
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Eugene Armstrong, an individual,
Peggy Armstrong, an individual, and
Richard Armstrong, an individual

Case Number: 03-02514

Names of the Respondents

Stephen Greenhut, an individual,
Christopher Knotts, an individual, and
Morgan Stanley, a Delaware corporation,
f/k/a/ Morgan Stanley Dean Witter & Co.

Hearing Site: Tampa, Florida

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

REPRESENTATION OF PARTIES

For Eugene Armstrong, an individual, Peggy Armstrong, an individual, and Richard Armstrong, an individual, hereinafter collectively referred to as "Claimants": Thomas Gleason, Esq. and Matthew S. Przybycin, Esq., Dennis Hernandez & Associates, Tampa, Florida.

For Stephen Greenhut, an individual, ("Greenhut"), Christopher Knotts, an individual, ("Knotts") and Morgan Stanley, a Delaware corporation, f/k/a/ Morgan Stanley Dean Witter & Co. ("Morgan"): Colleen M. Fitzgerald, Esq., Gray Robinson, Tampa, Florida.

CASE INFORMATION

Statement of Claim filed on or about: April 7, 2003.

Claimants signed the Uniform Submission Agreement: March 23, 2003.

Statement of Answer filed by Respondents on or about: July 7, 2003.

Respondent Greenhut signed the Uniform Submission Agreement: July 3, 2003.

Respondent Morgan signed the Uniform Submission Agreement: July 14, 2003.

Respondent Knotts did not file an executed Uniform Submission Agreement.

CASE SUMMARY

Claimants alleged the following causes of action: breach of contract; breach of fiduciary duty (Morgan and Morgan advisors); breach of fiduciary duty (Greenhut); breach of fiduciary duty (Knotts); breach of implied duties of good faith and fair dealing; unsuitability; fraudulent inducement (Morgan, Morgan advisors and Greenhut); negligent misrepresentation (Morgan, Morgan advisors and Greenhut); negligence (Morgan and Morgan advisors); failure to supervise (Morgan and Morgan advisors); violations of state securities law (Florida); and violations of state

securities law (West Virginia). The causes of action relate to Claimants' investments in various unspecified common stocks.

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

RELIEF REQUESTED

Claimants requested judgment against Respondents for direct, incidental and consequential damages, in excess of \$65,000.00, prejudgment interest, costs, and attorneys' fees.

Respondents requested that the arbitrators dismiss Claimants' claims, in their entirety, and reserve the right, in accordance with applicable law, to proceed to a court of competent jurisdiction to recover their attorneys' fees. In addition, Respondents requested that the Central Registration Depository ("CRD") records of Respondents Greenhut and Knotts be expunged of this matter.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent Knotts did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is 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, is bound by the determination of the arbitration panel (the "Panel") on all issues submitted.

Prior to the commencement of the hearing, the Panel heard Respondents' motion to bar the testimony of John Lyman, Claimants' expert, based upon Claimants' violation of Rule 10321(c) of the Code. After oral argument, the Panel granted Respondents' motion to bar the testimony of John Lyman, for Claimants' failure to timely file their witness and exhibit list in accordance with Rule 10321(c) of the Code.

Thereafter, on January 20th and 21st, 2005, Claimants moved the Panel to allow Mr. Lyman to testify. Respondents opposed the motion. The Panel refused the motion.

Claimants were asked at the close of the hearing to confirm that they had a full and fair opportunity to be heard. Counsel for Claimants stated that he could not say "yes" because the Panel barred the testimony of Mr. Lyman. At no time did counsel offer any excuse for the violation of Rule 10321 of the Code, other than the fact that the lawyer who started the case had left the law firm six months ago.

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:

On Claimants' Statement of Claim, the Panel finds against Claimants and in favor of Respondents.

