

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Robert A. Archer (Claimant) v. Morgan Wilshire Securities, Inc., Dimitri Metelkin, Barry F. Cassese, Michael J. Finnan, Russell J. Speranza, Charles Carrillo, and Edward C. Maher (Respondents)

Case Number: 02-02832

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant Robert A. Archer ("Archer") hereinafter referred to as "Claimant": Theodore M. Davis, Esq., Brooklyn, NY. Previously *pro se*.

Respondent Morgan Wilshire Securities, Inc. ("Morgan Wilshire"), Michael J. Finnan ("Finnan"), Russell Speranza ("Speranza"), Charles Carrillo ("Carrillo"), and Edward C. Maher ("Maher"): Charles Carrillo, Chief Compliance Officer, Morgan Wilshire Securities, Inc., Westbury, NY. Respondent Morgan Wilshire was previously represented by: David B. Dyer, Esq., Secore & Waller, L.L.P., Dallas, TX.

Respondent Dimitri Metelkin ("Metelkin") appeared *pro se*. Previously represented by: David B. Dyer, Esq., Secore & Waller, L.L.P., Dallas, TX.

Respondent Barry Cassese ("Cassese") did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: May 15, 2002.

Claimant's Response to Statement of Answer filed by Respondents Morgan Wilshire and Metelkin on or about: July 11, 2002.

Amended Statement of Claim filed by Claimant on or about: July 24, 2003.

Response to Respondents' Counterclaim filed by Claimant on or about: June 11, 2004.

Claimant signed the Uniform Submission Agreement: May 2, 2002.

Joint Statement of Answer filed by Respondents Morgan Wilshire and Metelkin on or about: July 9, 2002.

Joint Statement of Answer to the Amended Statement of Claim filed by Respondents Morgan Wilshire, Finnan, Speranza, Carrillo, and Maher on or about: October 9, 2003.

Joint Amendment to the Statement of Answer to include Counterclaims filed by Respondents Morgan Wilshire, Finnan, Speranza, Carrillo, and Maher on or about: June 2, 2004.
Respondent Carrillo signed the Uniform Submission Agreement: October 9, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: churning; breach of fiduciary duty; negligence; respondeat superior; violation of NASD rules; breach of contract; and fraud. The causes of action relate to shares of Sunhawk. Unless specifically admitted in his Response to the Counterclaim, Claimant denied the allegations made in the Counterclaim.

Unless specifically admitted in their Answer, Respondents Morgan Wilshire and Metelkin denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in their Answer to the Amended Statement of Claim, Respondents Morgan Wilshire, Finnan, Speranza, Carrillo, and Maher denied the allegations made in the Amended Statement of Claim and asserted various affirmative defenses. In their Counterclaim, Respondents Morgan Wilshire, Finnan, Speranza, Carrillo, and Maher asserted the following cause of action: claim filed in bad faith.

At the time of the hearing, Claimant reduced his claims in this matter to two basic grievances against Respondent Metelkin, the lone remaining Respondent: (1) unauthorized use of a \$30,000.00 account deposit for additional stock purchases on margin when Claimant instructed Respondent that the money was a short-term "loan" to the account; and (2) recommending the purchase of Sunhawk stock without appropriate disclosures or attention to Claimant's investment objectives.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$150,000.00; punitive damages; interest; costs; and such other and further relief as the arbitrators deem just and proper.

Respondent Morgan Wilshire and Metelkin requested that the Panel dismiss the Statement of Claim in its entirety with prejudice and such other and further relief as the Panel deems just and proper.

Respondents Morgan Wilshire, Finnan, Speranza, Carrillo, and Maher requested that the Panel dismiss the Statement of Claim in its entirety with prejudice and such other and further relief as the Panel deems just and proper. In its Counterclaim, Respondent Morgan Wilshire requested compensatory damages between \$50,000.00 and \$75,000.00; that the Panel dismiss the Statement of Claim with prejudice; and such other and further relief as the Panel deems just and proper.

