

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Winston E. Griffith and Sally Griffith JT TEN/WROS, Claimants v. Millennium Securities Corp.
and James M. Frace, Respondents

Case Number: 99-00703

Hearing Site: Seattle, Washington

REPRESENTATION OF PARTIES

For Claimants:

Winston E. Griffith
Chehalis, Washington

For Respondents:

Rick Cardillo
Millennium Securities Corp.
New York, New York

CASE INFORMATION

Statement of Claim filed on or about: February 10, 1999

Claimants' Amendment to Statement of Claim filed on or about: March 15, 2001

Claimants' Uniform Submission Agreement signed: February 4, 1999

Answer of Respondents, Millennium Securities Corp. ("Millennium") and James M. Frace, filed
on or about: April 20, 1999

Respondent Millennium's Uniform Submission Agreement signed: March 11, 1999

Respondent James M. Frace's Uniform Submission Agreement signed: March 11, 1999

CASE SUMMARY

Claimants, Winston E. and Sally Griffith (collectively "Griffith") allege Respondents made an unauthorized sale of Dell Computer stock and an unauthorized purchase of Worldcom Inc. stock in Griffith's account and later abandoned a settlement agreement between the parties.

Respondents, Millennium and Frace, deny all substantive allegations, deny Griffith was damaged and affirmatively allege failure to state a claim for relief, ratification, waiver and estoppel, actions in good faith, failure to mitigate damages, comparative fault, assumption of risk, consent, laches, unclean hands, limited corporate liability and Respondent Frace was an independent contractor and not an employee of Millennium.

RELIEF REQUESTED

Initially Griffith sought rescission of the unauthorized trades and return of all commissions and costs charged against Griffith in connection with the unauthorized trades.

After an alleged abandonment of a settlement, Griffith amended the claim on March 15, 2001, requested the settlement agreement be set aside; and damages of \$820, commissions and costs charged Griffith associated with the unauthorized transactions; \$3,112.92, the difference between the cost of Dell Computer stock and receipts from liquidation of Worldcom stock; \$1,000 for Griffith's NASD Dispute Resolution, Inc. ("NASD-DR") filing fee; \$529.45 loss of wages for 3 telephone conferences; and \$23,717.92, for lost opportunity for being denied the use of the Dell Computer stock.

Respondents requested that Claimants take nothing by their Statement of Claim and that it and all claims contained therein be dismissed with prejudice; that Respondents be awarded their costs incurred in this matter; and that Respondents be awarded such other and further relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents moved for dismissal of the Griffith claim, alleging a settlement between the parties and requested Attorney Fees. Griffith alleged Respondents failed to honor the settlement. The motion to dismiss was denied by the Panel and a November 2001, Arbitration hearing date was set.

Respondents Millennium and Frace did not appear at the evidentiary hearing. The Panel determined that Respondents received proper notice of the hearing, and that the arbitration of the above-referenced matter would proceed without said Respondents present, in accordance with the NASD-DR Code of Arbitration Procedure ("the Code").

The parties present at hearing 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 failed to appear for the Arbitration hearing at Seattle, Washington, on November 20, 2001.

Respondents appeared through counsel, filed Answers, Uniform Submission Agreements [agreeing to binding arbitration] and Motions to Dismiss. After Zelle, Hofmann, etc. gave notice of withdrawal as counsel, each Respondent was given time to retain other counsel. All subsequent notices, including of this hearing, were served on Respondents by mail at their last known address of record provided by Zelle, Hofmann, etc. No further appearances were made by either Respondent.

The Panel concludes, each Respondent submitted to the jurisdiction of the NASD-DR, and received adequate notice of the Arbitration Hearing. NASD-DR and this Panel can proceed to resolve this matter.

2. During the fall of 1997, Griffith, a resident of the state of Washington, received an unsolicited telephone call from Respondent Frace proposing use of Respondent's services for securities transactions. Griffith made four trades investing some \$42,000. On or about February 28, 1998, Griffith purchased 125 shares of Dell Computer stocks at \$135.18 for \$16,533.44. This was done on margin. Griffith did not place a "stop-loss" or "limit order" regarding this stock. Dell stock split two for one prior to March 18, 1998 and by June, 1999, again split two for one.

