

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Walsh Manning Securities, LLC, (Claimant) vs. Morgan Wilshire Securities, Inc., Michael Finnan, and Barry Cassese, (Respondents) vs. Paul Wasserman, Craig Gross, James Shanley, Frank Skelly, III, and Thomas Hack (Third-Party Respondents)

Case Number: 99-00897

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Walsh Manning Securities, LLC, hereinafter referred to as "Claimant": William A. Rome, Esq., Hoffman Pollok & Pickholz LLP, New York, NY.

Respondents, Morgan Wilshire Securities, Inc. ("Morgan"), Michael Finnan ("Finnan"), and Barry Cassese ("Cassese"), hereinafter collectively referred to as "Respondents": David B. Dyer, Esq., Secore & Waller, LLP, Dallas, TX. Previously represented by: Eva M. Possavino, Esq., Lehman & Eilen LLP, Uniondale, NY.

Third-Party Respondents, Paul Wasserman ("Wasserman") and Craig Gross ("Gross"): William A. Rome, Esq., Hoffman Pollok & Pickholz LLP, New York, NY.

Third-Party Respondents, James Shanley ("Shanley"), Frank Skelly, III ("Skelly"), and Thomas Hack ("Hack"), did not appear at the hearings in this matter.

CASE INFORMATION

Statement of Claim filed on or about: March 2, 1999.

Motion to Amend Statement of Claim filed on or about: September 22, 2000.

Motion for Default filed by Claimant on or about: May 28, 1999.

Reply to Counterclaim and Motion to Dismiss Counterclaim filed by Claimant on or about: June 18, 1999.

Reply Memorandum of Law in Support of Motion to Amend, Motion for Default, and Motion to Dismiss Counterclaim filed by Claimant on or about: November 6, 2000.

Claimant signed the Uniform Submission Agreement: February 10, 1999.

Joint Statement of Answer, Counterclaim, and Third-Party Claim filed by Respondents on or about: June 8, 1999.

Joint Response in Opposition to Claimant's Motion to Amend Statement of Claim on or about: October 13, 2000

Joint Statement of Answer to Amended Statement of Claim filed by Respondents on or about: December 28, 2000.

Opposition to Claimant's Motion for Default, Claimant's Motion to Dismiss Counterclaim, and Third-Party Respondents' Motion to Dismiss Third-Party Claim filed by Respondents on or about: October 31, 2000.

Morgan signed the Uniform Submission Agreement: June 8, 1999.

Finnan signed the Uniform Submission Agreement: June 8, 1999.

Cassese signed the Uniform Submission Agreement: June 8, 1999.

Joint Statement of Answer and Motion to Dismiss Third-Party Claim filed by Wasserman and Gross on or about: July 23, 1999.

Reply Memorandum of Law in Support of Motion to Dismiss Third-Party Claim filed by Wasserman and Gross on or about: November 6, 2000.

Wasserman did not sign a Uniform Submission Agreement.

Gross did not sign a Uniform Submission Agreement.

Shanley did not file a Statement of Answer or sign a Uniform Submission Agreement.

Skelly did not file a Statement of Answer or sign a Uniform Submission Agreement.

Hack did not file a Statement of Answer or sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; account stated; money had and received; unjust enrichment; breach of duty of loyalty; and indemnity.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted the following defenses: the Statement of Claim and Amended Statement of Claim fail to state a cause of action upon which relief may be granted; Claimant's claims are barred by Claimant's breach of the Branch Office Agreement and Letter Agreement; Claimant's claims must be denied because any losses suffered by Claimant were caused by Claimant's own culpable and illegal conduct as well as the culpable and illegal conduct of its agents and employees; at all relevant times, Finnan and Cassese performed all of their duties and obligations under the Branch Office Agreement and Letter Agreement; Claimant is barred from any recovery because Claimant, among other things, breached the Branch Office Agreement and Letter Agreement, and

