

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Ian R. West, (Claimant) vs. Pacific Cortez Securities Incorporated, Michael DiFrancesca, George H. Malagon, Jr., Harold B.J. Gallison, Alfonso Burgos, and Gregory K. Mehlmann, (Respondents)

Case Number: 99-02201

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Ian R. West, hereinafter referred to as "Claimant": Ralph A. Gant, Esq., a sole practitioner, New York, NY.

Respondent, George H. Malagon, Jr. ("Malagon"): Mauricio A. Malagon, Esq., Malagon & Nuzzo Esqs., New York, NY.

Respondent, Gregory K. Mehlmann ("Mehlmann"), appeared *pro se*.

Respondents, Harold B. J. Gallison ("Gallison"), Michael DiFrancesca ("DiFrancesca"), Alfonso Burgos ("Burgos"), and Pacific Cortez Securities Incorporated ("Cortez"), did not enter appearances in this matter.

CASE INFORMATION

Statement of Claim filed on or about: May 11, 1999.

Claimant signed the Uniform Submission Agreement: June 30, 1999.

Statement of Answer and Cross-claim filed by Malagon on or about: December 21, 1999.

Malagon signed the Uniform Submission Agreement.

Statement of Answer filed by Mehlmann on or about: August 20, 1999.

Mehlmann signed the Uniform Submission Agreement: August 20, 1999.

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

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

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

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

CASE SUMMARY

Claimant asserted the following causes of action: unauthorized transactions; failure to properly supervise; manipulation of penny stock prices; and violations of securities industry regulations.

Unless specifically admitted in his Answer, Malagon denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a cause of action against Malagon; Claimant failed to mitigate his damages; Claimant failed to sufficiently and properly particularize his claim against Malagon; Claimant's allegations are barred by the doctrines of ratification, waiver, and estoppel; Claimant sustained no compensable damages; Claimant's losses, if any, were caused solely by the market forces; Claimant was aware of the risks of purchasing the securities in question; at all times Malagon acted within the laws, rules and regulations, and industry customs applicable to the transactions at issue; and any losses suffered by Claimant were caused by individuals or entities other than Malagon.

In his Cross-claim, Malagon asserted the following causes of action: any damages sustained by Claimant were caused in whole or in part by reason of the misrepresentations, breach, and/or negligence of any and all of the Co-Respondents herein, with no misrepresentations, breach, or negligence on behalf of Malagon.

RELIEF REQUESTED

Claimant requested:

- (i) Out-of-pocket damages in the amount of \$98,550.00;
- (ii) Interest at the rate of 9% per annum beginning April 30, 1998;
- (iii) Punitive damages in an amount to be determined by the Panel;
- (iv) Referral to the NASD Enforcement Division, the Securities and Exchange Commission, and other regulatory agencies;
- (v) Reasonable attorneys' fees;
- (vi) Arbitration costs; and
- (vii) Such other relief as the Panel may find appropriate.

Malagon requested:

- (i) That the claims asserted against him be denied in their entirety and that his CRD be expunged; or in the alternative
- (ii) In the event Claimant shall have any recovery as a result of the allegations made herein, an order or judgement reducing such recovery by the extent to which Claimant's culpable conduct and failure to mitigate damages caused or contributed to his alleged loss and claim for damages; or judgement on the Cross-claim against Co-Respondents for contribution and/or indemnity; or for an order apportioning the liability of the Respondents, and for such further relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Gallison and DiFrancesca have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Gallison, DiFrancesca, Burgos, and Cortez did not file with NASD Dispute Resolution, Inc. 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.

This matter was unable to proceed against Cortez pursuant to a stay ordered by the Superior Court of the State of California.

Prior to the hearings in this matter, Claimant withdrew his claims against Burgos and Mehlmann.

During the hearings in this matter, Claimant made a motion for default judgement against Gallison and DiFrancesca. The Panel's decision is reflected in the "Award" section below.

