

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Scott Wilbanks, Claimant v. Milestone Financial Services, Inc., Anthony James Ustica, Gregory Evan Welter, Anthony Michael Gardini, Jr. and John Charles Boylan, Respondents

Case Number: 01-05491

Hearing Site: San Francisco, California

REPRESENTATION OF PARTIES

For Claimant:

Reed H. Bement, Esq.
San Francisco, California

For Respondents:

Robert T. Sullwold, Esq.
Sullwold & Hughes
San Francisco, California

CASE INFORMATION

Statement of Claim filed: October 10, 2001

Arbitration Brief filed by Claimant: March 1, 2003

Claimant's Uniform Submission Agreement signed: October 10, 2001

Joint Statement of Answer filed by Respondents Milestone Financial Services, Inc. ("Milestone"), Anthony James Ustica, Gregory Evan Welter, Anthony Michael Gardini, Jr. and John Charles Boylan: December 27, 2001

Respondent Milestone's Uniform Submission Agreement signed: December 27, 2001

Respondent Gregory Evan Welter's Uniform Submission Agreement signed: December 27, 2001

Respondent Anthony Michael Gardini, Jr.'s Uniform Submission Agreement signed: December 31, 2001

Respondent John Charles Boylan's Uniform Submission Agreement signed: December 28, 2001

CASE SUMMARY

Claimant alleged that the above-referenced dispute involves damages suffered by Claimant as a result of Respondents making unauthorized transactions, placing Claimant in unsuitable positions, including the unauthorized use of margin and concentrating Claimant's account in one highly speculative security (EMC), and misrepresenting and failing to disclose material facts to Claimant. Claimant further alleged that Respondents violated Rules 2110, 2120, 2310, 2510 and 3010 of the Conduct Rules of the NASD, acted negligently, breached the fiduciary duty owed to Claimant and otherwise violated the law of California.

Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents also asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages of \$196,000, or according to proof, interest on the amount awarded from September 18, 2001 to the date of the award, punitive damages of \$500,000, or as determined by the arbitrators, and an amount representing a reasonable attorney's fee as determined by the arbitrators.

Respondents requested an award dismissing the Statement of Claim with prejudice and awarding to Respondents the costs of this proceeding.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Anthony James Ustica did not file with NASD Dispute Resolution ("NASD-DR") a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered Claimant's Claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On October 18, 2002, Claimant signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On December 8, 2002, Respondents' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents Milestone and Anthony James Ustica are jointly and severally liable for and shall pay to Claimant the sum of \$163,000.00 in satisfaction of Claimant's claims.
- 2) All claims by Claimant against Respondents Gregory Evan Welter, Anthony Michael Gardini, Jr. and John Charles Boylan are dismissed.
- 3) Claimant's claim for punitive damages is denied.
- 4) Each party shall bear its own costs, including attorney's fees.
- 5) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

| | |
|--------------------------|------------|
| Initial claim filing fee | = \$375.00 |
|--------------------------|------------|

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. Accordingly, Milestone is a party and the following fees are assessed:

| | |
|----------------------------|---------------------|
| Member Surcharge | = \$2,000.00 |
| Pre-Hearing Process Fee | = \$ 600.00 |
| <u>Hearing Process Fee</u> | <u>= \$3,500.00</u> |
| Total Member Fees | = \$6,100.00 |

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

| | | |
|--|------------|-------------------|
| (1) Pre-hearing conference session with the Panel @ \$1,200.00/session | = | \$1,200.00 |
| Pre-hearing conference: November 29, 2002 | 1 session | |
| (6) Hearing sessions @ \$1,200.00/session | = | \$7,200.00 |
| Hearing: April 30, 2003 | 2 sessions | |
| May 1, 2003 | 2 sessions | |
| May 2, 2003 | 2 sessions | |
| Total Forum Fees | = | \$8,400.00 |

The Panel assessed the \$8,400.00 in forum fees solely to Respondent Milestone.

The Panel waived the forum fees in connection with the pre-hearing conference held March 12, 2003.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

Claimant requested additional copies of arbitrator awards: = \$ 70.00

Fee Summary

1. Claimant is charged with the following fees and costs:

| | | |
|-----------------------------|------|------------|
| Initial Filing Fee | = \$ | 375.00 |
| <u>Administrative Costs</u> | = \$ | 70.00 |
| Total Fees | = \$ | 445.00 |
| <u>Less Payments</u> | = \$ | (1,645.00) |
| Refund Due Claimant | = \$ | (1,200.00) |

2. Respondent, Milestone, is charged with the following fees and costs:

| | | |
|-----------------------------|------|------------|
| Member Fees | = \$ | 6,100.00 |
| Forum Fees | = \$ | 8,400.00 |
| <u>Administrative Costs</u> | = \$ | 0.00 |
| Total Fees | = \$ | 14,500.00 |
| <u>Less Payments</u> | = \$ | (6,100.00) |
| Balance Due NASD-DR | = \$ | 8,400.00 |

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

ARBITRATION PANEL

| | | |
|-----------------------|---|------------------------------------|
| Lester Friedman, Esq. | - | Public Arbitrator, Presiding Chair |
| Leba G. Wine, Esq. | - | Public Arbitrator |
| Carlos Richard Mangum | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

Lester Friedman, Esq.
Chair, Public Arbitrator

Signature Date

Leba G. Wine, Esq.
Public Arbitrator

Signature Date

Carlos Richard Mangum
Non-Public Arbitrator

Signature Date

5/16/03
Date of Service

ARBITRATION PANEL

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Chair, Public Arbitrator

Signature Date



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Public Arbitrator



Signature Date

Carlos Richard Mangum
Non-Public Arbitrator

Signature Date




Date of Service

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Concurring Arbitrators' Signatures


Lester Friedman, Esq.
Chair, Public Arbitrator

5/12/03
Signature Date

Leba G. Wine, Esq.
Public Arbitrator

Signature Date

Carlos Richard Mangum
Non-Public Arbitrator

Signature Date

5/10/03
Date of Service