

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Jane Lee and Chang-Kang Lee, (Claimants) vs. Avalon Partners, Inc., Vincent Au, Samuel J. Agosta, Peter Bull, and Bradley G. Treichler, (Respondents)

Case Number: 01-00628

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimants, Jane Lee ("J. Lee") and Chang-Kang Lee ("C. Lee"), hereinafter collectively referred to as "Claimants": Jenice L. Malecki, Esq., The Law Office of Jenice L. Malecki, New York, NY.

Respondents, Avalon Partners, Inc. ("Avalon"), Vincent Au ("Au"), Samuel J. Agosta ("Agosta"), and Peter Bull ("Bull"): Richard J. Babnick, Jr., Esq., Sichenzia Ross Friedman Ference, LLP, New York, NY.

Respondent, Bradley G. Treichler ("Treichler"), did not make an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: February 6, 2001.

Opposition to Agosta's Motion to Dismiss, Motion for Leave to Amend, if Necessary, and Opposition to Motion to Strike filed by Claimants on or about: May 31, 2001.

J. Lee signed the Uniform Submission Agreement.

C. Lee signed the Uniform Submission Agreement.

Joint Statement of Answer and Motion to Strike filed by Avalon, Au, and Agosta on or about: April 24, 2001.

Motion to Dismiss filed by Agosta on or about: April 24, 2001.

Reply to Claimants' Opposition to Motion to Dismiss filed by Agosta on or about: June 7, 2001.

Avalon signed the Uniform Submission Agreement: April 23, 2001.

Au signed the Uniform Submission Agreement: April 23, 2001.

Agosta did not sign a Uniform Submission Agreement.

Statement of Answer, Motion to Strike, and Motion to Dismiss filed by Bull on or about: June 7, 2001.

Bull did not sign a Uniform Submission Agreement.

Treichler did not file a Statement of Answer or sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: misrepresentations; unauthorized trading; breach of contract; breach of fiduciary duties; control person liability; fraud; negligence; failure to supervise; and common law fraud. Claimants' claim involved the stock and/or options of America Online, Unisys, Value America, Informix, Inprise, and Mattel Inc.

Unless specifically admitted in their Answer, Avalon, Au, and Agosta denied the allegations made in the Statement of Claim and asserted the following defenses: J. Lee was aware of all material risks concerning Claimants' investments, and she expressly, specifically, and knowingly ordered, approved, directed, and/or authorized the acts and transactions which are the subject of this proceeding; Claimants assumed the risk of the losses alleged herein; Claimants' claims are barred by the doctrines of waiver, ratification, estoppel, and laches; J. Lee was aware of the nature of Claimants' investments, and such investments were consistent with Claimants' articulated investment objectives, experience, sophistication, and/or financial circumstances; Respondents' actions were in the ordinary course of business, were not wrongful, and did not proximately cause any of the damages claimed to have been sustained by Claimants; J. Lee is an educated, experienced, and sophisticated investor who specifically and knowingly directed, authorized, and assumed the risk of loss that Claimants allege; any losses sustained by Claimants are wholly attributable to market conditions and price fluctuations outside the control of Respondents and normally associated with investments in the securities markets; J. Lee was provided with full and fair disclosure of all material facts concerning each transaction executed in Claimants' account and freely consented to each trade; there is no private right of action, and therefore no basis for recovery, based on NASD Rules; under New York law, there is no private right of action, and therefore no basis for recovery, for breach of fiduciary duty in connection with the purchase or sale of securities; Respondents were not fiduciaries to Claimants and did not owe them a fiduciary duty; Claimants have failed to plead fraud with specificity, which would inform Respondents as to the fraudulent conduct allegedly perpetrated against Claimants; Claimants have failed to state a claim upon which relief may be granted; at all times, Respondents conducted their

business in a professional manner and acted in good faith, without knowledge of, or participation in, any alleged improper conduct; Claimants received confirmations and account statements in a timely fashion indicating the securities purchased and sold in their accounts, and did not timely object to same; and Claimants held on to the securities that they Claim were unauthorized trades for nearly a year and, consequently, they failed to mitigate their damages.