repeatedly and willfully violated federal securities laws, rules, and regulations, New York common law, as well as the Constitution, By-Laws, and Rules of the NASD in the conduct of its operations; Claimant is barred from recovery herein because Claimant, among other things, violated section 683(1) and (2) of the General Business Law governing the offer and sale of franchises; the Statement of Claim and Amended Statement of Claim are barred by Claimant's unclean hands; the Statement of Claim and Amended Statement of Claim are barred, in whole or in part, by the applicable statutes of limitation; Claimant has failed to mitigate its damages, if any; there is no basis whatsoever to award punitive damages or litigation expenses to Claimant in this case; Respondents at all times acted in good faith and there is no evidence of the extraordinary level of maliciousness or intentional misconduct necessary for Claimant to recover the highly unusual award of punitive damages; Claimant's cause of action for indemnification is premature; and Claimant has failed to satisfy any of the prerequisites for maintaining an indemnity claim.

In their Counterclaim, Respondents asserted the following causes of action: breach of contract; violations of federal securities law and the Constitution, By-Laws, and Rules of the NASD; unauthorized purchases and transactions; withholding of profits due to Finnan and Cassese; violations of Claimant's Supervisory and Compliance Procedures; and violations of section 683(1) and (2) of the General Business Law.

Unless specifically admitted in its Reply, Claimant denied the allegations made in the Counterclaim and asserted the following defenses: the Counterclaim fails to state a cause of action upon which relief can be granted; the Counterclaim is barred by Respondents' breach of the Branch Office Agreement and Letter Agreement; the Counterclaim must be denied because any losses suffered by Respondents were caused by Respondents' own culpable and illegal conduct as well as the culpable and illegal conduct of its agents and employees; at all relevant times, Claimant performed all of its duties and obligations under the Branch Office Agreement and Letter Agreement; the Counterclaim is barred by Respondents' unclean hands; the Counterclaim is barred by the doctrines of laches and waiver; and Respondents have failed to mitigate their damages, if any.

In their Third-Party Claim, Respondents asserted the following causes of action: violations of federal securities laws, rules, and regulations, New York common law, and the Constitution, By-Laws, and Rules of the NASD; violations of section 683(1) and (2) of the General Business Law; and unauthorized transactions.

Unless specifically admitted in their Answer, Wasserman and Gross denied the allegations made in the Third-Party Claim and asserted the following defenses: the Third-Party Claim fails to state a cause of action upon which relief can be granted; the Third-Party Claim is barred by Respondents' breach of the Branch Office Agreement and Letter Agreement; the Third-Party Claim must be denied because any losses suffered by Respondents were caused

by Respondents' own culpable and illegal conduct as well as the culpable and illegal conduct of its agents and employees; at all relevant times, Wasserman and Gross performed all of their duties and obligations under the Branch Office Agreement and Letter Agreement; the Third-Party Claim is barred by Respondents' unclean hands; the Third-Party Claim is barred by the doctrines of laches and waiver; and Respondents have failed to mitigate their damages, if any.

RELIEF REQUESTED

Claimant requested an Award:

1. As to the first through fifth causes of action, awarding Claimant compensatory damages in an amount to be proven at hearing, but in an amount not less than \$573,145.67, awarded jointly and severally against Finnan and Cassese;
2. As to the sixth cause of action, awarding Claimant compensatory damages in an amount to be proven at hearing, but in an amount not less than \$352,000.00, awarded jointly and severally against Finnan and Cassese;
3. As to the seventh cause of action, awarding Claimant compensatory damages in an amount to be proven at hearing, but in an amount not less than \$175,000.00, awarded jointly and severally against Finnan and Cassese;
4. Requiring Respondents to disgorge to Claimant all revenues and profits obtained by them as a result of their wrongful conduct, plus pre-judgment and post-judgment interest thereon;
5. Requiring Morgan to post security and disgorge to Claimant no less than \$573,145.67;
6. Awarding Claimant punitive damages in the amount of \$500,000.00;
7. Awarding Claimant the costs, expenses, and attorneys' fees incurred in bringing this arbitration, together with pre-judgment and post-judgment interest;
8. Declaring Respondents are required to indemnify Claimant;
9. Making specific findings of fact and law as to each Respondent; and
10. For such other and further relief as to the Panel shall seem just and proper.

