

**Stipulated Award
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

James Santy and Susan Santy, Claimants v. First Wall Street Corporation and John R. Openshaw,
Respondents

Case Number: 03-03097

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimants:

Michael Harrington, Esq.
Law Offices of James Jay Seltzer
Emeryville, California

For Respondents:

Jeffrey S. Kob, Esq.
Miller Milove & Kob
San Diego, California

CASE INFORMATION

Statement of Claim filed: April 25, 2003

Claimants' Uniform Submission Agreement signed: April 16, 2003

Joint Statement of Answer filed by Respondents First Wall Street Corporation ("First Wall Street") and John R. Openshaw: August 21, 2003

CASE SUMMARY

In their Statement of Claim, Claimants alleged negligence, unsuitability, breach of fiduciary duty, fraud, failure to supervise, breach of contract, breach of the implied covenant of good faith and fair dealing, and violation of Corporations Code Section 25401 made actionable by Section 25504.1, against Respondents First Wall Street and John R. Openshaw. Claimants' allegations involve investments in Telergy, Inc. stock.

In their Joint Answer to Claimants' Statement of Claim, Respondents First Wall Street and John R. Openshaw denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested:

1. Compensatory damages in the amount of \$200,000.00;
2. Punitive damages in the amount of \$600,000.00;
3. Treble damages;
4. Costs;
5. Attorney's fees; and
6. Such further action deemed just and appropriate in this matter.

Respondents requested:

1. Dismissal of Claimants' claims; and
2. Such other relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On June 21, 2003, Claimants and Claimants' 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. Pursuant to the Code of Arbitration Procedure IM-10100 the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

Respondents First Wall Street and John R. Openshaw did not file with NASD Dispute Resolution ("NASD-DR") properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered the Claim are bound by the determination of the Panel on all issues submitted.

The parties have entered into a confidential settlement agreement pursuant to which Claimants have agreed to dismiss their claims with prejudice and the parties have agreed to request jointly that an Award be issued expunging the references to this proceeding from the NASD Central Registration Depository of Respondent John R. Openshaw.

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 and the parties' request for this Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants and Respondents have entered into a confidential settlement agreement.
2. The Panel accepts the dismissal with prejudice of each and every claim asserted by Claimants against Respondents First Wall Street and John R. Openshaw.
3. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent John R. Openshaw's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent John R. Openshaw must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$500.00
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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, First Wall Street is a party and the following fees are assessed:

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$5,000.00</u>
Total Member Fees	= \$8,550.00

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 Chair/Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference: October 17, 2003 1 session	

Total Forum Fees	= \$1,200.00
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The Panel assessed \$600.00 in forum fees jointly and severally to Claimants.

The Panel assessed \$600.00 in forum fees jointly and severally to Respondents.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 1,100.00
Less Payments	= \$(1,700.00)
Refund Due Claimants	= \$(600.00)

2. Respondent First Wall Street is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
Less Payments	= \$(8,550.00)
Balance Due NASD-DR	= \$ 0.00

3. Respondents First Wall Street and John R. Openshaw are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 600.00
Less Payments	= \$(0.00)
Balance Due NASD-DR	= \$ 600.00

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

Concurring Arbitrators' Signatures



Robin Lynn Berry
Chair, Public Arbitrator

9/1/04
Signature Date

Linda M. McCoy, CPA
Public Arbitrator

Signature Date

Timothy P. Bogan, CPA
Non-Public Arbitrator

Signature Date

9/10/04
Date of Service

ARBITRATION PANEL

Robin Lynn Berry	-	Public Arbitrator, Presiding Chair
Linda M. McCoy, CPA	-	Public Arbitrator
Timothy P. Bogan, CPA	-	Non-Public Arbitrator

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Signature Date



Timothy P. Bogan, CPA
Non-Public Arbitrator

9-7-04

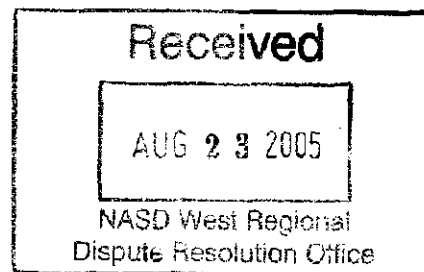
Signature Date

9/10/04

Date of Service

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Miller Milove & Kob
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(619) 696-5200

Attorneys for Respondents
John Openshaw and
First Wall Street Corporation



NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ARBITRATION PROCEEDING

In the matter of)	NASD-DR Case No. 03-03097
the Arbitration Between,)	
)	
JAMES DOMINICK SANTY, SUSAN SANTY,)	STIPULATION REQUESTING
)	ORDER RECOMMENDING
Claimants,)	EXPUNGEMENT OF MATTER
)	FROM RESPONDENT JOHN
v.)	OPENSHAW'S C.R.D. RECORDS
)	
JOHN OPENSHAW, FIRST WALL STREET)	
CORPORATION,)	
Respondents.)	
_____)	

By and through their counsel of record, Claimants James and Susan Santy and Respondents First Wall Street Corp. and John Openshaw agree and stipulate as follows:

1. Claimants have brought certain claims against First Wall Street and John Openshaw ("Respondents") before the National Association of Securities Dealers Dispute Resolution Inc. ("NASD-DR") for arbitration and resolution, and that matter was assigned case number 03-03097.

2. Respondents denied all material allegations of Claimants' claims.
3. Claimants and First Wall Street have entered into a Confidential Settlement Agreement and General Release ("Settlement Agreement") regarding Claimants' claims against Respondents.
4. Pursuant to the Settlement Agreement, Claimants have dismissed Respondents First Wall Street and John Openshaw from these proceedings with prejudice.
5. Respondents contend that the claims against John Openshaw were without factual basis, and on that basis seek an order recommending that this matter be expunged from his C.R.D. record.
6. As part of the settlement, Claimants have agreed not to oppose Respondents' request that a stipulated award be entered, recommending that all references to this matter be expunged from the record of Respondent John Openshaw maintained by the NASD in its Central Registration Depository.

WHEREFORE, through their respective counsel of record, Claimants and Respondents First Wall Street and John Openshaw hereby stipulate to, and seek the arbitrator's approval of, the following order:

- A. The arbitration denominated, *James Dominick Santy and Susan Santy v. John Robert Openshaw and First Wall Street Corporation*, Case No. 03-03097, is hereby dismissed in its entirety with prejudice.
- B. The arbitrator recommends and directs that all references to the complaints of the Claimants or the claim filed by them be expunged from the record of respondent John Openshaw maintained by the NASD in its C.R.D., with the understanding that, pursuant to NASD Notice To Members 99-09, NASD

Regulation will not execute the expungement directive until the Arbitration

Award is confirmed by a court of competent jurisdiction.

C. All other relief not expressly granted is denied.

Dated: 8/20/04

W. Richard Sintek
W. Richard Sintek, Esq.
Miller, Milove & Kob
Attorneys for First Wall Street and
John Openshaw

Dated: 8-17-04

Michael Harrington
Michael Harrington
Law Offices of James Jay Seltzer
Attorneys for James and Susan Santy

settlement.santy.wpd