

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

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In the Matter of the Arbitration Between:

The Hoeschler Joint Trust dtd March 30, 1988, Claimant v. Morgan Stanley DW Inc.,  
Robert H. Magel, and Melissa Campbell, Respondents

Case Number: 03-00045

Hearing Site: San Diego, California

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

**REPRESENTATION OF PARTIES**

For Claimant:

Frank A. Hoeschler  
Power of Attorney  
La Jolla, California

For Respondents:

Tom Christopher, Esq.  
Morgan Stanley DW Inc.  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: December 31, 2002

Amended Statement of Claim received: September 26, 2003

Claimant's Opposition to Respondents' Motion to Dismiss and Statement of Answer to Amended  
Statement of Claim received: December 19, 2003

Claimant's Uniform Submission Agreement signed: January 21, 2003

Joint Statement of Answer to Statement of Claim filed by Respondents: April 11, 2003

Joint Motion to Dismiss and Statement of Answer to Amended Statement of Claim filed by  
Respondents: November 17, 2003

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: April 21, 2003

Respondent Robert H. Magel's Uniform Submission Agreement signed: April 22, 2003

Respondent Melissa Campbell's Uniform Submission Agreement signed: April 22, 2003

### **CASE SUMMARY**

In its Amended Statement of Claim, Claimant alleged omission of material facts, non-disclosures and/or material misrepresentations, unsuitability, unauthorized trading, failure to supervise, breach of fiduciary duty, negligence, and negligent interference with prospective economic advantage. The dispute involved the purchase and/or sale of Fruit of the Loom, Polariod, and Loral securities.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Initial and Amended Statements of Claim.

### **RELIEF REQUESTED**

In its Initial Statement of Claim and Claim Information Sheet, Claimant requested \$51,979.00 in compensatory damages, \$155,937.00 in punitive damages, interest, reimbursement of filing fees, attorney's fees, and arbitration costs.

In its Amended Statement of Claim, Claimant requested unspecified compensatory damages, punitive damages, commissions, fees, and other forms of compensation received by Respondents in connection with the transactions in dispute, interest, attorney's fees, and arbitration costs.

Respondents requested dismissal of the Claimant's Initial and Amended Statements of Claim in their entirety.

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

NASD Dispute Resolution received Claimant's Uniform Statutory Form of Power of Attorney. Margaret P. Hoeschler, individually and as Trustee of the Hoeschler Joint Trust dated March 30, 1988, appointed Frank A. Hoeschler as attorney-in-fact.

On March 5, 2003, Claimant and Frank A. Hoeschler 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 May 27, 2003, Respondents' 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 December 30, 2003, the Arbitration Panel accepted Claimant's Amended Statement of Claim and denied Respondents' Motion to Dismiss.

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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) All motions, including to dismiss and for sanctions, are denied.
- 2) All claims for relief, including those set forth in the Statement of Claim, as amended, are denied.
- 3) Respondent Melissa Campbell's request for expungement is denied.
- 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 that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Morgan Stanley DW Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
<b>Total Member Fees</b>	<b>= \$ 5,200.00</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 Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: August 27, 2003 1 session	
Five (5) Hearing sessions @ \$1,000.00/session	= \$ 5,000.00
Hearings: June 21, 2004 2 sessions	
June 22, 2004 2 sessions	
June 23, 2004 1 session	
<b>Total Forum Fees</b>	<b>= \$ 6,125.00</b>

The Panel assessed \$6,125.00 of the forum fees to Claimant the Hoeschler Joint Trust dtd March 30, 1988.

**Fee Summary**

1. Claimant The Hoeschler Joint Trust dtd March 30, 1988 is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 6,125.00</u>
Total Fees	= \$ 6,425.00
<u>Less payments</u>	<u>= \$(1,425.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 5,000.00</b>

2. Respondent Morgan Stanley DW Inc. is charged with the following fees and costs:

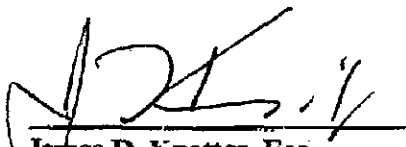
Member Fees	= \$ 5,200.00
<u>Less payments</u>	<u>= \$(5,200.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

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**

James D. Knotter, Esq.	-	Public Arbitrator, Presiding Chair
Guenter S. Cohn, Esq.	-	Public Arbitrator
Larry Haugaard	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
James D. Knotter, Esq.  
Chair, Public Arbitrator

6/25/04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Guenter S. Cohn, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Larry Haugaard  
Non-Public Arbitrator

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

6/28/04  
\_\_\_\_\_  
Date of Service

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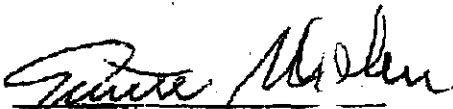
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