During the hearings in this matter, Malagon made a motion for default judgement on his Cross-claim against Gallison and DiFrancesca. The Panel's decision is reflected in the "Award" section below.

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

1. Gallison and DiFrancesca be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$93,550.76 as compensatory damages, plus interest at the rate of 9% per annum accruing from April 30, 1998 until payment.
2. Gallison and DiFrancesca be and hereby are jointly and severally liable for and shall pay to Malagon the sum of \$3,333.33, plus interest at the rate of 9% per annum accruing from April 30, 1998 until payment.
3. Claimant's request for punitive damages is hereby denied.
4. Gallison, DiFrancesca, and Malagon be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$225.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution, Inc.
5. All other requests for relief are hereby 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	= \$ 225.00
Cross-claim filing fee	= \$ 225.00

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:

Two (2) Pre-hearing sessions with Panel x \$750.00	= \$1,500.00
Pre-hearing conferences: June 19, 2000	1 session
September 15, 2000	1 session

One (1) Hearing session x \$750.00	= \$ 750.00
Hearing Date: September 14, 2000 1 session	
Total Forum Fees	= \$2,250.00

The Panel has assessed all of the forum fees jointly and severally against Gallison, DiFrancesca, and Malagon.

Fee Summary

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 225.00
Total Fees	= \$ 225.00
<u>Less payments</u>	= \$ 975.00
Refund Due Claimant	= \$ 750.00

As stated in the "Award" section above, Gallison, DiFrancesca, and Malagon are jointly and severally liable for and shall reimburse Claimant for the \$225.00 filing fee.

2. Malagon be and hereby is solely liable for:

<u>Cross-claim Filing Fee</u>	= \$ 225.00
Total Fees	= \$ 225.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 225.00

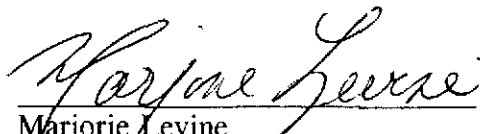
3. Gallison, DiFrancesca, and Malagon be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$2,250.00
Total Fees	= \$2,250.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,250.00

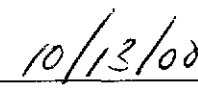
All balances are due and payable to NASD Dispute Resolution, Inc.

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.



Marjorie Levine
Public Arbitrator, Presiding Chair



Signature Date

Bruce S. Boltuch
Public Arbitrator

Signature Date

Henry F. Minnerop, Esq.
Industry Arbitrator

Signature Date

October 18, 2000

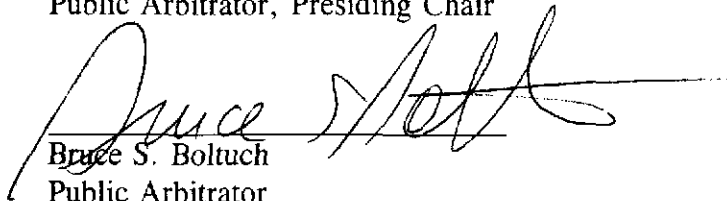
Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

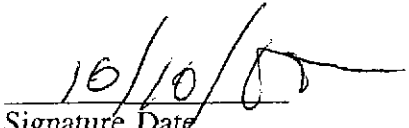
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Marjorie Levine
Public Arbitrator, Presiding Chair

Signature Date



Bruce S. Boltuch
Public Arbitrator



Signature Date

Henry F. Minnerop
Industry Arbitrator

Signature Date

October 18, 2000
Date of Service (For NASD office use only)

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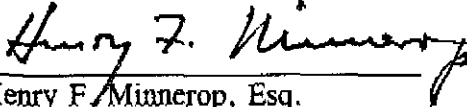
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Marjorie Levine
Public Arbitrator, Presiding Chair

Signature Date

Bruce S. Boltuch
Public Arbitrator

Signature Date


Henry F. Minnerop, Esq.
Industry Arbitrator

10/10/00
Signature Date

October 18, 2000
Date of Service (For NASD office use only)