

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 99-05501

Paul Satterfield and Toy Satterfield

Names of the Respondents

Hearing Site: Boca Raton, Florida

Whale Securities Co., L.P. n/k/a
Bluestone Capital Corp., Evan E.
Gappelberg, William George Walters,
Donald Joseph O'Connor, William
Joseph McSherry and George Karfunkel

Nature of the Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

For Paul Satterfield and Toy Satterfield, hereinafter collectively referred to as "Claimants": Michael Huberman, Esq., Huberman & Associates, La Quinta, California.

For Respondents Whale Securities Co., L.P. n/k/a Bluestone Capital Corp. ("Whale"), William George Walters ("Walters"), Donald Joseph O'Connor ("O'Connor") and William Joseph McSherry ("McSherry"): David Richan, Esq., Blank Rome, LLP, New York, New York and Neil S. Baritz, Esq., Baritz & Colman, LLP, Boca Raton, Florida.

For Respondent Evan E. Gappelberg ("Gappelberg"): Scott M. Zucker, Esq., Lake Success, New York.

For Respondent George Karfunkel ("Karfunkel"): Bruce A. Katzen, Esq., Kluger, Peretz, Kaplan & Berlin, P.A., Miami, Florida.

CASE INFORMATION

Statement of Claim filed on or about: December 8, 1999.

Claimants signed the Uniform Submission Agreement: November 23, 1999.

Statement of Answer filed by Respondent Gappelberg on or about: February 15, 2000.

Statement of Answer filed by Respondent Whale on or about: March 2, 2000.

Respondent Gappelberg signed the Uniform Submission Agreement: February 16, 2000.

Final Motion for Production and Summary Award filed by Claimants on or about: September 13, 2001.

Response to Claimants' Final Motion for Production and Summary Award filed by Respondent Whale on or about: September 14, 2001.

Claimants' Request to Vacate Order Regarding Past Discovery Owed to Respondents, Request for Past Discovery Owed to Claimants, Request to Add Parties, Request to Add One Cause of Action to Statement of Claim and Request to Update the Conclusion and Damages in the

Statement of Claim filed on or about: April 28, 2002.

Opposition to Claimants' Motion to Amend Claim and Compel Discovery filed by Respondent Whale on or about: June 5, 2002.

Arguments in Support of Adding Control Persons and Compelling Discovery filed by Claimants on or about: June 28, 2002.

Reply in Further Opposition to Claimants' Motion to Amend the Statement of Claim filed by Respondent Whale on or about: July 9, 2002.

Proposed Amendment of Claim filed by Claimants on or about: July 12, 2002.

Amendment of Claim filed by Claimants on or about: August 21, 2002.

Answer and Motion to Dismiss Amendment of Claim filed by Respondents Whale, McSherry, O'Connor and Walters on or about: November 8, 2002.

Motion to Dismiss, Motion to Quash, Answer, Defenses and Demand for Attorney's Fees filed by Respondent Karfunkel on or about: November 22, 2002.

Respondent Karfunkel signed the Uniform Submission Agreement: November 22, 2002.

Response in Opposition to the Motion by Respondents Whale, McSherry, O'Connor and Walters to Dismiss the Amended Claim filed by Claimants on or about: June 13, 2003.

Motion for Partial Summary Judgment With Findings of Fact and Conclusions of Law filed by Claimants on or about: June 24, 2003.

Respondents Whale, McSherry, O'Connor and Walters did not file executed Uniform Submission Agreements.

CASE SUMMARY

Claimants asserted the following causes of action: control person liability; claim under Section 415.1111 of the Florida Statutes; respondeat superior; unsuitability; failure to diversify; misrepresentation; and, failure to supervise. The causes of action relate to the purchase and sale of shares of WS Visual Edge Systems, Inc. and Apparel Technologies, Inc. stock in Claimants' account.

Unless specifically admitted in his Answer, Respondent Gappelberg denied the allegations made in the Statement of Claim and asserted various defenses.

Unless specifically admitted in their Answers, Respondents Whale, McSherry, O'Connor and Walters denied the allegations made in the Statement of Claim and Amended Statement of Claim, asserted various defenses and filed a motion to dismiss the Amended Statement of Claim on the following bases: any control person liability claims were barred by the applicable statute of limitations; Respondents Walters, McSherry and O'Connor did not have supervisory authority over Claimants' account representative; Respondents Walters, McSherry and O'Connor had no respondeat superior liability to Claimants; and, Claimants had not set forth any facts which would permit a claim under Section 415.1111 of the Florida Statutes.

Unless specifically admitted in his Answer, Respondent Karfunkel denied the allegations made in the Amended Statement of Claim, asserted various defenses and filed a motion to dismiss the Amended Statement of Claim on the following bases: the Panel had no jurisdiction over Respondent as he was not a broker or member of the NASD; claims as to Respondent Karfunkel were barred as a matter of law; Respondent Karfunkel was not a control person in this matter

as he had no relationship to Respondent Whale during the time period at issue; and, adding Respondent Karfunkel after three years of proceedings in this matter was a denial of his due process rights.

