

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Viola Scaven

Case Number: 02-05630

Name of the Respondents  
Lawrence R. Malcolm  
Malcolm & Co. Asset Management, Inc.

Hearing Site: Philadelphia, PA

Name of the Third-Party Respondent  
Michael Scaven

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

**REPRESENTATION OF PARTIES**

Claimant, Viola Scaven, hereinafter referred to as "Claimant", was represented by Debra G. Speyer, Esq., Law Offices of Debra G. Speyer, Philadelphia, Pennsylvania.

Respondents, Lawrence R. Malcolm ("Malcolm") and Malcolm & Co. Asset Management, Inc. ("Malcolm & Co."), hereinafter collectively referred to as "Respondents", were represented by Harold J. Kulp, Esq., Attorney at Law, Chadds Ford, Pennsylvania.

Third-Party Respondent, Michael Scaven, hereinafter referred to as "Third-Party Respondent", was represented by Debra G. Speyer, Esq., Law Offices of Debra G. Speyer, Philadelphia, Pennsylvania.

**CASE INFORMATION**

Statement of Claim filed on: September 11, 2002.

Claimant signed the Uniform Submission Agreement on: June 1, 2002.

Statement of Answer and Third-Party Claim filed by Respondents on: November 15, 2002.

A representative of Respondent Malcolm & Co. signed the Uniform Submission Agreement on: November 15, 2002.

Respondent Malcolm did not file a signed Uniform Submission Agreement.

Statement of Answer filed by Third-Party Respondent on: November 21, 2002.

Third-Party Respondent did not file a signed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action, among others: negligence, unsuitability, breach of contract, violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, and breach of fiduciary duty. The causes of action relate to the purchase and sale of various securities including, but not limited to: Amazon, Amerco, Ser, Amgen, Inc., Bethlehem Steel, AOL, Chase, Cicso Systems, Conagra, EMS Corp Mass, Exodus, and IBM.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim.

Respondents asserted the following cause of action in their Third-Party claim: that Third-Party Respondent exerted undue influence over Claimant.

Unless specifically admitted in his Answer, Third-Party Respondent denied the allegations made in the Third-Party Claim.

**RELIEF REQUESTED**

Claimant in her Statement of Claim requested:

Compensatory Damages	\$ 67,000
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested that the Arbitration Panel (the "Panel") find in their favor and award no damages to Claimant.

Respondents in their Third-Party Claim requested indemnification for the full amount of any damages assessed, including interest, costs, and attorneys' fees.

Third-Party Respondent requested that the claim against him be dismissed.

**OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Malcolm did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

Third-Party Respondent did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the third-party claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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. Respondents Malcolm and Malcolm Asset are jointly and severally liable to and shall pay to Claimant compensatory damages in the amount of sixty-six thousand dollars (\$66,000.00);
2. All claims against Third-Party Respondent are denied in their entirety;
3. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and,
4. Any and all relief not specifically addressed herein is denied in its entirety.

### **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	= \$ 225
Third-Party Claim filing fee	= \$ 225

#### **Forum Fees and Assessments**

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

One (1) Pre-hearing session with Panel @ \$ 750	= \$ 750
Pre-hearing conference: May 22, 2003 1 session	
Four (4) Hearing sessions @ \$ 750	= \$ 3,000
Hearing Dates: January 20, 2004 2 sessions	
January 22, 2004 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$ 3,750

1. The Panel has assessed \$ 1,875 of the forum fees to Claimant.
2. The Panel has assessed \$ 1,875 of the forum fees jointly and severally to Respondents.

**FEE SUMMARY**

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 225
Forum Fees	= \$ 1,875
Total Fees	= \$ 2,100
Less payments	= \$ 975
Balance Due NASD Dispute Resolution	= \$ 1,125

2. Respondents are jointly and severally assessed and shall pay the following fees:

Filing Fee	= \$ 225
Forum Fees	= \$ 1,875
Total Fees	= \$ 2,100
Less payments	= \$ 975
Balance Due NASD Dispute Resolution	= \$ 1,125

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

**ARBITRATION PANEL**

James J. McCann	-	Public Arbitrator, Presiding Chairperson
Kathleen L. Daerr-Bannon, Esq.	-	Public Arbitrator, Panelist
Fred M. Fleisher	-	Non-Public Arbitrator, Panelist

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**Concurring Arbitrators' Signatures**

James J. McCann

James J. McCann  
Public Arbitrator, Presiding Chairperson

1/29/04  
Signature Date

Kathleen Daem-Bannon, Esq.  
Public Arbitrator, Panelist

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Signature Date

Fred M. Fleisher  
Non-Public Arbitrator, Panelist

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Signature Date

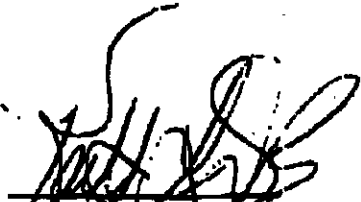
February 3, 2004  
Date of Service (For NASD Dispute Resolution office use only)

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Public Arbitrator, Presiding Chairperson

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Signature Date

  
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Kathleen Daerr-Bainon, Esq.  
Public Arbitrator, Panelist

1/30/04  
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Signature Date

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Fred M. Fleisher  
Non-Public Arbitrator, Panelist

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