

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

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In the Matter of the Arbitration Between

**Name of Claimant**

David Jaffit, Trustee  
for The Abby Trust

Case No. 99-01582

**Names of Respondents**

Vincent Albanese  
Morgan Taylor f/k/a European Community  
Capital, Ltd.

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**REPRESENTATION OF PARTIES**

For David Jaffit, Trustee for the Abby Trust ("Jaffit") hereinafter referred to as "Claimant":  
David M. Garvin, Esq., Miami, Florida.

For Vincent Albanese ("Albanese") and Morgan Taylor f/k/a European Community Capital,  
Ltd. ("Morgan Taylor"), hereinafter collectively referred to as "Respondents": Charles M.  
O'Rourke, Esq., Woodbury, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: April 5, 1999

Claimant Jaffit signed the Uniform Submission Agreement: February 26, 1999.

Statement of Answer filed by Respondents on or about: October 27, 1999.

Respondent Albanese signed the Uniform Submission Agreement: October 22, 1999.

Respondent Morgan Taylor signed the Uniform Submission Agreement: October 22, 1999.

**CASE SUMMARY**

Claimant asserted the following: Claimant was solicited by Respondent Morgan Taylor to open a securities account. In or around the beginning of 1998, Claimant opened an account and purchased approximately \$65,000.00 of securities. Respondent Albanese was the account executive that handled Claimant's account. By June 10, 1998, the value of Claimant's account had decreased to \$45,332.50. On June 10, 1998, Claimant wrote to the manager at Respondent Morgan Taylor and directed him to liquidate the account and forward the proceeds to Mr. Jaffit's bank account. Respondents sold the stock but did not return the funds as directed. Respondent Albanese contacted Claimant and asserted that the money should not be taken out of the account at Respondent Morgan Taylor and insisted that the funds be used to purchase stock in Paradise Holdings, Inc. Respondent Albanese represented

that the purchase of Paradise Holdings, Inc. stock would result in profits for Claimant which would make up for the losses sustained by Claimant to that date. Claimant acquiesced and Respondent purchased \$45,332.50 of Paradise Holdings, Inc. stock on behalf of Claimant. By August 1998, the value of the account was zero. Claimant asserted that Respondents failed to follow his clear unambiguous written directions and made improper representations to Claimant to keep him from transferring his funds away from Respondent Morgan Taylor.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following: Claimant consented to the purchase of the Paradise Holdings, Inc. stock; Claimant's instructions were not followed because Respondents and Claimant agreed not to follow them; and Claimant did not complain about the purchase until after its stock price declined.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$45,332.50, plus interest, attorneys' fees and the costs of the proceeding.

Respondents requested that the case be dismissed in its entirety and that the costs of this action, including legal fees, be assessed against Claimant.

### **OTHER ISSUES CONSIDERED AND 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.

At the commencement of the August 16, 2000 hearing, Claimant requested a ruling on a previously filed Motion to Compel Production of Tape Recordings which recorded a conversation between the Claimant and Respondents. The Panel granted the Motion. Respondents complied and the tape recording was entered into evidence.

### **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:

Respondents are liable, jointly and severally, and shall pay to Claimant the sum of \$40,000.00 plus interest at the rate of 10% per annum from June 10, 1998 until the date of payment of the Award.

The parties submitted the issue of attorneys' fees to the Panel to decide. The Arbitrators requested the parties to produce legal authority for the award of attorneys' fees. Neither party produced such legal authority. In the Claimant's Motion for Attorneys' Fees and Costs, the Claimant alleged no statutory violation of law which provided for an award of

attorneys' fees, nor did either party produce any contract which provided for an award of attorneys' fees to the prevailing party. Accordingly, Claimant's Motion for Attorneys' Fees is denied and Respondents' request for attorneys' fees is denied.

Respondents are liable, jointly and severally, and shall pay to Claimant the sum of \$175.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution, Inc.

All other requests for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$175.00
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#### **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 person at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,000.00

#### **Adjournment Fees**

No adjournments were requested during these proceedings.

#### **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:

One (1) Pre-hearing session with Panel x \$600.00	= \$600.00
Pre-hearing conference: March 28, 2000	1 session
Two (2) Hearing sessions x \$600.00	= \$1,200.00
Hearing Date: August 16, 2000	2 sessions
Total Forum Fees	= \$1,800.00

The Panel has assessed \$1,800.00 of the forum fees, jointly and severally, to Respondents Morgan Taylor and Albanese.

### 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.

No administrative costs were incurred during these proceedings.

### Fee Summary

Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$175.00
Total Fees	= \$175.00
<u>Less payments</u>	= \$175.00
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

Respondent Morgan Taylor be and hereby is solely liable for:

<u>Member Fees</u>	= \$2,400.00
Total Fees	= \$2,400.00
<u>Less payments</u>	= \$1,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 800.00

Respondents Morgan Taylor and Albanese be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$1,800.00
Total Fees	= \$1,800.00
<u>Less payments</u>	= \$0.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,800.00

All balances are due and payable to NASD Dispute Resolution, Inc.

### Concurring Arbitrators' Signatures

/s/  
Bonnie A. Pearce  
Public Arbitrator, Presiding Chair

September 27, 2000  
Signature Date

/s/  
Stuart Alan, Ph.D  
Public Arbitrator

September 29, 2000  
Signature Date

/s/  
Ernest Steve ZumTobel  
Industry Arbitrator

October 3, 2000  
Signature Date

October 3, 2000  
Date of Service (For NASD-DR office use only)

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Bonnie A. Pearce  
Public Arbitrator, Presiding Chair

09-27-00  
Signature Date

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Stuart Alan, Ph.D  
Public Arbitrator

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

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Public Arbitrator, Presiding Chair

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

  
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Stuart Alan, Ph.D  
Public Arbitrator

9-29-00  
Signature Date



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Ernest Steve ZumTobel  
Industry Arbitrator

10/03/00

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Signature Date

Date of Service (For NASD-DR office use only)