

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Jay T. Pierce, Raymond Fisk, and Jennifer Fisk, Claimants v. Waldron & Co., Inc., Cery B. Perle, Michael D'Amico, Michael Visbal, Wedbush Morgan Securities, Inc., Edward Harris, and Jon G. Aubry, Respondents

Case Number: 98-03798

Hearing Site: Los Angeles, California

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**REPRESENTATION OF PARTIES**

For Claimants:

Steven L. Miller, Esq.  
Law Offices of Steven L. Miller  
Encino, California

For Respondent Waldron & Co., Inc.:

Waldron & Co., Inc.  
Los Angeles, California

For Respondent Cery B. Perle:

Cery B. Perle  
In Pro Per  
Los Angeles, California

For Respondent Michael D'Amico:

Michael D'Amico  
In Pro Per  
Los Angeles, California

For Respondent Michael Visbal:

Michael Visbal  
In Pro Per  
Los Angeles, California

For Respondent Wedbush Morgan Securities, Inc.:

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

For Respondent Jon G. Aubry:

Thomas L. Taylor, Esq.  
Morgan, Lewis & Bockius, LLP  
Los Angeles, California

### **CASE INFORMATION**

Statement of Claim filed: October 8, 1998

Statement of Answer filed by Respondent Wedbush Morgan Securities, Inc.: February 10, 1999

Statement of Answer filed by Jon G. Aubry: March 6, 2000

Claimant Jay T. Pierce's Uniform Submission Agreement signed: October 6, 1998

Claimants Raymond and Jennifer Fisk's Uniform Submission Agreement signed: October 7, 1998

Respondent Wedbush Morgan Securities, Inc.'s Uniform Submission Agreement signed: February 12, 1999

### **CASE SUMMARY**

Claimants alleged fraud, breach of fiduciary duty, negligent infliction of emotional distress, failure to supervise, and conspiracy. The allegations arose out of the purchase and/or sale of 35,000 shares of Shopping.com.

Respondents Wedbush Morgan Securities, Inc. and Jon G. Aubry denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

### **RELIEF REQUESTED**

Claimant Jay T. Pierce requested \$630,000.00 in compensatory damages and \$1,260,000.00 in punitive damages. Claimants Raymond and Jennifer Fisk requested \$141,979.25 in compensatory damages and \$283,958.00 in punitive damages. Claimants Jay T. Pierce and Raymond and Jennifer Fisk also requested unspecified damages for personal injuries, interest, and reimbursement for costs and attorney's fees.

Respondents Wedbush Morgan Securities, Inc. and Jon G. Aubry requested dismissal of the Claimants' Statement of Claim in its entirety.

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

Upon review of the file and the representations made by the Claimants, the undersigned Panel determined that Respondents Waldron & Co. Inc., Cery B. Perle, Michael D'Amico and Michael Visibal were properly served with the Statement of Claim and received due notice of the hearing.

The arbitration of the matter proceeded without said Respondents present, and in accordance with the NASD Code of Arbitration Procedure (The Code).

Respondents Waldron & Co., Inc., Cery B. Perle, Michael D'Amico, Michael Visibal, and Jon G. Aubry did not file with NASD Dispute Resolution, Inc. properly executed submission agreements but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

On September 3, 1999, Respondent Edward Harris was removed as a party because NASD Dispute Resolution, Inc. determined that it did not have jurisdiction.

On November 17, 2000, NASD Dispute Resolution, Inc. received notice from Claimants that all claims against Respondent Wedbush Morgan Securities, Inc. were withdrawn with prejudice.

On November 27, 2000, NASD Dispute Resolution, Inc. received notice from Claimants that all claims against Respondent Jon G. Aubry were withdrawn with prejudice.

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) Respondents Waldron & Co., Inc. and Cery B. Perle are jointly and severally liable to and shall pay Claimants Raymond and Jennifer Fisk \$93,214.00 in compensatory damages.
- 2) Respondents Waldron & Co., Inc. and Cery B. Perle are jointly and severally liable to and shall pay Claimants Raymond and Jennifer Fisk \$2,000,000.00 in punitive damages.
- 3) Respondents Waldron & Co., Inc. and Cery B. Perle are jointly and severally liable to and shall pay Claimant Jay T. Pierce \$174,245.00 in compensatory damages.
- 4) Respondents Waldron & Co., Inc. and Cery B. Perle are jointly and severally liable to and shall pay Claimant Jay T. Pierce \$2,000,000.00 in punitive damages.
- 5) Respondents Michael D'Amico and Michael Visibal are dismissed without prejudice.
- 6) Each party shall bear its own costs, including attorney's fees.
- 7) All other relief requested and not granted is expressly denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 250.00
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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 event of the dispute. Accordingly, the member firms Wedbush Morgan Securities, Inc. and Waldron & Co., Inc. are parties and the following fees are assessed to each:

