

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

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In the Matter of the Arbitration Between:

Names of the Claimants

John P. Morgan, individually  
and Jeffrey P. Lawson, not  
individually but solely as  
Trustee of The Kacie K.  
McLean Exempt Trust, The  
Joseph J. Morgan Exempt  
Trust, and The Karri J.  
Gabridge Exempt Trust

Case Number: 03-01767

Name of the Respondent

Goldman, Sachs & Co., a  
New York Corporation and  
successor in interest to  
Goldman Sachs & Co., a  
New York limited partnership

Hearing Site: Tampa, Florida

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For John P. Morgan, individually ("Morgan") and Jeffrey B. Lawson, not individually but solely as Trustee of The Kacie K. McLean Exempt Trust, The Joseph J. Morgan Exempt Trust, and The Karri J. Gabridge Exempt Trust ("Lawson"), hereinafter collectively referred to as "Claimants": Edward T. Joyce, Esq., Arthur W. Aufmann, Esq. and Rowena T. Parma, Esq., Edward T. Joyce & Associates, P.C., Chicago, Illinois and Daniel J. Pierce, Esq., Chicago, Illinois.

For Goldman, Sachs & Co., a New York Corporation and successor in interest to Goldman Sachs & Co., a New York limited partnership, hereinafter referred to as "Respondent": Robert B. Mazur, Esq., Stephen R. DiPrima, Esq., John F. Lynch, Esq. and Till Olbrich, Esq., Wachtell, Lipton, Rosen & Katz, New York, New York and Hilarie Bass, Esq., Greenberg Traurig, LLP, Miami, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: March 10, 2003.

Claimants signed the Uniform Submission Agreements: February 6, 2003.

Statement of Answer filed by Respondent on or about: June 12, 2003.

Respondent signed the Uniform Submission Agreement: June 12, 2003.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty; and, negligence. The causes of action relate to Respondent's alleged failure to advise Claimants to sell or re-collar the appropriate amount of McLeod USA stock in Claimants' accounts at the appropriate times following the unwinding of collars.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant Morgan requested: 1) damages of \$28,213,601.00 for breach of fiduciary duty and negligence; and 2) damages of \$1,489,094.78, less the cost of unwinding the first collar in mid February 2000 in the amount of \$132,778.62, in the net amount of \$1,356,316.16 for overcharges to unwind the first collar in mid February of 2000. Claimant Lawson requested damages of \$30,994,552.00 for breach of fiduciary duty and negligence. Further, Claimants jointly requested interest, costs and such other relief as the Arbitrators deemed just and proper.

Respondent requested that Claimants take nothing in this proceeding.

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

During the evidentiary hearing, the arbitration panel permitted Claimant Morgan to amend his pleading to add a claim that Respondent overcharged him to unwind the first collar in mid February of 2000. In connection therewith, Claimant Morgan requested additional damages of \$1,489,094.78, less the cost of unwinding the collar in the amount of \$132,778.62, in the net amount of \$1,356,316.16.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

Respondent is liable on Claimant Morgan's claim of negligence and shall pay to Claimant Morgan the sum of \$750,000.00 plus interest at the Florida statutory rate from July 1, 2004 until the date of payment of the Award.

Respondent is liable on Claimant Morgan's amended claim for overcharges to unwind the first collar in mid February 2000 and shall pay to Claimant Morgan the sum of \$1,356,316.16 plus interest at the Florida statutory rate from July 1, 2004 until the date of payment of the Award.

Respondent is liable on Claimant Lawson's claim of negligence and shall pay to Claimant Lawson the sum of \$900,000.00 plus interest at the Florida statutory rate from July 1, 2004 until the date of payment of the Award.

Respondent is liable and shall pay to Claimants the sum of \$600.00 representing reimbursement of the claim filing fee previously paid by Claimants to NASD Dispute Resolution.

Any and all claims for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 600.00
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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. In this matter, the member firm is a party.

Member surcharge	= \$3,750.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,500.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments for which fees were assessed were granted 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.