3. On or about March 18, 1998, Respondents sold the Dell computer stock at \$62.per share for \$15,289.48 and purchased 350 Worldcom, Inc. at \$43.06 for \$15,681 and charged Griffith's account \$820 commissions and costs for the transactions. Mr. nor Ms. Griffith authorized the transactions.

The Panel concludes, the sale of the Dell stock, purchase of Worldcom and charges to the Griffith account by Respondents were all unauthorized transactions.

4. Griffith challenged the transactions and requested NASD-DR Arbitration.

5. Griffith was thereafter contacted by Mr. Gamboa, of Zelle, Hofmann etc., counsel for Respondents. Counsel offered to "reverse" the Dell Computer and World Com shares [exhibit E to Motion to Dismiss referred to in item 6] and prepared a release for Griffith to sign [Exhibit B of Motion to Dismiss]. Among other things, the release relieved Respondents of all claims including future claims against Respondents, waived California Civil Code Sec 1542 protecting persons signing a general release from claims the person did not know or suspect to exist in the person's favor at the time of execution, adopted California Law as the governing law, placed venue in the California Courts and waived rules of construction that require ambiguities to be resolved against the party drafting the agreement. Griffith was not informed that the release gave up the protections of the securities and other laws of the state of Washington as well as the anti-fraud provisions of the Federal Securities Laws.

6. On or about November 17, 2000 Respondents moved to dismiss the Arbitration and sought attorney fees against Griffith. Respondent's counsel attached exhibit B, the Agreement; exhibit E [letter from Attorney Gamboa to Griffith dated, June 11, 1999] advising that as part of the settlement, \$820 would be deducted from the Griffith account; and exhibit C, asserting \$820 was deducted from the Griffith account. While exhibit C shows Griffith's margin account balances and transactions for June, 1999, the alleged deduction of \$820 is not apparent.

7. The Panel finds the settlement transaction was an exchange of securities and subject to the protection of the anti-fraud provisions of the state of Washington and Federal Securities Laws; the release violates NASD Rules of Fair Practice and Griffith was not provided full and adequate disclosure of the significance of the different provisions of the settlement. The settlement is set aside.

8. After the Release was signed in June 1999, 1000 shares of Dell [125 shares split two for one twice] were purchased for Griffith and World Com was returned to Respondents and Griffith's margin account which was \$8,713.45 at the end of May 28, 1999 was charged margin interest, and an additional \$3,112.92, the difference between the purchase cost of Dell and income from sale of Worldcom. The margin account balance at the end of June 1999 was \$11,942.11. While there were various transactions involving the margin account, by June, 1999, the account balance represented primarily the interest expenses, costs and charges related to the unauthorized sale of Dell and purchase of Worldcom and ultimate sale of Worldcom and repurchase of Dell. Griffith ended up paying the margin shortfall as part of the transfer of account to another Broker-Dealer.

9. Between the date of the unauthorized sale of the Dell stock, March 18, 1998, and its return to Griffith's account after June 1999, the price of Dell fluctuated to the extent Griffith could have sold the 250 shares at a significant profit. The stocks could not be sold because Dell was not available to Griffith due to the unauthorized transaction.

10. Accordingly, Respondents are jointly and severally liable for and shall pay to Griffith damages in the amount of \$11,942.11.

While it is unclear whether the \$820 initial charges for the unauthorized transactions were deducted from the margin account, if the amount was deducted as alleged by Respondents, Griffith has received the benefit. If the \$820 was not deducted, as alleged by Griffith, the \$820 is still included in the \$11,942.11.

11. Respondents are jointly and severally liable for and shall pay to Griffith the sum of \$250.00 as reimbursement for Griffith's filing fee.