At the hearing, Claimant reduced the amount of compensatory damages requested to \$63,000.00.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Respondent Cassese has 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 Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents Morgan Wilshire, Metelkin, Maher, Speranza, and Finnan did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

On or about July 12, 2004, NASD Dispute Resolution was notified that the Claimant settled with Respondent Cassese.

On or about November 2, 2004, NASD Dispute Resolution was notified that the Claimant settled with Respondents Morgan Wilshire, Maher, Speranza, Finnan, and Carrillo.

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, and 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 Metelkin is liable for and shall pay to Claimant compensatory damage in the amount of \$40,000.00, which is inclusive of interest.
2. Any and all relief not specifically addressed herein, including punitive damages, is 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	= \$ 300.00
Counterclaim filing fee	= \$1,000.00

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. Accordingly, Morgan Wilshire Securities, Inc. is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

December 21, 22, 23, 27, 2004, adjournment by Claimant	= \$1,125.00
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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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: November 19, 2002 1 session	

Three (3) Pre-hearing sessions with Panel @ \$1,125.00	= \$3,375.00
Pre-hearing conferences: May 4, 2004 1 session	
July 7, 2004 1 session	
August 19, 2004 1 session	

Two (2) Hearing sessions @ \$1,125.00	= \$2,250.00
Hearing Date: May 27, 2005 2 sessions	
Total Forum Fees	= \$6,075.00

1. The Panel has assessed \$3,037.50 of the forum fees solely against Claimant.
2. The Panel has assessed \$1,912.50 of the forum fees jointly and severally against Respondents Morgan Wilshire and Metelkin.
3. The Panel has assessed \$1,125.00 of the forum fees solely against Respondent Metelkin.

Fee Summary

1. Claimant is solely liable for:	
Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$1,125.00
<u>Forum Fees</u>	<u>= \$3,037.50</u>
Total Fees	= \$4,462.50
<u>Less payments</u>	<u>= \$2,550.00</u>
Balance Due NASD Dispute Resolution	= \$1,912.50

2. Respondent Morgan Wilshire is solely liable for:

Counterclaim Filing Fee	= \$1,000.00
<u>Member Fees</u>	<u>= \$5,200.00</u>
Total Fees	= \$6,200.00
<u>Less payments</u>	<u>= \$6,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondent Metelkin is solely liable for:

<u>Forum Fees</u>	<u>= \$1,125.00</u>
Total Fees	= \$1,125.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$1,125.00

4. Respondents Morgan Wilshire and Metelkin are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$1,912.50</u>
Total Fees	= \$1,912.50
<u>Less payments</u>	<u>= \$ 750.00</u>
Balance Due NASD Dispute Resolution	= \$1,162.50

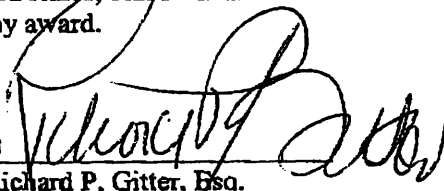
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Richard P. Gitter, Esq.	-	Public Arbitrator, Presiding Chairperson
Melvin Lyon	-	Public Arbitrator
Richard P. Ryder, Esq.	-	Non-Public Arbitrator

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.


Richard P. Gitter, Esq.
Public Arbitrator, Presiding Chairperson

6/8/05
Signature Date

Melvin Lyon
Public Arbitrator

Signature Date

Richard P. Ryder, Esq.
Non-Public Arbitrator

Signature Date

June 9, 2005
Date of Service (For NASD Dispute Resolution use only)

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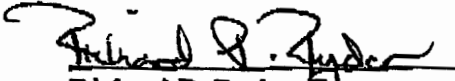
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Signature Date

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Public Arbitrator

Signature Date



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Non-Public Arbitrator

6-7-05
Signature Date

June 9, 2005
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