

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

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In the Matter of the Arbitration Between:

Peter J. Andersen, Claimant v. Morgan Stanley Dean Witter (n.k.a. Morgan Stanley DW, Inc.),  
Bradley J. Saunders, and Dante M. Panella, Respondents

Case Number: 01-01468

Hearing Site: San Francisco, California

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

**REPRESENTATION OF PARTIES**

For Claimant:

James Jay Seltzer, Esq.  
Law Offices of James Jay Seltzer  
Emeryville, California

For Respondents:

John S. Worden, Esq.  
Morgenstein & Jubelirer LLP  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: March 22, 2001

Claimant's Uniform Submission Agreement signed: March 21, 2001

Joint Statement of Answer filed by Respondents: June 18, 2001

Respondent Morgan Stanley Dean Witter's ("MSDW") Uniform Submission Agreement signed:  
June 18, 2001

Respondent Bradley J. Saunders' ("Saunders") Uniform Submission Agreement signed: June 18,  
2001

Respondent Dante M. Panella's ("Panella") Uniform Submission Agreement signed: June 18,  
2001

### **CASE SUMMARY**

Claimant alleged breach of contract, breach of fiduciary duty, negligence, omission of facts and misrepresentations, fraud, unsuitable recommendations, violations of state law and NASD Rules, and failure to supervise. Claimant's allegations involved transactions in the common stock of various technology companies, including Asiainfo Holdings, Inc., Exodus Communications, Inc., Lucent Technologies, Inc., Cisco Systems, Inc., Agilent Technologies, Inc., and America Online, Inc.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$351,850.00, unspecified punitive damages, prejudgment interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, and costs, including attorney's fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On December 9, 2002, Claimant and Claimant's 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.

On January 6, 2003, Respondents' counsel signed a Waiver Agreement on behalf of Respondents expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On October 30, 2002, Respondents filed a motion for Summary Judgment. On November 14, 2002, Claimant filed an opposition to Respondents' Motion for Summary Judgment. On July 19, 2004 a telephonic pre-hearing conference was held, attended by the parties and the Panel. After due deliberation in an executive session, the Panel denied the motion.

On July 22, 2004, Claimant dismissed Respondents Bradley J. Saunders, and Dante M. Panella.

On October 12, 2004, the parties submitted a stipulated request for an award that included (1) an award of \$60,000.00, inclusive of interest and costs, to be paid by Respondent MSDW to Claimant and (2) a recommendation of expungement of all references to this matter from Respondents Saunders' and Panella's Central Registration Depository records.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

### **AWARD**

After considering the pleadings, testimony, and the Parties' request for this stipulated award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent MSDW is liable to and shall pay Claimant the sum of \$60,000.00 in compensatory damages, inclusive of interests and costs.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Bradley J. Saunders' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Bradley J. Saunders must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Dante M. Panella's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Dante M. Panella must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. The parties shall bear their respective costs, including attorney's fees.
5. All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 300.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Morgan Stanley Dean Witter (n.k.a. Morgan Stanley DW, Inc.) is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 2,500.00</u>
<b>Total Member Fees</b>	<b>= \$ 4,600.00</b>

Accordingly, the member firm UBS Financial Services, Inc., who employed Respondent Dante M. Panella at the time of the events which gave rise to this claim, is assessed the following fees:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 2,500.00</u>
<b>Total Member Fees</b>	<b>= \$ 4,600.00</b>

#### **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 or the parties and the Panel. The following fees are assessed:

1 Pre-hearing conference session with a single arbitrator @ \$ 450.00/session	= \$ 450.00
Pre-hearing conference: December 5, 2002	1 session
3 Pre-hearing conference sessions with the Panel @ \$ 1,125.00/session	= \$ 3,375.00
Pre-hearing conferences: May 2, 2002	1 session
October 17, 2003	1 session
July 19, 2004	1 session

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<b>Total Forum Fees</b>	<b>= \$ 3,825.00</b>
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Pursuant to the parties' stipulation:

1. The Panel assessed \$1,912.50 of the forum fees to Claimant.
2. The Panel assessed \$1,912.50 of the forum fees to Respondent MSDW.

**Fee Summary**

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

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 1,912.50
Total Fees	= \$ 2,212.50
<u>Less payments</u>	= \$ (1,425.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 787.50</b>

2. Respondent Morgan Stanley Dean Witter (n.k.a. Morgan Stanley DW, Inc.) is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
<u>Forum Fees</u>	= \$ 1,912.50
Total Fees	= \$ 6,512.50
<u>Less payments</u>	= \$ (4,600.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,912.50</b>

3. Respondent UBS Financial Services, Inc. is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
<u>Less payments</u>	= \$ (5,200.00)
<b>Refund Due</b>	<b>= \$ (600.00)</b>

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

ARBITRATION PANEL

Carol M. Clements, Esq.	-	Public Arbitrator, Presiding Chair
Michael J. Fish, Esq.	-	Public Arbitrator
Mark R. Palmer	-	Non-Public Arbitrator

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Carol M. Clements, Esq.  
Chair, Public Arbitrator

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Signature Date

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Michael J. Fish, Esq.  
Public Arbitrator

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Signature Date

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Mark R. Palmer  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service

**ARBITRATION PANEL**

Carol M. Clements, Esq.	-	Public Arbitrator, Presiding Chair
Michael J. Fish, Esq.	-	Public Arbitrator
Mark R. Palmer	-	Non-Public Arbitrator



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Carol M. Clements, Esq.  
Chair, Public Arbitrator

10/20/04

Signature Date

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Michael J. Fish, Esq.  
Public Arbitrator

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Signature Date

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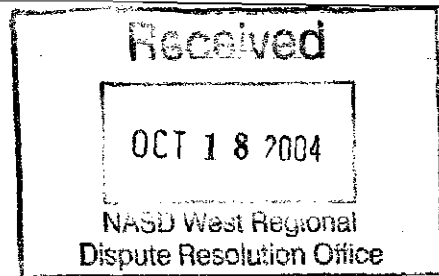
Mark R. Palmer  
Non-Public Arbitrator

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Signature Date

10-20-04

Date of Service



ARBITRATION PANEL

Carol M. Clements, Esq.	-	Public Arbitrator, Presiding Chair
Michael J. Fish, Esq.	-	Public Arbitrator
Mark R. Palmer	-	Non-Public Arbitrator

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Carol M. Clements, Esq.  
Chair, Public Arbitrator

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Signature Date

  
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Michael J. Fish, Esq.  
Public Arbitrator

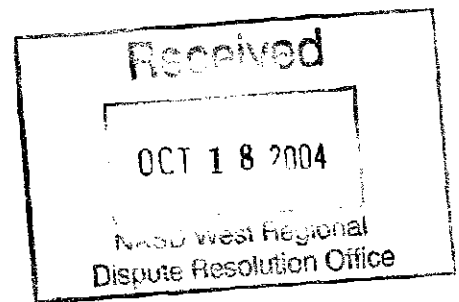
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Mark R. Palmer  
Non-Public Arbitrator

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Signature Date

10-20-04  
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Date of Service





ARBITRATION PANEL

Carol M. Clements, Esq.  
Michael J. Fish, Esq.  
Mark R. Palmer


- Public Arbitrator, Presiding Chair  
- Public Arbitrator  
- Non-Public Arbitrator

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Carol M. Clements, Esq.  
Chair, Public Arbitrator

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Signature Date

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Michael J. Fish, Esq.  
Public Arbitrator

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Signature Date

  
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Mark R. Palmer  
Non-Public Arbitrator

10-14-04  
Signature Date

10-20-04  
Date of Service