The claims against Respondents Greenhut and Knotts were factually impossible or clearly erroneous. As such, the Panel recommends that all references to the above-captioned arbitration be expunged from the registration records of Respondents Greenhut and Knotts, which are maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Greenhut and Knotts must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

The Panel further finds that the Claimants failed to prove a violation of Florida or West Virginia securities law and that the Respondents are entitled to proceed to a court of competent jurisdiction to recover their attorney fees.

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 will retain or collect the non-refundable filing fees for each claim:

| | |
|--------------------------|------------|
| Initial claim filing fee | = \$225.00 |
|--------------------------|------------|

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent Morgan is a member firm and a party.

| | |
|----------------------------|---------------------|
| Pre-hearing process fee | = \$ 750.00 |
| <u>Hearing process fee</u> | <u>= \$1,700.00</u> |
| Total Member Fees | = \$2,450.00 |

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments granted during these proceedings for which fees were assessed.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

Three-day cancellation 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.

There were no injunctive relief fees assessed during these proceedings.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

| | |
|---|--------------------|
| One (1) Pre-hearing session with the Panel @ \$750.00 per session | = \$750.00 |
| Pre-hearing conference: December 4, 2003 1 session | |
| Six (6) Hearing sessions @ \$750.00 per session | = \$4,500.00 |
| Hearing Dates: January 19, 2005 2 sessions | |
| January 20, 2005 2 sessions | |
| January 21, 2005 2 sessions | |
| <hr/> Total Forum Fees | <hr/> = \$5,250.00 |

The Panel has assessed the total forum fees in the amount of \$5,250.00 to Claimants, jointly and severally.

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 during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

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|-------------------------------------|---------------|
| Initial Filing Fee | = \$ 225.00 |
| Forum Fees | = \$ 5,250.00 |
| Total Fees | = \$ 5,475.00 |
| Less payments | = \$ 1,425.00 |
| Balance Due NASD Dispute Resolution | = \$ 4,050.00 |

Respondent Morgan is solely liable for:

| | |
|-------------------------------------|---------------|
| Member Fees | = \$ 2,450.00 |
| Total Fees | = \$ 2,450.00 |
| Less payments | = \$ 2,450.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

NASD Dispute Resolution

Arbitration No. 03-02514

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

ARBITRATION PANEL

| | | |
|---------------------|---|--|
| R Donald Kelly, LLB | - | Public Arbitrator, Presiding Chairperson |
| Richard Lee Ashton | - | Public Arbitrator |
| Peter F. Crowell | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

_____/s/_____
R. Donald Kelly, LLB
Public Arbitrator, Presiding Chairperson

Signature Date

_____/s/_____
Richard Lee Ashton
Public Arbitrator

Signature Date

_____/s/_____
Peter F. Crowell
Non-Public Arbitrator

Signature Date

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

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

ARBITRATION PANEL

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|---------------------|---|--|
| R Donald Kelly, LLB | - | Public Arbitrator, Presiding Chairperson |
| Richard Lee Ashton | - | Public Arbitrator |
| Peter F. Crowell | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

R. Donald Kelly
R. Donald Kelly, LLB
Public Arbitrator, Presiding Chairperson

1-28-05
Signature Date

Richard Lee Ashton
Public Arbitrator

Signature Date

Peter F. Crowell
Non-Public Arbitrator

Signature Date

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

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| Richard Lee Ashton | - | Public Arbitrator |
| Peter F. Crowell | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

R. Donald Kelly, LLB
Public Arbitrator, Presiding Chairperson

Signature Date

Richard Lee Ashton
Richard Lee Ashton
Public Arbitrator

Jan. 28, 2005
Signature Date

Peter F. Crowell
Non-Public Arbitrator

Signature Date

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

PFC

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| Richard Lee Ashton | - | Public Arbitrator |
| Peter F. Crowell | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

R. Donald Kelly, LLB
Public Arbitrator, Presiding Chairperson

Signature Date

Richard Lee Ashton
Public Arbitrator

Signature Date

Peter F. Crowell
Peter F. Crowell
Non-Public Arbitrator

1/28/05
Signature Date

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