
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Peter Margolis
Donald Margolis
Michael Gral

Case Number: 01-04196

Names of the Respondents

Morgan Stanley DW, Inc.
f/k/a Dean Witter Reynolds Inc.
Scott Donato
Christopher D. McCray

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Peter Margolis ("PM"), Donald Margolis ("DM") and Michael Gral ("MG"), hereinafter collectively referred to as "Claimants": Jeffrey B. Crockett, Esq., Jorden, Burt LLP, Miami, Florida.

For Respondent Morgan Stanley DW, Inc. f/k/a Dean Witter Reynolds Inc. ("MSDW"), and Christopher D. McCray ("McCray"): Holly R. Skolnick, Esq., Greenberg Traurig, P.A., Miami, Florida.

For Respondent Scott Donato ("Donato"): Laura J. Starr, Esq. and Peter Homer, Esq., Homer Bonner & Delgado, P.A., Miami, Florida.

CASE INFORMATION

Statement of Claim filed on or about: August 11, 2001.

Claimant DM signed the Uniform Submission Agreement: July 13, 2001.

Claimant MG signed the Uniform Submission Agreement: July 18, 2001.

Claimant PM signed the Uniform Submission Agreement: August 1, 2001.

Statement of Answer filed by Respondent Donato on or about: January 4, 2002.

Statement of Answer filed by Respondents MSDW and McCray on or about: January 4, 2002.

Respondent Donato signed the Uniform Submission Agreement: February 21, 2002.

Respondents MSDW and McCray did not file executed Uniform Submission Agreements.

CASE SUMMARY

Claimants asserted the following causes of action: false and fraudulent representations; violation of NASD Conduct Rule 2510; violation of NASD Conduct Rule 2310, including unsuitability, reckless and speculative short-term trading, concentration of capital in high risk sectors and positions, extensive use of leverage and

margin interest, and unwillingness to sell stocks which were careening downward; violation of Chapter 517, Fla. Stat., including Chapter 517.301; violations of NASD Conduct Rule 2120 and federal securities laws; common law fraud; breach of fiduciary duty; unauthorized trading; breach of contract; and negligent, incompetent and reckless account management. Claimants further asserted that Respondents MSDW and McCray were negligent in their supervision of Respondent Donato. The causes of action relate to the purchase in Claimants' accounts of unspecified initial public offerings and growth stocks.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant PM requested compensatory damages in the amount of approximately \$584,499.00, and punitive damages in the amount of \$400,000.00. Claimant DM requested compensatory damages in the amount of approximately \$96,865.00, and punitive damages in the amount of \$200,000.00. Claimant MG requested compensatory damages in the amount of approximately \$410,790.00, and punitive damages in the amount of \$400,000.00. Further, Claimants requested pre-judgment interest and any other relief that the Panel may find to be fair, just or appropriate, with reasonable attorney's fees to be ordered by a court of competent jurisdiction in confirmation proceedings.

Respondent Donato requested that all claims asserted by Claimants be denied in their entirety, and requested attorney's fees.

Respondents MSDW and McCray requested that Claimants' claims be denied in their entirety and that all references to this dispute be expunged from Respondent McCray's NASD records as well as the records maintained by the NASD Central Registration Depository ("CRD"). Respondents MSDW and McCray further requested attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents MSDW and McCray did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to Arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

Respondent Donato moved to strike pleadings for alleged discovery violations. The Panel denied the motion, and worked with the parties to resolve the discovery issues.

All Respondents moved for involuntary dismissal, which the Panel denied.

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, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant DM's claims are denied in their entirety.

Respondent McCray is not liable on any of the claims asserted by Claimants, including, but not limited to, the claim for failure to supervise.

Respondents Donato and MSDW are jointly and severally liable on the claims for fraudulent inducement and violation of Florida Statutes 517.301. Respondent MSDW is further liable on the claim for failure to supervise.

Respondents Donato and MSDW are jointly and severally liable and shall pay to Claimant PM compensatory damages in the amount of \$409,149.00, plus interest at the Florida legal rate from April 30, 2001 until the Award is paid.

Respondents Donato and MSDW are jointly and severally liable and shall pay to Claimant MG compensatory damages in the amount of \$287,553.00, plus interest at the Florida legal rate from April 30, 2001 until the Award is paid.

Respondents Donato and MSDW are jointly and severally liable and shall reimburse Claimant PM the sum of \$166.67, representing one-third of the claim-filing fee paid by Claimants to NASD Dispute Resolution.

