
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
James W. Falanga

Case Number: 03-03489

Names of the Respondents
Morgan Stanley Dean Witter, Inc.
James Musso

Hearing Site: New Orleans, LA

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

REPRESENTATION OF PARTIES

For James W. Falanga ("Falanga"), hereinafter referred to as "Claimant": Bruce V. Schewe, Esq., Phelps Dunbar LLP, New Orleans, LA.

For Morgan Stanley Dean Witter, Inc. ("MSDW") and James Musso ("Musso"), hereinafter referred to as "Respondents": Kevin H. Lewis, Esq., Howard Rice Nemerovski Canady Falk & Rabkin, San Francisco, CA.

CASE INFORMATION

Statement of Claim filed on or about: May 12, 2003.

Claimant signed the Uniform Submission Agreement: May 12, 2003.

Statement of Answer filed by Respondents on or about: July 15, 2003

Respondent MSDW signed the Uniform Submission Agreement: July 15, 2003.

Respondent Musso signed the Uniform Submission Agreement: July 15, 2003.

Motion to Bar Respondent from Presenting a Defense or to Exclude Their Untimely "Exhibits" and Hearing Brief filed by Claimant on or about: September 24, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: 1) breach of fiduciary and contractual duties; 2) failure to supervise; and 3) violation of Louisiana's Blue-Sky Law, La. R.S. 41:701-723. The causes of action relate to the purchase of various shares of stock including Telefonos, America Online, Cisco Systems, Intel, Motorola, Nokia, Sony, Lucent Technologies, General Electric, Sun Microsystems, MSDW Hi-Tech 35 Index and NASDAQ-100 Trust Series as well as the purchase of funds in Aggressive Equity Fund B, American Opportunities Fund B, Blackrock International Small Cap Equity B, Blackrock Mid Cap Growth B, European Growth Fund B and VK Select Growth Fund B.

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

RELIEF REQUESTED

Claimant requested compensatory damages of \$210,697.00, plus interest, punitive and/or special damages, attorney's fees, expert witness fees, costs and all other relief viewed as just.

Respondents requested that all claims against them be dismissed, that Respondents be awarded their costs and fees in defending this claim and such other relief as may be just, proper and provided by law. In addition, Respondents requested that this matter be permanently expunged from Respondent Musso's Form U-4 on file with the NASD Central Registration Depository.

OTHER ISSUES CONSIDERED AND DECIDED

At the commencement of the evidentiary hearing, the parties stipulated to the granting of Claimant's *ore tenus* Motion to Amend the Statement of Claim for Damages to Conform to the Evidence.

In addition, at the commencement of the evidentiary hearing, the arbitration panel denied Claimant's Motion to Bar Evidence.

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

AWARD

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

1. Respondents are liable, jointly and severally, and shall pay to Claimant the sum of \$67,962.00 in compensatory damages, plus interest at the rate of 5.25% (percent) per annum (La. judicial rate) from the date of execution of the Award until the date of payment of the Award.
2. Respondents are liable, jointly and severally, and shall pay to Claimant the sum of \$34,000.00 as attorneys' fees pursuant to La. R.S. 51:714.
3. Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive and/or special damages, 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 = \$300.00

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, MSDW is a member firm and a party.

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred during these proceedings.

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.

No three-day cancellation fees were incurred during these proceedings.

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 during these proceedings.

Forum Fees and Assessments

The Panel 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 hours or less.

One (1) Pre-hearing session with the Panel @ \$1,125.00 = \$1,125.00

Pre-hearing conference: November 18, 2003 1 session

Five (5) Hearing sessions with the Panel @ \$1,125.00 = \$5,625.00

Hearing Date: September 28, 2004 2 sessions

September 29, 2004 2 sessions

September 30, 2004 1 session

Total Forum Fees = \$6,750.00

The Panel has assessed the total forum fees of \$6,750.00 jointly and severally to Respondents.

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 during these proceedings.

Fee Summary

Claimant is solely 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

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

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$6,750.00
<u>Total Fees</u>	= \$6,750.00
<u>Less Payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$6,750.00

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

ARBITRATION PANEL

Thomas K. Potter, III, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Kendall P. Hill	-	Public Arbitrator
Alisa Ruth	-	Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Thomas K. Potter, III, Esq.
Non-Public Arbitrator, Presiding Chairperson

October 26, 2004
Signature Date

/s/
Kendall P. Hill
Public Arbitrator

October 26, 2004
Signature Date

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/s/
Alisa Ruth
Public Arbitrator

October 26, 2004
Signature Date

October 27, 2004
Date of Service (For NASD Dispute Resolution office use only)

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Alisa Ruth	-	Public Arbitrator

Concurring Arbitrators' Signatures


Thomas K. Potter, III, Esq.
Non-Public Arbitrator, Presiding Chairperson

10/26/2004
Signature Date

Kendall P. Hill
Public Arbitrator

Signature Date

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No administrative costs were incurred during these proceedings.

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Kendall P. Hill	-	Public Arbitrator
Alisa Ruth	-	Public Arbitrator

Concurring Arbitrators' Signatures

Thomas K. Potter, III, Esq.
Non-Public Arbitrator, Presiding Chairperson

Signature Date

Kendall P. Hill
Kendall P. Hill
Public Arbitrator

10/26/04
Signature Date

NASD Dispute Resolution

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Alisa Ruth

Public Arbitrator


Signature Date

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