Member Surcharge	= \$ 2,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 4,500.00</u>
<b>Total Member Fees</b>	<b>= \$ 7,600.00</b>

#### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel. The following fees are assessed:

1 Pre-hearing conference session with a single arbitrator @ \$ 300.00/session	= \$ 300.00
Pre-hearing conference: October 30, 2000	1 session
2 Pre-hearing conference sessions with the Panel @ \$1,000.00/session	= \$ 2,000.00
Pre-hearing conferences: April 25, 2000	1 session
August 23, 2000	1 session
2 Hearing sessions @ \$1,000.00/session	= \$ 2,000.00
Hearings: November 28, 2000	2 sessions
<b>Total Forum Fees</b>	<b>= \$ 4,300.00</b>

1. The Panel assessed \$ 2,300.00 of the pre-hearing conference forum fees jointly and severally to Respondents Wedbush Morgan Securities, Inc., Cery B. Perle, Michael D'Amico, Michael Visibal, and Jon G. Aubry.

2. The Panel assessed \$2,000.00 of the hearing forum fees jointly and severally to Respondents Cery B. Perle, Michael D'Amico, and Michael Visbal.

**Fee Summary**

1. Claimants Jay T. Pierce, Raymond Fisk, and Jennifer Fisk are charged jointly and severally with the following fees and costs:
- |                                |                        |
|--------------------------------|------------------------|
| Initial Filing Fee             | = \$ 250.00            |
| <u>Less Payments</u>           | <u>= \$(1,250.00)</u>  |
| <b>Refund Due to Claimants</b> | <b>= \$ (1,000.00)</b> |
2. Respondent Wedbush Morgan Securities, Inc. is charged with the following fees and costs:
- |                                                  |                        |
|--------------------------------------------------|------------------------|
| Member Fees                                      | = \$ 7,600.00          |
| <u>Less Payments</u>                             | <u>= \$ (7,600.00)</u> |
| <b>Balance Due NASD Dispute Resolution, Inc.</b> | <b>= \$ 0.00</b>       |
3. Respondent Waldron & Co., Inc. is charged with the following fees and costs:
- |                                                  |                      |
|--------------------------------------------------|----------------------|
| <u>Member Fees</u>                               | <u>= \$ 7,600.00</u> |
| <b>Balance Due NASD Dispute Resolution, Inc.</b> | <b>= \$ 7,600.00</b> |
4. Respondents Wedbush Morgan Securities, Inc., Cery B. Perle, Michael D'Amico, Michael Visbal, and Jon G. Aubry are charged jointly and severally with the following fees and costs:
- |                                                  |                      |
|--------------------------------------------------|----------------------|
| <u>Pre-Hearing Forum Fees</u>                    | <u>= \$ 2,300.00</u> |
| <b>Balance Due NASD Dispute Resolution, Inc.</b> | <b>= \$ 2,300.00</b> |
5. Respondents Cery B. Perle, Michael D'Amico, and Michael Visbal are charged jointly and severally with the following fees and costs:
- |                                                  |                      |
|--------------------------------------------------|----------------------|
| <u>Hearing Forum fees</u>                        | <u>= \$ 2,000.00</u> |
| <b>Balance Due NASD Dispute Resolution, Inc.</b> | <b>= \$ 2,000.00</b> |

All balances are payable to NASD Dispute Resolution, Inc. and are due within 30 days of the Award's date of service.

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
A. Joel Klein  
Chair, Public Arbitrator

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

  
\_\_\_\_\_  
Charles Bloomfield  
Public Arbitrator

12/19/00  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Charles A. Pease  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service

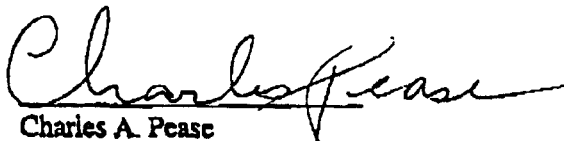
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Signature Date

  
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Charles A. Pease  
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12/19/00  
Signature Date

\_\_\_\_\_  
Date of Service

NASD Dispute Resolution, Inc.

Arbitration No. 98-03798

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A. Joel Klein

Chair, Public Arbitrator

12/21/00  
  
Signature Date

\_\_\_\_\_  
Charles Bloomfield  
Public Arbitrator

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

\_\_\_\_\_  
Charles A. Pease  
Non-Public Arbitrator

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

12/22/00  
\_\_\_\_\_  
Date of Service