Respondents Donato and MSDW are jointly and severally liable and shall reimburse Claimant MG the sum of \$166.67, representing one-third of the claim-filing fee paid by Claimants to NASD Dispute Resolution.

The Panel awards attorney's fees, the amount of which shall be determined by a court of competent jurisdiction, as follows: All three (3) Claimants are jointly and severally liable for and shall reimburse Respondent McCray his attorney's fees; and Respondents Donato and MSDW are jointly and severally liable for and shall reimburse Claimants PM and MG their attorney's fees. Attorney's fees are awarded pursuant to F.S. 517.211(6).

The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent McCray's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent McCray must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. The expungement directive is based upon the defamatory nature of the information in the CRD system.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, are 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	= \$ 500.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent MSDW is a member firm and a party.

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$4,500.00</u>
Total Member Fees	= \$7,600.00

Adjournment Fees

Adjournment fees were not assessed in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

Injunctive relief fees were not assessed in this matter.

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:

Two (2) Pre-hearing sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences:	
April 24, 2002	1 session
February 20, 2003	1 session

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference:	
January 29, 2003	1 session

Thirteen (13) Hearing sessions @ \$1,200.00/session	= \$15,600.00
Hearing Dates:	
February 3, 2003	1 session
November 18, 2003	2 sessions
November 19, 2003	2 sessions

November 20, 2003	2 sessions
November 21, 2003	2 sessions
January 6, 2004	2 sessions
January 7, 2004	2 sessions

Total Forum Fees	= \$18,450.00
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The Panel has waived the forum fee of \$1,200.00 for the pre-hearing conference that was conducted on February 20, 2003 because a medical issue required one of the arbitrators to withdraw from the Panel, and the sole purpose of this pre-hearing conference was to reschedule the evidentiary hearing dates.

The Panel has assessed the remaining forum fees of \$17,250.00 jointly and severally to Respondents Donato and MSDW.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred in this matter.

Fee Summary

Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less Payments</u>	= \$ 500.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MSDW is solely liable for:

<u>Member Fees</u>	= \$ 7,600.00
<u>Total Fees</u>	= \$ 7,600.00
<u>Less Payments</u>	= \$ 7,600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents MSDW and Donato are jointly and severally liable for:

<u>Forum Fees</u>	= \$17,250.00
<u>Total Fees</u>	= \$17,250.00
<u>Less Payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$17,250.00

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

ARBITRATION PANEL

Lewis J. Levey, Esq.	-	Public Arbitrator, Presiding Chairperson
Nicholas A. Natale	-	Non-Public Arbitrator
James W. Robinson, Ph.D.	-	Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Lewis J. Levey, Esq.
Public Arbitrator, Presiding Chairperson

1/20/04
Signature Date

/s/
Nicholas A. Natale
Non-Public Arbitrator

1/19/04
Signature Date

/s/

James W. Robinson, Ph.D.
Public Arbitrator

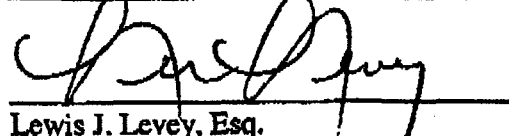
1/16/04
Signature Date

1/26/04
Date of Service (For NASD Dispute Resolution office use only)

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Concurring Arbitrators' Signatures



Lewis J. Levey, Esq.
Public Arbitrator, Presiding Chairperson

1/20/4

Signature Date

Nicholas A. Natale
Non-Public Arbitrator

Signature Date

James W. Robinson, Ph.D.
Public Arbitrator

Signature Date

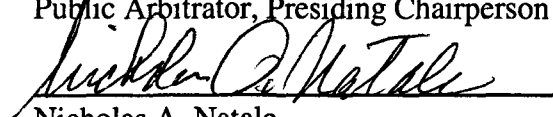
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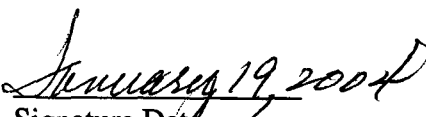
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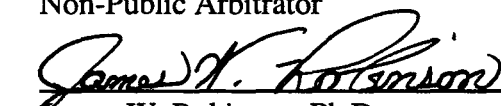
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Public Arbitrator, Presiding Chairperson

Signature Date

Nicholas A. Natale
Non-Public Arbitrator

Signature Date



James W. Robinson, Ph.D.
Public Arbitrator



Signature Date

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