In their Answer, Respondents requested that the Panel:

1. Dismiss Claimant's claims in their entirety;
2. Award Respondents the costs, disbursements, and reasonable attorneys' fees as contemplated for in the Branch Office Agreement; and
3. Award Respondents such other and further relief as the Panel deems just and proper.

In their Counterclaim, Respondents requested that an Award be rendered as follows:

1. In an amount to be determined at the hearing, but in any event not less than \$1,000,000.00;
2. Pre-judgment and post-judgment interest at the statutory rate of 9%;
3. The costs, disbursements, and reasonable attorneys' fees of this arbitration as contemplated in the Branch Office Agreement and Section 691 of the General Business Law;
4. Rescission of the unauthorized trades in an amount to be determined by the Panel, with interest at 6% per year from the date of the Branch Office Agreement;
5. That Claimant account to Finnan and Cassese the manner and calculation of the branch office's monthly Net Profits during the entire period of the branch office's operation;
6. That Claimant shall also include in such accounting a breakdown of branch office revenues and expenses actually paid by Claimant during the entire period of the branch office's operation; and
7. Such other and further relief as the Panel deems just and proper.

In its Reply, Claimant requested that the Panel:

1. Dismiss the Counterclaim in its entirety; and
2. Award Claimants such other and further relief as the Panel deems just and proper, including costs and attorneys' fees.

In their Third-Party Claim, Respondents requested that an Award be rendered as follows:

1. In an amount to be determined at the hearing, but in any event not less than \$1,000,000.00;
2. Pre-judgment and post-judgment interest at the statutory rate of 9%;
3. The costs, disbursements, and reasonable attorneys' fees of this arbitration as contemplated in the Branch Office Agreement and Section 691 of the General Business Law; and
4. Such other and further relief as the Panel deems just and proper.

In their Reply, Wasserman and Gross requested that the Third-Party Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of the Respondents, the undersigned arbitrators (the "Panel") determined that Shanley and Skelly have been properly served with the Third-Party Claim, and that arbitration of the matter would proceed without Shanley and Skelly present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

By Notice dated April 16, 2002, Respondents advised NASD Dispute Resolution that they were dismissing their Third-Party Claim against Wasserman and Hack.

Wasserman, Gross, Shanley, Skelly, and Hack did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

The Panel denied Claimant's Motion for Default.

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Cassese and Finnan are jointly and severally liable for and shall pay to Claimant the sum of \$363,228.85 as compensatory damages.
2. Claimant is liable and shall pay to Cassese and Finnan, jointly and severally, the sum of \$369,405.76 as compensatory damages.
3. Parties shall satisfy this award by Claimant paying to Cassese and Finnan, jointly and severally, the sum of \$6,176.91.
4. Claimant's request for punitive damages is denied.
5. All other requests for relief are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 500.00
Counterclaim filing fee	= \$ 500.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, Walsh Manning Securities, LLC and Morgan Wilshire Securities, Inc. are parties.

Walsh Manning Securities, LLC

Member surcharge	= \$ 2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

Morgan Wilshire Securities, Inc.

