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

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In the Matter of the Arbitration Between:

Chris Dishman and Karen Dishman,  
Claimants

Vs.

First Montauk Securities Corp. and Dwight S. Jones,  
Respondents.

Case Number: 99-04543

Hearing Site: Houston, Texas.

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**REPRESENTATION OF PARTIES**

Neil S. Baritz, Esq. of Dreier & Baritz, Boca Raton, Florida, represented Claimants Chris and Karen Dishman ("Claimants").

Roni J. Hardy, Esq. of Santa Monica, California represented Respondent Dwight Sean Jones, ("Jones").

Lloyd S. Clareman, Esq. of New York, New York represented Respondent First Montauk Securities Corp. ("First Montauk").

**CASE INFORMATION**

Statement of Claim filed on or about: October 29, 1999.

Claimants Chris and Karen Dishman signed the Uniform Submission Agreement on September 2, 1999.

Respondent Jones filed his Statement of Answer on or about: February 10, 2000.  
Respondent Jones did not file a signed Uniform Submission Agreement.

Respondent First Montauk filed a Statement of Answer on or about January 20, 2000.  
Respondent First Montauk signed the Uniform Submission Agreement on or about: January 13, 2000.

### CASE SUMMARY

Claimants asserted the following causes of action against Respondents, Jones and First Montauk: Suitability, Unauthorized Trading, Churning, Breach of Fiduciary Duty, Breach of Contract, Negligence, Misrepresentation and Failure to Supervise. All of Claimants' allegations relate to the purchase and sale of Common stock.

Unless specifically admitted in the Statement of Answer, Respondent First Montauk denied the allegation set forth in the Statement of Claim and asserted the following affirmative defenses:

1. All claims with respect to the First Montauk Account are barred by waiver, estoppel and ratification, by reason of Claimants receipt of confirmations and monthly statements detailing each and every transaction of which they now complain;
2. All claims with respect to the First Montauk Account are barred for lack of damages;
3. Claimants lack standing to bring any claims against First Montauk with respect to the Sunrise hedge fund due to the fact that there is no privity or legal relationship between Claimants and Respondent First Montauk in connection with the Sunrise hedge fund;
4. Claimants claims with regard to the Sunrise hedge fund are barred on the ground that any alleged oral misrepresentations were superseded by full written disclosure in the form of the offering memorandum, subscription agreement, and related documentation; and by the doctrines of waiver, estoppel and ratification associated therewith;
5. Claimants' losses in connection with the Sunrise hedge fund were caused by the very risk factors which were disclosed to them and which they were required to have expressly agreed to undertake in connection with their investment in Sunrise;
6. Claimants' claims are barred in whole or in part by the applicable statutes of limitations;
7. Any claims for negligence are barred by Claimants' comparative and/or contributory fault; and
8. Attorney's fees may not be awarded against Respondent First Montauk in this matter, as there is no contractual or statutory basis cited in the Statement of Claim for doing so
9. Punitive damages are barred under applicable state law and under the due process clause of the Constitution; and respondent First Montauk does not agree to submit those claims to arbitration.

Unless specifically admitted in his Statement of Answer, Respondent Jones denied all allegations set forth in the Statement of Claim and asserted the following affirmative defenses:

1. All claims with respect to Respondent Jones are barred by waiver, estoppel and ratification, by reason of Claimants receipt of confirmations and monthly statements detailing each and every transaction of which they now complain;
2. All claims which allege damages against Respondent Jones are barred for lack of damages;
3. Claimants' claims with regard to the Sunrise hedge fund are barred on the ground that any alleged oral misrepresentations were superseded by full written disclosure in the form of the offering Memorandum, subscription agreement and related documentation and by the doctrines of waiver, estoppel and ratification associated therewith,
4. Claimants' losses in connection with the Sunrise hedge fund were caused by the very risk factors which were disclosed to Claimants and which Claimants were required as a prerequisite to have expressly agreed to undertake in connection with Claimants investment in Sunrise.
5. The claims in this matter are barred in whole or in part by the applicable statute of limitations.
6. Any claims for negligence are barred by Claimants and each of their comparative and/or contributory fault; and
7. Upon findings of fact and conclusions of law in the favor of Respondent Jones in this matter, Respondent Jones and/or Sunrise is entitled to reasonably incurred attorney's fees and costs during the course of this matter, as the prevailing parties.

#### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$750,000.00
Attorney's Fees	unspecified
Interest	unspecified
Costs	unspecified

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

Respondent Jones did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and having answered the claim, is bound by the determination of the Panel on all issues submitted. Respondent First Montauk Securities Corp. was dismissed from this action by Claimants on January 8, 2001.

#### **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. Respondent Dwight Jones is solely liable for and shall pay to the Claimants Chris and Karen Dishman the sum of \$396,500 (Three

Hundred and Ninety Six Thousand, Five Hundred Dollars) as  
Compensatory Damages.

