

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Janet Virginia Jay Revocable Trust

and

96-05647

Name of Respondent

*Wedbush Morgan Securities, Inc.
Daley Discount Securities
Jeff Novakovich

REPRESENTATION OF PARTIES

Janet Virginia Jay Revocable Trust ("Claimant") was represented by Kevin L. McDowell, Esq.,
Brotzman, Buchholz & McDowell, Boulder, Colorado.

Wedbush Morgan Securities, Inc. ("Respondent Wedbush"), Daley Discount Securities
("Respondent Daley") and Jeff Novakovich ("Respondent Novakovich") were represented by
Terry Ross, Esq., Keesal, Young & Logan, Long Beach, California.

CASE INFORMATION

The Statement of Claim was filed on or about December 20, 1996. Submission Agreement of
Claimant Janet Virginia Jay Revocable Trust was signed on January 27, 1997 by Janet V. Jay,
Trustee.

Statement of Answer was filed by Respondents Wedbush Morgan Securities, Inc., Daley Discount
Securities and Jeff Novakovich on or about March 31, 1997. Submission Agreement of Respondent
Wedbush Morgan Securities, Inc. was signed on February 28, 1997 by Marie E. Eaton. Submission
Agreement of Respondent Daley Discount Securities was signed on February 28, 1997 by Thomas
Hale. Submission Agreement of Respondent Jeff Novakovich was signed on March 18, 1997.

HEARING INFORMATION

A pre-hearing conference was held on August 27, 1997 for one (1) session. The hearing was held on September 18, 1997 for three (3) sessions, September 19, 1997 for two (2) sessions, and November 11, 1997 for one (1) session in Denver, Colorado for a total of one (1) prehearing and six (6) hearing sessions.

CASE SUMMARY

Claimant alleged that during the time that she maintained an account with Respondents, Respondents engaged in numerous fraudulent, unlawful acts and breaches of contractual obligations by engaging in practices including, but not limited to, the following:

- ▶ using discretionary status to purchase stocks which were wholly unsuitable for the Claimant's stated investment objective;
- ▶ failing to diversify the account;
- ▶ directing and effecting excessive trades which resulted in churning the account in order to generate sizeable commissions;
- ▶ directing and effecting trades of securities in a manner contrary to the Claimant's goals and objectives;
- ▶ misrepresenting and/or failing to disclose material facts; and
- ▶ failing to supervise or intentionally improperly supervising the Claimant's account, and failing to supervise or intentionally improperly supervising Respondent Novakovich.

Respondents denied the allegations set forth in the Statement of Claim. Respondents stated that Respondent Novakovich had many discussions with the Claimant regarding the status of her account. Respondents also stated that the Claimant was well aware of her account results and had stated that, even though she was not happy, she knew the technology stocks were volatile. It was further stated that the Claimant's losses were the result of market fluctuation. Respondents stated that Claimant voluntarily went on margin while she liquidated some or all of the assets in her account. In addition, Respondents stated that Respondent Novakovich initially recommended mutual funds to the Claimant, but the Claimant wanted to make more money quickly. Respondents stated that he account was set up as discretionary account due to the fact that Claimant travelled frequently. Numerous affirmative defenses were asserted including but not limited to: the claims are barred by the doctrine of laches; failure to mitigate; assumption of the risk; and the losses suffered by the Claimant were caused by her own conduct or negligence.

RELIEF REQUESTED

Claimant requested an award in the amount of compensatory damages in an amount sufficient to compensate her for her losses in the amount of \$94,000; pre and post award interest; punitive

damages in such amount as the arbitrators deem appropriate to deter the Respondents from future acts of misconduct as those giving rise to this claim; and for all of her costs, expenses and disbursements, including reasonable attorneys' fees and expert witness costs incurred in pursuing this claim.

Respondents requested that the claims asserted against them be dismissed with costs assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

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 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. The claims asserted in this matter shall be and hereby are dismissed in their entirety.
2. Each party shall bear its own costs, expenses and fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) session x \$300 and were six (6) sessions x \$500 = \$3,300 in forum fees. Pursuant to Rule 10332(b) 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 Rule 10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$150 and shall retain as forum fees the hearing session deposit in the amount of \$500 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Janet Virginia Jay Revocable Trust. Claimant Janet Virginia Jay Revocable Trust shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,150 as forum fees. Respondents Wedbush Morgan Securities, Inc., Daley Discount Securities and Jeff

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Novakovich shall e and hereby are jointly and severally liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,650 as the balance due for forum fees.

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$300 previously paid on behalf of Wedbush Morgan Securities, Inc. Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

/s/ Carol J. Zamperini
Carol J. Zamperini
Public Arbitrator, Presiding Chair

Dated:
November 28, 1997

/s/ Billy Kwan
Billy Kwan
Public Arbitrator

November 16, 1997

/s/ Gerald K. Moore
Gerald K. Moore
Industry Arbitrator

November 17, 1997