In response to Respondents Whale, McSherry, O'Connor and Walters' motion to dismiss, Claimants denied the assertions therein.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$279,357.00, lost interest from September 26, 1997 to September 15, 1998 in the amount of \$32,388.00, lost income in the amount of \$114,272.00, punitive damages in the amount of \$838,071.00 plus attorney's fees and costs in the amount of \$442,430.00.

Respondent Gappelberg requested that the Statement of Claim be dismissed in its entirety.

Respondents Whale, McSherry, O'Connor and Walters requested that Claimants' Amended Statement of Claim be dismissed, plus costs, attorneys' fees and any other relief deemed just and proper.

Respondent Karfunkel requested that the Panel dismiss Claimants' claims as to Respondent Karfunkel or determine no liability as to Respondent Karfunkel and award him costs and attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Whale, McSherry, O'Connor and Walters did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, are bound by the determinations of the Panel on all issues submitted.

On or about May 7, 2001, Claimants filed a Motion to Compel un-redacted copies of the confirmation slips with respect to the APTX shares. In addition, Claimants requested that they be awarded sanctions in the amount of \$1,500.00 against Respondent Whale due to its failure to comply with the Panel's February 20, 2001 order to produce the fifteen confirmation slips with respect to the APTX shares. On or about May 8, 2001, Respondent Whale objected to same. On or about May 15, 2001, the Panel issued an order which granted Claimants' Motion to Compel un-redacted copies of the confirmation slips and granted Claimants' request for sanctions in the amount of \$1,500.00 against Respondent Whale for its failure to comply with the Panel's February 20, 2001 order.

On or about July 30, 2001, the Panel issued an order which directed all parties to comply with all outstanding discovery requests by August 13, 2001. Thereafter, on or about October 23, 2001, Respondent Gappelberg filed a Motion to Compel and asserted that Claimants had not complied with the Panel's July 30, 2001 order. On or about October 24, 2001 Claimants filed their response to same stating that they had provided all documentation in their possession. On

or about October 25, 2001, Respondent Whale joined in Respondent Gappelberg's motion. On or about November 1, 2001, the Panel issued an order which directed Claimants to produce all requested discovery by not later than January 1, 2002 and assessed sanctions in the amount of \$1,500.00 against Claimants for their failure to produce the state and federal tax returns for the years 1992, 1993 and 1994 as they were previously ordered to produce.

On or about October 15, 2001, the Panel issued an order which deferred ruling on Claimants' Final Motion for Production and denied Claimants' request for a Summary Award.

On or about June 29, 2002, the Panel issued an order which granted Claimants' Motion to Amend the Statement of Claim.

On or about August 12, 2002, Claimants notified NASD Dispute Resolution that the claims against Respondent Gappelberg were withdrawn, with prejudice.

On or about June 16, 2003, the Panel issued an order which granted Respondent Karfunkel's Motion to Dismiss, without prejudice. Further, said order denied the Motions to Dismiss filed by Respondents McSherry, O'Connor and Walters.

On or about July 17, 2003, the Panel issued an order which denied Claimants' Motion for Partial Summary Judgment.

During the evidentiary hearing on October 14, 2003, Claimants dismissed Respondents O'Connor and McSherry, with prejudice.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

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:

The Panel finds no liability on all counts with respect to Respondent Walters.

Respondent Karfunkel is dismissed, with prejudice.

The Panel finds for and awards to Claimants compensatory damages in the amount of \$224,357.00 against Respondent Whale on the claims of unsuitability and failure to supervise.

Respondent Whale is liable and shall pay to Claimants pre-judgment interest in the amount of \$52,723.90.

Respondent Whale is liable and shall pay to Claimants the sum of \$500.00 representing reimbursement of the claim filing fee previously paid by Claimants to NASD Dispute Resolution.

The Panel finds insufficient evidence to award costs. Therefore, the claims for costs are denied.

The claims for attorneys' fees are denied.

Respondent Whale is liable and shall pay to Claimants the amount of \$1,500.00 representing the sanctions assessed by the Panel in its May 15, 2001 order.

The Panel's order dated November 1, 2001 assessing sanctions against Claimants in the amount of \$1,500.00 is vacated.

Any and all claims for relief not specifically addressed herein, including Claimants' requests for punitive damages and for damages pursuant to Section 415.1111 of the Florida Statutes, 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
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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 that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

January 9-11, 2001, adjournment requested by Respondent Whale	= \$1,200.00
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The Panel assessed the \$1,200.00 adjournment fee against Respondent Whale.

November 12-16, 2001, second adjournment requested by Respondent Whale	= \$1,500.00
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The Panel assessed the \$1,500.00 adjournment fee against Respondent Whale.