No injunctive relief fees were incurred 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 session with a single arbitrator @ \$ 450.00 = \$ 450.00  
Pre-hearing conference: May 24, 2004 1 session

Two (2) Pre-hearing sessions with the Panel @ \$1,200.00 = \$ 2,400.00  
Pre-hearing conferences: October 9, 2003 1 session  
October 23, 2003 1 session

Thirteen (13) Hearing sessions @ \$1,200.00 = \$15,600.00  
Hearing Dates: June 22, 2004 2 sessions  
June 23, 2004 2 sessions  
June 24, 2004 2 sessions  
June 25, 2004 2 sessions  
June 29, 2004 2 sessions  
June 30, 2004 1 session  
July 1, 2004 2 sessions

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Total Forum Fees = \$18,450.00

The Panel has assessed the total forum fees of \$18,450.00 to Respondent.

**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 are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

**FEE SUMMARY**

Claimants are jointly and severally liable for:

Initial Filing Fee = \$ 600.00

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Total Fees = \$ 600.00

Less payments = \$ 600.00

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Balance Due NASD Dispute Resolution = \$ 0.00

Respondent is solely liable for:

Member Fees = \$10,000.00

Forum Fees = \$18,450.00

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Total Fees = \$28,450.00

Less payments = \$10,000.00

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Balance Due NASD Dispute Resolution = \$18,450.00

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

**ARBITRATION PANEL**

Arthur L. Tepper, Esq.	-	Public Arbitrator, Presiding Chair
William J. Schifino, Jr., Esq.	-	Public Arbitrator
Albert Roberts	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/S/\_\_\_\_\_  
Arthur L. Tepper, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_/S/\_\_\_\_\_  
William J. Schifino, Jr., Esq.  
Public Arbitrator

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

\_\_\_\_\_/S/\_\_\_\_\_  
Albert Roberts  
Non-Public Arbitrator

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

July 19, 2004

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

JUL 8, 2004 9:48AM NASD

NASD Dispute Resolution  
Arbitration No. 03-01767  
Award Page 5

Less payments	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 0.00
Respondent is solely liable for:	
Member Fees	= \$10,000.00
Forum Fees	= \$18,450.00
Total Fees	= \$28,450.00
Less payments	= \$10,000.00
Balance Due NASD Dispute Resolution	= \$18,450.00

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William J. Schifino, Jr., Esq.	-	Public Arbitrator
Albert Roberts	-	Non-Public Arbitrator

#### Concurring Arbitrators' Signatures

  
Arthur L. Tepper, Esq.  
Public Arbitrator, Presiding Chair

7/14/04  
Signature Date

William J. Schifino, Jr., Esq.  
Public Arbitrator

Signature Date

Albert Roberts  
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution  
 Arbitration No. 03-01767  
 Award Page 5

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Less payments = \$ 600.00

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Balance Due NASD Dispute Resolution = \$ 0.00

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Forum Fees = \$18,450.00

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Total Fees = \$28,450.00

Less payments = \$10,000.00

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 Signature Date

  
 \_\_\_\_\_  
 William J. Schifino, Jr., Esq.  
 Public Arbitrator

7-13-04  
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 Signature Date

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NASD Dispute Resolution  
 Arbitration No. 03-01767  
 Award Page 5

Less payments = \$ 600.00

Balance Due NASD Dispute Resolution = \$ 0.00

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Forum Fees = \$18,450.00

Total Fees = \$28,450.00

Less payments = \$10,000.00

Balance Due NASD Dispute Resolution = \$18,450.00

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### ARBITRATION PANEL

Arthur L. Tepper, Esq.

Public Arbitrator, Presiding Chair

William J. Schifino, Jr., Esq.

Public Arbitrator

Albert Roberts

Non-Public Arbitrator

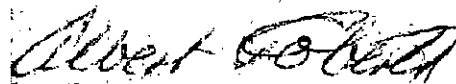
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Arthur L. Tepper, Esq.  
 Public Arbitrator, Presiding Chair

Signature Date

William J. Schifino, Jr., Esq.  
 Public Arbitrator

Signature Date

  
 Albert Roberts  
 Non-Public Arbitrator

  
 Signature Date

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