RELIEF REQUESTED

Claimants requested:

- a. Compensatory damages in the amount of \$66,206.89, plus interest;
- b. Attorneys' fees, costs, filing fees, and disbursements;
- c. Punitive damages in the approximate amount of \$30,000.00; and
- d. Any other or further relief as the Panel deems appropriate.

Avalon, Au, and Agosta requested an Award denying all of Claimants' claims.

OTHER ISSUES CONSIDERED AND DECIDED

By letter dated April 16, 2001, Claimants advised NASD Dispute Resolution, Inc. that they were withdrawing their claims against Respondent Treichler, without prejudice.

Prior to the conclusion of the hearings in this matter, Claimants dismissed their claims against respondent Bull.

Agosta, Bull, and Treichler did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and are 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. Avalon and Au be and hereby are jointly and severally liable for and shall pay to Claimants the sum of \$48,000.00 as compensatory damages, plus interest at the rate of 9% accruing from the date of this Award until date of payment.
2. All claims against Agosta are hereby dismissed.
3. All other requests for relief are hereby dismissed.

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	= \$ 225.00
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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, Avalon Partners, Inc. is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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 x \$450.00	= \$ 450.00
Pre-hearing conference: April 11, 2002	1 session

One (1) Pre-hearing session with Panel x \$750.00		= \$ 750.00
Pre-hearing conference: August 28, 2001	1 session	
Six (6) Hearing sessions x \$750.00		= \$4,500.00
Hearing Dates: March 13, 2002	2 sessions	
March 15, 2002	2 sessions	
April 12, 2002	2 sessions	
<hr/> Total Forum Fees		= \$5,700.00

The Panel has assessed all of the forum fees jointly and severally against Avalon and Au.

Fee Summary

1. Claimants be and hereby are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 225.00
Total Fees	= \$ 225.00
<u>Less payments</u>	= \$ 975.00
Refund Due Claimants	= \$ 750.00

2. Avalon be and hereby is solely liable for:

<u>Member Fees</u>	= \$3,100.00
Total Fees	= \$3,100.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,100.00

3. Avalon and Au be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$5,700.00
Total Fees	= \$5,700.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$5,700.00


All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Marc T. Danon, Esq.	-	Public Arbitrator, Presiding Chair
Jeffrey G. Sommers	-	Public Arbitrator
Gerald A. Guild	-	Industry 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.



Marc T. Danon, Esq.
Public Arbitrator, Presiding Chair

5-22-02

Signature Date

Jeffrey G. Sommers
Public Arbitrator

Signature Date

Gerald A. Guild
Industry Arbitrator

Signature Date

May 22, 2002

Date of Service (For NASD office use only)

ARBITRATION PANEL

Marc T. Dannon, Esq.	-	Public Arbitrator, Presiding Chair
Jeffrey G. Sommers	-	Public Arbitrator
Gerald A. Guild	-	Industry 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.

Marc T. Dannon, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Jeffrey G. Sommers
Public Arbitrator

13th MAY 2002

Signature Date

Gerald A. Guild
Industry Arbitrator

Signature Date

May 22, 2002
Date of Service (For NASD office use only)

ARBITRATION PANEL

Marc T. Dannon, Esq.	-	Public Arbitrator, Presiding Chair
Jeffrey G. Sommers	-	Public Arbitrator
Gerald A. Guild	-	Industry Arbitrator

Concurring Arbitrators' Signatures

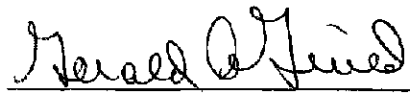
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Marc T. Dannon, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Jeffrey G. Sommers
Public Arbitrator

Signature Date



Gerald A. Guild
Industry Arbitrator

May 14 2002
Signature Date

May 22, 2002
Date of Service (For NASD office use only)