April 21-24, 2003, adjournment requested by Claimants and Respondents Whale, Karfunkel, McSherry, O'Connor and Walters	= \$1,200.00
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The Panel assessed 1/6 of the adjournment fee against each of the requesting parties.

August 4-7, 2003, adjournment requested by Claimants and Respondents Whale, McSherry, O'Connor and Walters	= \$1,200.00
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The Panel assessed 1/5 of the adjournment fee against each of the requesting parties.

Injunctive Relief Fees

No injunctive relief fees were incurred in this matter.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 a single arbitrator @ \$450.00 = \$ 900.00

Pre-hearing conferences:	January 3, 2001	1 session
	November 1, 2001	1 session

Six (6) Pre-hearing sessions with the Panel @ \$1,200.00 = \$7,200.00

Pre-hearing conferences:	June 21, 2000	1 session
	March 5, 2001	1 session
	July 30, 2001	1 session
	March 26, 2003	1 session
	June 16, 2003	1 session
	June 26, 2003	1 session

Four (4) Hearing sessions @ \$1,200.00 = \$4,800.00

Hearing Dates:	October 13, 2003	2 sessions
	October 14, 2003	2 sessions

Total Forum Fees = \$12,900.00

The Panel has assessed \$2,250.00 of the forum fees jointly and severally to Respondents Whale, McSherry, Walters, O'Connor and Gappelberg.

The Panel has assessed \$4,050.00 of the forum fees jointly and severally to Claimants.

The Panel has assessed \$1,800.00 of the forum fees jointly and severally to Respondents Whale, McSherry, Walters and O'Connor.

The Panel has assessed \$4,800.00 of the forum fees jointly and severally to Respondents Whale, O'Connor and Walters.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to: additional copies of arbitrator awards; copies of audio transcripts; retrieval of documents from archives; interpreters; and, security.

Claimants requested copies of all of the motions to dismiss filed in this matter, 63 pages @ \$0.25 per page, \$15.75.

FEE SUMMARY

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Adjournment Fee	= \$ 440.00
Forum Fees	= \$4,050.00

Administrative Costs = \$ 15.75

Total Fees = \$5,005.75

Less payments = \$1,425.00

Balance Due NASD Dispute Resolution = \$3,580.75

Respondent Whale is solely liable for:

Member Fees = \$7,600.00

Adjournment Fees = \$3,140.00

Total Fees = \$10,740.00

Less payments = \$4,095.06

Balance Due NASD Dispute Resolution = \$6,644.94

Respondent Karfunkel is solely liable for:

Adjournment Fees = \$ 200.00

Total Fees = \$ 200.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$ 200.00

Respondent McSherry is solely liable for:

Adjournment Fees = \$ 440.00

Total Fees = \$ 440.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$ 440.00

Respondent O'Connor is solely liable for:

Adjournment Fees = \$ 440.00

Total Fees = \$ 440.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$ 440.00

Respondent Walters is solely liable for:

Adjournment Fees = \$ 440.00

Total Fees = \$ 440.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$ 440.00

Respondents Whale, Gappelberg, O'Connor, Walters and McSherry are jointly and severally liable for:

Forum Fees = \$2,250.00

Total Fees = \$2,250.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$2,250.00

Respondents Whale, O'Connor, Walters and McSherry are jointly and severally liable for:

Forum Fees = \$1,800.00

Total Fees = \$1,800.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$1,800.00

Respondents Whale, O'Connor and Walters are jointly and severally liable for:

Forum Fees = \$4,800.00

Total Fees = \$4,800.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$4,800.00

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

ARBITRATION PANEL

William John DiPetrillo, Esq.	-	Public Arbitrator, Presiding Chair
Meah Dell Rothman-Tell, Esq.	-	Public Arbitrator
David L. Giertz	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/

11/11/03

William John DePetrillo, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Meah Dell Rothman-Tell, Esq.
Public Arbitrator

Signature Date

/s/

11/11/03

David L. Giertz
Non-Public Arbitrator

Signature Date

11/11/03

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

Dissenting Arbitrator's Signature

/s/

Meah Dell Rothman-Tell, Esq.
Public Arbitrator

11/12/03

Signature Date

Concurring Arbitrators' Signatures



William John DePetrillo, Esq.
Public Arbitrator, Presiding Chair

11-11-03
Signature Date

Mesh Dell Rothman-Tell, Esq.
Public Arbitrator

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Public Arbitrator

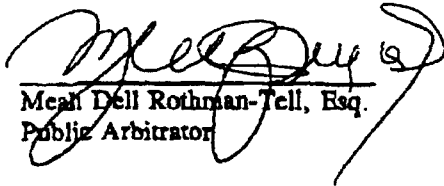
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Dissenting Arbitrator's Signature


Meah Dell Rothman-Tell, Esq.
Public Arbitrator

11/12/2003
Signature Date