12. Griffith's claims for loss of wages and lost opportunity are denied.
13. Each party shall bear its own costs, including attorney's fees.
14. All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. received or shall 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 events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Millennium is a party and the following fees are assessed:

Member Surcharge	= \$1,200.00
Pre-Hearing Process Fee	= \$600.00
<u>Hearing Process Fee</u>	<u>= \$2,000.00</u>
Total Member Fees	= \$3,800.00

Adjournment Fees

The following adjournment fees are assessed:

May 25, 2001, adjournment requested by Millennium	= \$600.00
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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 Chair/Panel. The following fees are assessed:

4 Pre-hearing conference sessions with the Panel @ \$600.00/session	= \$2,400.00
Pre-hearing conferences:	
October 11, 2000	1 session
December 18, 2000	1 session
February 27, 2001	1 session
March 26, 2001	1 session

2 Hearing sessions @ \$600.00/session = \$1,200.00
Hearing: November 20, 2001 2 sessions

Total Forum Fees = \$3,600.00

The Panel assessed the \$3,600.00 in forum fees jointly and severally to Respondents, Millennium and Frace.

Fee Summary

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

<u>Initial Filing Fee</u>	= \$ 250.00
<u>Total Fees</u>	= \$ 250.00
<u>Less Payments</u>	= \$(1,000.00)
Balance (Refund)	= \$750.00

2. Respondent Millennium is charged with the following fees and costs:

Member Fees	= \$ 3,800.00
<u>Adjournment Fee</u>	= \$ 600.00
<u>Total Fees</u>	= \$ 4,400.00
<u>Less Payments</u>	= \$(1,800.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,600.00

3. Respondents Millennium and Frace are charged jointly and severally with the following fees and costs:

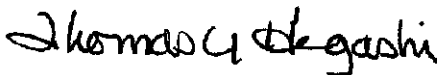
<u>Forum Fees</u>	= \$3,600.00
<u>Total Fees</u>	= \$3,600.00
<u>Less Payments</u>	= \$ (0.00)
Balance Due NASD Dispute Resolution, Inc.	= \$3,600.00

All balances are payable to NASD Dispute Resolution, Inc., and are payable upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Thomas Y. Higashi, Esq.	-	Public Arbitrator, Presiding Chair
James A. Vawter	-	Public Arbitrator
Bonny Kathleen Riggs	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Thomas Y. Higashi, Esq.
Chair, Public Arbitrator



Signature Date

James A. Vawter
Public Arbitrator

Signature Date

Bonny Kathleen Riggs
Non-Public Arbitrator

Signature Date

Date Served:

DEC 18 2001

Date of Service

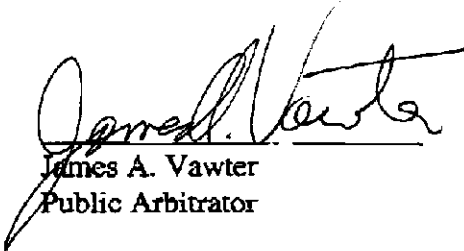
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Thomas Y. Higashi, Esq.	-	Public Arbitrator, Presiding Chair
James A. Vawter	-	Public Arbitrator
Bonny Kathleen Rogers	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Thomas Y. Higashi, Esq.
Chair, Public Arbitrator

Signature Date


James A. Vawter
Public Arbitrator

12/10/01
Signature Date

Bonny Kathleen Rogers
Non-Public Arbitrator

Signature Date

Date Served:

DEC 18 2001

Date of Service

ARBITRATION PANEL

Thomas Y. Higashi, Esq.	-	Public Arbitrator, Presiding Chair
James A. Vawter	-	Public Arbitrator
Bonny Kathleen Riggs	-	Non-Public Arbitrator

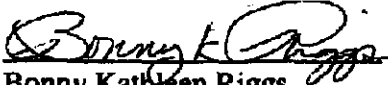
Concurring Arbitrators' Signatures

Thomas Y. Higashi, Esq.
Chair, Public Arbitrator

Signature Date

James A. Vawter
Public Arbitrator

Signature Date


Bonny Kathleen Riggs
Non-Public Arbitrator

12-11-01
Signature Date

12-11-01
Date of Service

Date Served:

DEC 18 2001