFERRAL

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

**Glen Swartz and Eugene Stombler,
Claimants and Counter-Respondents,**

and

**William Allen, Mark Evers, Richard Griffard,
Richard Schaurwecker, and David Mulligan,
Claimants,**

and

**Victoria Montano, Alexander Montano, and
Amy Montano**

Respondents and Counter-Claimants

and

Consolidated Case Nos. 95-04735 and 95-05927

Daniel C. Montano,

Respondent, Counter-Claimant, and Third-Party Claimant,

and

**Montano Securities Corporation,
Adam Montano, Anne-Marie Montano, Judy Pelton,
Jeffrey Stubbett, Mark Voorhis, Dennis Lynn Brown,
Lynne Bolduc, David Lopes, Mark Lane, Pride Financial Group,
and Brookstreet Securities Corporation,
Respondents,**

and

Mark Lane,

Third Party Respondent.

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Disciplinary Referral
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During the course of the hearing held in the above captioned matter, the undersigned arbitrators heard testimony and reviewed evidence which indicated wrongdoing by Respondents Daniel C. Montano, Victoria Montano, Alexander Montano, and Amy Montano. Specifically, the arbitration panel noted violations of NASD rules and regulations, including: (1) failure to supervise; (2) commingling; (3) selling unregistered shares of stock in Montano Securities Corporation ("MSC"); (3) misrepresenting the value of MSC stock to Claimants; and (4) improper advertising.

Concurring Arbitrators' Signatures

/s/ Frederick P. Kessler
Hon. Frederick P. Kessler
Chairperson
Public Arbitrator

August 11, 1997
Dated:

/s/ Barry Goldman
Barry Goldman, Esq.
Panelist
Public Arbitrator

August 11, 1997
Dated:

/s/ Barry Goldman
Barry Goldman, Esq.
Panelist
Public Arbitrator

/s/ Ramona V. Larson
Ramona V. Larson
Panelist
Industry Arbitrator

August 13, 1997
Dated:

/s/ Ramona V. Larson
Ramona V. Larson
Panelist