
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 03-00123

Ronald J. Scott M.D., IRA
Ronald J. Scott, II UTMA/FI
Ronald J. Scott, M.D.

Names of the Respondents

Hearing Site: Boca Raton, Florida

Morgan Stanley DW, Inc.
Janney Montgomery Scott LLC
David Kolman Hirschman

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

REPRESENTATION OF PARTIES

For Ronald J. Scott M.D., IRA ("IRA"), Ronald J. Scott, II UTMA/FI ("UTMA"), and Ronald J. Scott, M.D. ("MD"), hereinafter collectively referred to as "Claimants": Jan Douglas Atlas, Esq., Adorno & Yoss, P.A., Ft. Lauderdale, Florida.

For Respondent Morgan Stanley DW, Inc. ("MSDW"): Joseph C. Coates, III, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida.

For Respondents Janney Montgomery Scott LLC ("JMS") and David Kolman Hirschman ("Hirschman"): Paula D. Shaffner, Esq., Saul Ewing, LLP, Philadelphia, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on or about: January 3, 2003.

Claimants signed the Uniform Submission Agreements: January 28, 2003.

Statement of Answer filed by Respondent MSDW on or about: April 9, 2003.

Respondent MSDW signed the Uniform Submission Agreement: July 7, 2003.

Statement of Answer filed by Respondents JMS and Hirschman on or about: April 18, 2003.

Respondent JMS signed the Uniform Submission Agreement: June 19, 2003.

Respondent Hirschman signed the Uniform Submission Agreement: July 8, 2003.

First Amended Statement of Claim filed by Claimants on or about: June 3, 2003.

Response to First Amended Statement of Claim filed by Respondents JMS and Hirschman on or about: June 12, 2003.

Statement of Answer to First Amended Statement of Claim filed by Respondent MSDW on or about: June 23, 2003.

Response to Respondent MSDW's Statement of Answer to First Amended Statement of Claim filed by Claimants on or about: June 27, 2003.

Motion to Amend the Statement of Claim filed by Claimants on or about: July 29, 1993.

Second Amended Statement of Claim filed by Claimants on or about: September 4, 2003.

Statement of Answer to Claimants' Second Amended Statement of Claim filed by Respondent MSDW on or about: September 26, 2003.

Motion to Dismiss filed by Respondent MSDW on or about: May 21, 2004.

Response to Motion to Dismiss filed by Claimants on or about: May 25, 2004.

Memorandum of Law in Opposition to Respondent MSDW's Motion to Dismiss filed by Claimants on or about: May 28, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: violations of the Florida Securities Investor Protection Act; violation of Section 10b of the Securities Exchange Act of 1934; negligence; common law fraud; breach of fiduciary duty; breach of the Implied Covenant of Good Faith and Fair Dealing; negligent supervision; and vicarious liability. The causes of action relate to the purchase in Claimants' accounts of unspecified, predominantly high-tech, stocks.

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

RELIEF REQUESTED

Claimants requested the following:

- (a) compensatory damages in an amount not less than \$300,000.00;
- (b) pre-judgment interest at the statutory rate;
- (c) lost opportunity cost of what Claimants' investment funds would have earned if suitably invested;
- (d) reasonable attorneys' fees pursuant to Chapter 517, Florida Statutes;
- (e) punitive damages commensurate with the activities engaged in by Respondents according to proof;
- (f) disgorgement of all Respondents' commissions, fees and income of any other type whatsoever; and
- (g) such other and further relief as the Panel deemed just.

Respondent MSDW requested that the Statement of Claim, as amended, be denied in its entirety.

Respondents JMS and Hirschman requested that Claimants' claims be denied in all respects and the costs of this proceeding, including attorneys' fees, be assessed against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

On or about September 2, 2003, the Panel issued an Order which granted Claimants' unopposed Motion to Amend the Statement of Claim.

On or about May 21, 2004, Respondent MSDW filed a Motion to Dismiss which asserted, among other things, that Claimants claims are barred by the applicable Statute of Limitations; Claimants were aware of and authorized the trading strategy utilized; and the Panel has the authority to dismiss this case. In their response,

Claimants asserted, among other things, that Claimants' claims are not barred by the applicable Statute of Limitations; Claimants did not knowingly authorize the trading activity utilized; and the NASD Code of Arbitration Procedure (the "Code") does not provide the Panel with the authority to dismiss the claims. The Panel stated that a decision on Respondent MSDW's Motion to Dismiss would be rendered at the evidentiary hearings. On June 1, 2004, the first day of the scheduled evidentiary hearings in this matter, Claimants notified the Panel that all claims asserted against Respondent MSDW had been settled.

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:

Claimants' UTMA and MD's claims are denied in their entirety.

Respondents JMS and Hirschman are jointly and severally liable on the breach of fiduciary duty, negligence, and breach of implied covenant of good faith and fair dealing claims, and shall pay compensatory damages to Claimant IRA in the amount of \$100,000.00.