2. Respondent Dwight Sean Jones is solely liable for and shall pay to the Claimants Chris and Karen Dishman, interest in the amount of 6% per annum on \$21,500 of the Damages awarded in Paragraph 1 above. This Interest shall accrue from June 1, 1998 and will cease to accrue on July 30, 2001. Additionally, Respondent shall pay to the Claimants Cris and Karen Dishman interest in the amount of 6% per annum on \$375,000 of the Damages awarded in Paragraph 1 above. This Interest shall accrue from February 1, 1997 and will cease to accrue on July 30, 2001.
3. Except as otherwise specified herein, each party shall bear its own costs.
4. Any and all relief not specifically addressed herein is 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	= \$375
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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 firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm was Respondent First Montauk Securities Corp.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$600.00
Hearing Processing fee	= \$3,500.00

#### **Adjournment Fees**

The Claimants requested an adjournment the October 10-13, 2000 hearing dates

Total Fees	= 1,200.00
Less Payments	= 1,200.00
Amount due to NASD-DR	= 00

**Forum Fees and Assessments**

The arbitrator has the authority to assess forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the Arbitrator that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing session(s) with Panel x \$1,200	= \$ 2,400.00
Pre-hearing conference(s): June 21, 2000	1 session
September 29, 2000	1 session

Ten (12) Hearing sessions x \$1,200	= \$12,000.00
Hearing Date(s): January 16, 2001	2 sessions
January 17, 2001	2 sessions
January 18, 2001	2 sessions
May 7, 2001	2 sessions
July 30, 2001	2 sessions

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Total Forum Fees	= \$14,400.00
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1. The Panel has assessed \$11,520.00 of the forum fees incurred in this arbitration to Respondent Dwight Sean Jones.
2. The Panel has assessed \$2,880.00 of the forum fees incurred in this arbitration to Claimants Chris and Karen Dishman.

**Fee Summary**

1. Claimants Chris and Karen Dishman, be and hereby are jointly and severally liable for:

Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$ 2,880.00
Initial Filing Fee	= \$ 375.00
Total Fees	= \$ 4,455.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,880.00

2. Respondent First Montauk Securities, be and hereby is solely liable for:

Member Fees	= \$6,100.00
Total Fees	= \$6,100.00
Less payments	= \$2,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,500.00

3. Respondent Dwight Jones, be and hereby is solely liable for:

Forum Fees	= \$11,520.00
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Total Fees	= \$11,520.00
<u>Less payments</u>	= \$ .00
Balance Due NASD Dispute Resolution, Inc.	= \$11,520.00

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Denis H. Taylor, Esq.	-	Public, Presiding Chair
Leonard S. Alpert	-	Public Arbitrator
Charles A. Bankston	-	Non-Public Arbitrator

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Denis H. Taylor, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Leonard S. Alpert  
Public Arbitrator

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

\_\_\_\_\_  
Charles A. Bankston  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD-Dispute Resolution office use only)

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Arbitration # 99-04543  
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Balance Due NASD Dispute Resolution, Inc. = \$3,500.00

3. Respondent Dwight Jones is solely liable for:

Forum Fees	= \$11,520.00
Total Fees	= \$11,520.00
Less payments	= \$ .00
Balance Due NASD Dispute Resolution, Inc.	= \$11,520.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Dennis H. Taylor, Esq. - Public Arbitrator, Presiding Chair  
Leonard S. Alpert - Public Arbitrator  
Charles A. Bankston - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Dennis H. Taylor  
Dennis H. Taylor, Esq.  
Public Arbitrator, Presiding Chair

9/21/01  
Signature Date

\_\_\_\_\_  
Leonard S. Alpert  
Public Arbitrator

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

\_\_\_\_\_  
Charles A. Bankston  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD-Dispute Resolution office use only)

FROM : LEONARD ALPERT  
08/24/01 MON 10:28 FAX

FAX NO. : 7135410298  
NASD REGULATION

Sep. 24 2001 11:41AM P2  
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EP-21-01 FRI 04:49 PM  
09/21/01 FRI 11:19 FAX

FAX:  
NASD REGULATION

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Balance Due NASD Dispute Resolution, Inc. = \$3,500.00

3. Respondent Dwight Jones is solely liable for:

Forum Fees	= \$11,520.00
Total Fees	= \$11,520.00
Less Payments	= \$ .00
Balance Due NASD Dispute Resolution, Inc.	= \$11,520.00

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Leonard S. Alpert - Public Arbitrator  
Charles A. Bankston - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Dennis H. Taylor  
Dennis H. Taylor, Esq.  
Public Arbitrator, Presiding Chair

9/21/01  
Signature Date

Leonard S. Alpert  
Leonard S. Alpert  
Public Arbitrator

9/22/01  
Signature Date

Charles A. Bankston  
Charles A. Bankston  
Non-Public Arbitrator

                      
Signature Date

                      
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09/24/01 MON 10:35 FAX

NASD REGULATION

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NASD REGULATION

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 Arbitration # 99-04543  
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Balance Due NASD Dispute Resolution, Inc. = \$3,500.00

3. Respondent Dwight Jones is solely liable for:

Forum Fees	= \$11,520.00
Total Fees	= \$11,520.00
Less Payments	= \$ .00
Balance Due NASD Dispute Resolution, Inc.	= \$11,520.00

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Dennis H. Taylor, Esq. - Public Arbitrator, Presiding Chair  
 Leonard S. Alpert - Public Arbitrator  
 Charles A. Bankston - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Dennis H. Taylor  
 Dennis H. Taylor, Esq.  
 Public Arbitrator, Presiding Chair

9/21/01

Signature Date

Leonard S. Alpert  
 Leonard S. Alpert  
 Public Arbitrator

Signature Date

Charles A. Bankston  
 Charles A. Bankston  
 Non-Public Arbitrator

09/24/01  
 Signature Date

Date of Service (For NASD-Dispute Resolution office use only)