Member surcharge	= \$ 2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

Adjournment Fees

Adjournments requested during these proceedings:

Aug. 7, 8 & 9, 2001, adjournment by Respondents	= \$ 1,000.00
Dec. 17, 18 & 19, 2001, adjournment by Cassese	= WAIVED

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) Pre-hearing sessions with Panel x \$1,000.00	= \$ 4,000.00
Pre-hearing conferences:	
October 17, 2000	1 session
November 20, 2000	1 session
November 22, 2000	1 session
August 1, 2001	1 session

Twenty-eight (28) Hearing sessions x \$1,000.00 = \$28,000.00

Hearing Dates:	October 29, 2001	2 sessions
	October 30, 2001	2 sessions
	October 31, 2001	1 session
	January 28, 2002	2 sessions
	January 29, 2002	2 sessions
	January 30, 2002	2 sessions
	January 31, 2002	2 sessions
	April 23, 2002	2 sessions
	April 24, 2002	2 sessions
	April 25, 2002	2 sessions
	April 26, 2002	1 session
	August 8, 2002	2 sessions
	August 9, 2002	2 sessions
	August 12, 2002	2 sessions
	August 13, 2002	2 sessions

Total Forum Fees = \$32,000.00

1. The Panel has assessed \$16,000.00 of the forum fees against Claimant.
2. The Panel has assessed \$16,000.00 of the forum fees jointly and severally against Cassese and Finnan.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimant, requested tapes, \$675.00.
2. Respondents, requested tapes, \$495.00.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
Member Fees	= \$ 7,600.00
Forum Fees	= \$16,000.00
<u>Administrative Costs</u>	<u>= \$ 675.00</u>
Total Fees	= \$24,775.00
<u>Less payments</u>	<u>= \$ 7,125.00</u>
Balance Due NASD Dispute Resolution	= \$17,650.00

2. Morgan is solely liable for:

<u>Member Fees</u>	<u>= \$ 7,600.00</u>
Total Fees	= \$ 7,600.00
<u>Less payments</u>	<u>= \$ 7,600.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Cassese and Finnan are jointly and severally liable for:

Counterclaim Filing Fee	= \$ 500.00
Forum Fees	= \$16,000.00
Total Fees	= \$16,500.00
<u>Less payments</u>	<u>= \$ 4,400.00</u>
Balance Due NASD Dispute Resolution	= \$12,100.00

4. Respondents are jointly and severally liable for:

Adjournment Fee	= \$ 1,000.00
<u>Administrative Costs</u>	<u>= \$ 495.00</u>
Total Fees	= \$ 1,495.00
<u>Less payments</u>	<u>= \$ 1,495.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

W. Jeffrey Weinlandt	-	Non-Public Arbitrator, Presiding Chair
Dean E. Kois	-	Non-Public Arbitrator
Paul Karischak	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

W. Jeffrey Weinlandt
W. Jeffrey Weinlandt
Non-Public Arbitrator, Presiding Chair

October 31, 2002
Signature Date

Dear E. Kois
Non-Public Arbitrator

Signature Date

Paul Kanischak
Non-Public Arbitrator

Signature Date

November 21, 2002
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL


W. Jeffrey Weinlandt	-	Non-Public Arbitrator, Presiding Chair
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Paul Kanischak	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

W. Jeffrey Weinlandt
Non-Public Arbitrator, Presiding Chair

Signature Date


Dean E. Kois
Non-Public Arbitrator

11/4/02
Signature Date

Paul Kanischak
Non-Public Arbitrator

Signature Date

November 21, 2002
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

W. Jeffrey Weinlandt	-	Non-Public Arbitrator, Presiding Chair
Dean E. Kois	-	Non-Public Arbitrator
Paul Kanischak	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

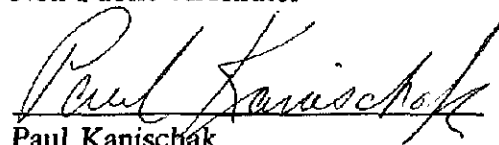
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

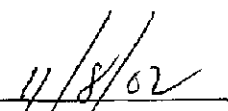
W. Jeffrey Weinlandt
Non-Public Arbitrator, Presiding Chair

Signature Date

Dean E. Kois
Non-Public Arbitrator

Signature Date


Paul Kanischak
Non-Public Arbitrator


Signature Date

November 21, 2002
Date of Service (For NASD Dispute Resolution use only)