

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

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In the Matter of the Arbitration Between:

Robert L. Skegrud, Claimant vs. Duke & Company, Inc., Thomas J. Heaphy, Keith Connolly,  
Abraham M. Mirman and Victor M. Wang, Respondents

Case Number: 99-00386

Hearing Site: San Francisco, California

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Nature of the Dispute: Customer v. Member and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimant:	Ralph A. Gant, Esq. Counselor at Law New York, New York
For Respondent Duke & Co., Inc.	Gregg Thaler Duke & Co., Inc. New York, New York
For Respondent Thomas J. Heaphy	in persona propria Palm Beach, Florida
For Respondent Keith Connolly	in persona propria Melville, New York
For Respondent Abraham M. Mirman	in persona propria East Northport, New York
For Respondent Victor M. Wang	in persona propria New York, New York

**CASE INFORMATION**

Statement of Claim filed: January 27, 1999

Claimant's Uniform Submission Agreement signed: January 19, 1999

Statement of Answer filed by Respondent Abraham M. Mirman received: October 11, 2000

### **CASE SUMMARY**

Claimant alleged unauthorized trading, price manipulation, misrepresentation, unsuitability, failure to execute, and failure to supervise. Claimant's allegations involved transactions in Paravant Computer Systems, Inc. and Aviation Group, Inc. securities.

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

### **RELIEF REQUESTED**

Claimant requested \$67,314 in compensatory damages, unspecified punitive damages, pre-judgment interest at 9% starting September 1, 1997, and costs, including attorney's fees.

Respondent Abraham M. Mirman requested dismissal of the Claimant's Statement of Claim in its entirety, expungement of all references to this claim from his registration record maintained with the Central Registration Depository ("CRD"), and costs.

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

Respondents did not file with the NASD Dispute Resolution a properly executed submission agreement 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 March 1, 1999, NASD Dispute Resolution received notice that Respondent Keith Connolly filed Chapter 7 Bankruptcy Proceedings. Accordingly, this matter is stayed as to Respondent Keith Connolly.

On or about May 27, 1999, NASD Dispute Resolution received a court order commencing SIPA liquidation proceedings against Respondent Duke & Company, Inc. Accordingly, this matter is stayed as to Respondent Duke & Company, Inc.

On April 23, 2004, NASD Dispute Resolutions received Claimant's notice that Claimant dismissed Abraham Mirman with prejudice.

During the telephonic pre-hearing conference held on April 23, 2004 and attended by Claimant and Panelists Glen L. Moss and John B. Weingart, Claimant moved the Panel to issue an award against Respondent Thomas J. Heaphy for an unpaid settlement agreement. After due deliberation, the two panelists granted the motion.

Respondent Thomas J. Heaphy did not attend the April 23, 2004 pre-hearing conference. Since there was a question as to whether Respondent Thomas J. Heaphy received proper notice of the April 23, 2004 pre-hearing conference, on August 16, 2004, a second pre-hearing conference was held to consider Claimant's motion for an award. Respondent Thomas J. Heaphy was absent. After due deliberation, the full panel determined that Respondent Thomas J. Heaphy was given proper notice of the August 16, 2004 pre-hearing conference and granted Claimant's motion for an award.

The Panel did not determine if Respondent Victor M. Wang was properly served.

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 and testimony, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Thomas J. Heaphy is liable to and shall pay Claimant the sum of \$9,500.00 in compensatory damages.
- 2) Respondent Thomas J. Heaphy is liable to and shall pay Claimant interest at the rate of 9.00% per annum on the sum of \$9,500.00 from March 15, 2002, until the date the compensatory damages are paid in full.
- 3) Respondent Victor M. Wang is dismissed without prejudice.
- 4) Claimant's claim for punitive damages is denied.
- 5) The parties shall bear their respective costs, including attorney's fees.
- 6) 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 = \$ 150.00

#### **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: February 6, 2002 1 session

(4) Pre-hearing conference sessions with the Panel @ \$500.00/session = \$2,000.00  
Pre-hearing conferences: September 27, 2000 1 session  
December 10, 2001 1 session  
April 23, 2004 1 session  
August 16, 2004 1 session

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**Total Forum Fees** = \$2,300.00

The Panel assessed the entire \$1,800.00 in forum fees to Respondent Thomas J. Heaphy.

The \$500 in forum fees for the April 23, 2004 pre-hearing conference is waived.

### **Fee Summary**

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

Initial Filing Fee	= \$ 150.00
<u>Less payments</u>	= \$ (650.00)
<b>Refund Due Claimant</b>	<b>= \$ (500.00)</b>

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

<u>Forum Fees</u>	= \$1,800.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$1,800.00</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**

Mary Margaret Bush	-	Public Arbitrator, Presiding Chair
Glen L. Moss	-	Public Arbitrator
John B. Weingart	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Mary Margaret Bush  
Chair, Public Arbitrator

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Signature Date

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Glen L. Moss  
Public Arbitrator

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Signature Date

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John B. Weingart  
Non-Public Arbitrator

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Signature Date

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Date of Service

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Glen L. Moss	-	Public Arbitrator
John B. Weingart	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



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Mary Margaret Bush  
Chair, Public Arbitrator

8.18.04  
Signature Date

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Glen L. Moss  
Public Arbitrator

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Signature Date

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John B. Weingart  
Non-Public Arbitrator

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Signature Date

8/18/04  
Date of Service

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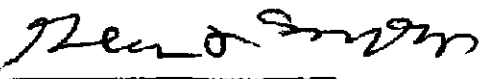
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Mary Margaret Bush  
Chair, Public Arbitrator

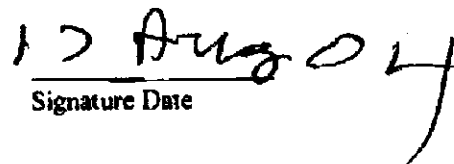
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Signature Date



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Glen L. Moss  
Public Arbitrator

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Signature Date

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John B. Weingart  
Non-Public Arbitrator

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Signature Date

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8/18/04  
Date of Service

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Mary Margaret Bush  
Chair, Public Arbitrator

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Signature Date

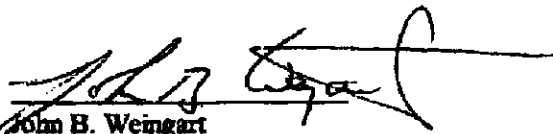
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Glen L. Moss  
Public Arbitrator

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Signature Date

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John B. Weingart  
Non-Public Arbitrator

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*August 18, 2004*  
Signature Date

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*8/18/04*  
Date of Service