Florida Statute 768.72(b) defines "gross negligence" as meaning that "the defendants' conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct." The Panel finds clear evidence to show that Respondent Hirschman's conduct falls within the purview of this definition. Accordingly, the Panel finds that Respondent Hirschman is liable and shall pay punitive damages to Claimant IRA in the amount of \$50,000.00.

All parties shall pay their own costs.

Any and all claims for relief not specifically addressed herein, including Claimants' claim for relief pursuant to Chapter 517 of the Florida Statutes, 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	= \$ 300.00
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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 Respondent JMS is a member firm and a party.

Respondent MSDW's Member Surcharge	= \$1,700.00
Respondent MSDW's Pre-hearing process fee	= \$ 750.00
<u>Respondent MSDW's Hearing process fee</u>	<u>= \$2,750.00</u>
Respondent MSDW's Total Member Fees	= \$5,200.00

Respondent JMS' Member Surcharge	= \$1,700.00
Respondent JMS' Pre-hearing process fee	= \$ 750.00
<u>Respondent JMS' Hearing process fee</u>	<u>= \$2,750.00</u>
Respondent JMS' Total Member Fees	= \$5,200.00

Adjournment Fees

No adjournments were requested 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:

One (1) Pre-hearing sessions with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: September 19, 2003 1 session	
Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00/session	= \$ 900.00
Pre-hearing conferences: December 16, 2003 1 session	
May 14, 2004 1 session	
Six (6) Hearing sessions @ \$1,125.00/session	= \$6,750.00
Hearing Dates: June 1, 2004 2 sessions	
June 2, 2004 2 sessions	
June 3, 2004 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$8,775.00

The Panel has assessed forum fees of \$2,925.00 to Claimant IRA.

The Panel has assessed forum fees of \$2,925.00 to Respondent JMS.

The Panel has assessed forum fees of \$2,925.00 to Respondent Hirschman.

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>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less Payments</u>	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Claimant IRA is solely liable for:

<u>Forum Fees</u>	= \$2,925.00
<u>Total Fees</u>	= \$2,925.00
<u>Less Payments</u>	= \$1,125.00
Balance Due NASD Dispute Resolution	= \$1,800.00

Respondent JMS is solely liable for:

<u>Member Fees</u>	= \$5,200.00
<u>Forum Fees</u>	= \$2,925.00
<u>Total Fees</u>	= \$8,125.00
<u>Less Payments</u>	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$2,925.00

Respondent Hirschman is solely liable for:

<u>Forum Fees</u>	= \$2,925.00
<u>Total Fees</u>	= \$2,925.00
<u>Less Payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$2,925.00

Respondent MSDW is solely liable for:

<u>Member Fees</u>	= \$5,200.00
<u>Total Fees</u>	= \$5,200.00
<u>Less Payments</u>	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

James W. Geiger, Esq.

Marie G. Peterson, C.P.A.

Michael J. Mazzafrò

Concurring Arbitrators' Signatures

/s/

James W. Geiger, Esq.

Public Arbitrator, Presiding Chairperson

June 10, 2004

Signature Date

/s/

Marie G. Peterson, C.P.A.

Public Arbitrator

June 7, 2004

Signature Date

 /s/

Michael J. Mazzafrò

Non-Public Arbitrator

June 9, 2004

Signature Date

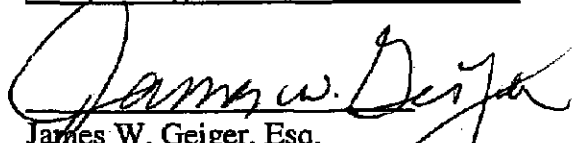
June 14, 2004

Date of Service (For NASD Dispute Resolution office use only)

ARBITRATION PANEL

James W. Geiger, Esq.	-	Public Arbitrator, Presiding Chairperson
Marie G. Peterson, C.P.A.	-	Public Arbitrator
Michael J. Mazzafro	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


James W. Geiger, Esq.
Public Arbitrator, Presiding Chairperson

June 10, 2004
Signature Date

Marie G. Peterson, C.P.A.
Public Arbitrator

Signature Date

Michael J. Mazzafro
Non-Public Arbitrator

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James W. Geiger, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Marie G. Peterson, C.P.A.
Public Arbitrator

6/7/04

Signature Date

Michael J. Mazzafro
Non-Public Arbitrator

Signature Date

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Marie G. Peterson, C.P.A.	-	Public Arbitrator
Michael J. Mazzafrò	-	Non-Public Arbitrator

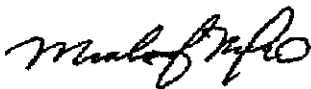
Concurring Arbitrators' Signatures

James W. Geiger, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Marie G. Peterson, C.P.A.
Public Arbitrator

Signature Date



6/9/04

Michael J. Mazzafrò
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)