
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 03-03543

Dana J. Weinkle and Susan H. Weinkle JTEN
Dana J. Weinkle IRA
Susan Holloway Weinkle IRA
Dana J. Weinkle on behalf of Palm Coast Eye Center P.A. Profit
Sharing Plan F/N/A Dana J. Weinkle TTEE Profit Sharing Plan
U/A/D 07/07/95 FBO Dana J. Weinkle
Dana J. Weinkle Cust for Justin J. Weinkle UTMA/FL
Dana J. Weinkle Cust for Allison P. Weinkle UTMA/FL

Names of the Respondents

Hearing Site: Tampa, Florida

Morgan Stanley DW, Inc.
William Richard Fox

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

REPRESENTATION OF PARTIES

For Dana J. Weinkle and Susan H. Weinkle JTEN ("JTEN"), Dana J. Weinkle IRA ("DWIRA"), Susan Holloway Weinkle IRA ("SWIRA"), Dana J. Weinkle ("Weinkle") on behalf of Palm Coast Eye Center P.A. Profit Sharing Plan F/N/A Dana J. Weinkle TTEE Profit Sharing Plan U/A/D 07/07/95 FBO Dana J. Weinkle ("PSP"), Dana J. Weinkle Cust for Justin J. Weinkle UTMA/FL ("JJW") and Dana J. Weinkle Cust for Allison P. Weinkle UTMA/FL ("APW"), hereinafter collectively referred to as "Claimants": Ross B. Intelisano, Esq., Rich Intelisano LLP, New York, New York.

For Morgan Stanley DW, Inc. ("MSDW") and William Richard Fox ("Fox"), hereinafter collectively referred to as "Respondents": Laura J. Starr, Esq. and Peter J. Aldrich, Esq., Peter J. Aldrich, P.A., Palm Beach Gardens, Florida.

CASE INFORMATION

Statement of Claim filed on or about: May 13, 2003.

Claimants DWIRA, PSP, JJW and APW signed the Uniform Submission Agreements: May 3, 2003.

Claimants JTEN and SWIRA signed the Uniform Submission Agreements: May 4, 2003.

Statement of Answer and Counterclaim filed by Respondents on or about: August 11, 2003.

Respondent MSDW signed the Uniform Submission Agreement: September 29, 2003.

Respondent Fox signed the Uniform Submission Agreement: December 3, 2003.

Answer to Counterclaim filed by Claimants on or about: October 3, 2003.

CASE SUMMARY

Claimants asserted the following causes of action against Respondents: unsuitability; misrepresentations and omissions; fraud; breach of fiduciary obligations; failure to supervise; breach of customer agreement; negligence, gross negligence and negligent supervision; respondeat superior; violation of Section 517.301 of the Florida Statutes; and, violation of Section 812.014 of the Florida Statutes. The causes of action relate to the purchase in Claimants' accounts of the following: various technology stocks including, but not limited to, NASDAQ 100; MSDW proprietary products, including the MSDW High Technology 35 Index Portfolio and MSDW 21st Century Trend Fund B; and, Yahoo bonds and Xilinx convertible bonds, both sponsored by MSDW.

Unless specifically admitted in their Answer, Respondents denied all allegations of wrongdoing and asserted various defenses and affirmative defenses. Additionally, Respondents asserted a counterclaim for indemnification against Weinkle, acting in his capacity as Trustee and Custodian for Claimants PSP, JJW and APW.

Unless specifically admitted in their Answer, Claimants denied the allegations set forth in the counterclaim and asserted various defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$765,000.00, rescissory damages, disgorgement of Respondents' compensation, an unspecified amount of punitive damages, reasonable attorneys' fees, treble damages, accrued interest from the date of loss to the date of the award, costs (including expert and witness fees and administrative expenses) and any other and further relief deemed just and equitable by the Panel. Additionally, Claimants requested that Respondents' counterclaim be denied in its entirety and that the Panel award Claimants their attorneys' fees and costs incurred in defense thereof.

Respondents requested that all claims asserted by Claimants be dismissed, that Respondents be awarded their costs, that Respondents be permitted to seek their fees in a court of law and that all references to this matter be expunged from the NASD Central Registration Depository ("CRD") records of Respondent Fox.

OTHER ISSUES CONSIDERED AND DECIDED

On or about September 16, 2004, the parties filed with NASD Dispute Resolution a notice of settlement.

On or about December 10, 2004, the parties filed with NASD Dispute Resolution a proposed Stipulated Award for review and approval by the Panel that contained a request for expungement of all references to this matter from the NASD CRD records of Respondents MSDW and Fox.

On March 14, 2005, the Panel conducted a pre-hearing conference with the parties in order to gather additional information from the parties with respect to the issue of expungement.

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

AWARD

After considering the pleadings and the proposed Stipulated Award submitted by the parties, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Panel accepts Claimants' voluntary dismissal of all claims against Respondents, with prejudice, and Respondents' voluntary dismissal of all counterclaims against Claimants, with prejudice.

The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents MSDW's and Fox's public and non-public registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents MSDW and Fox must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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	= \$ 500.00
Counterclaim filing fee	= \$2,000.00

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 MSDW is a member firm and a party:

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournments were requested in this matter.

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 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.

No injunctive relief fees were incurred in this matter.

Forum Fees and Assessments

The Panel assesses 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.

One (1) Pre-hearing session with the Panel @ \$1,200.00/session = \$1,200.00
Pre-hearing conference: March 14, 2005 1 session

Total Forum Fees = \$1,200.00

The Panel has assessed the total forum fees of \$1,200.00 to Respondents, 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.

No administrative costs were incurred in this matter.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Total Fees	= \$ 500.00
Less payments	= \$ 500.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MSDW is solely liable for:

Member Fees	= \$8,550.00
Total Fees	= \$8,550.00
Less payments	= \$8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Counterclaim Filing Fee	= \$2,000.00
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<u>Forum Fees</u>	= \$1,200.00
<u>Total Fees</u>	= \$3,200.00
<u>Less payments</u>	= \$3,200.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 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

Thomas F. Icard, Jr.	-	Public Arbitrator, Presiding Chairperson
Donald M. Macdonald	-	Public Arbitrator
Tama Traberman	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Thomas F. Icard, Jr.
Public Arbitrator, Presiding Chairperson

March 28, 2005
Signature Date

/s/
Donald M. Macdonald
Public Arbitrator

March 29, 2005
Signature Date

/s/
Tama Traberman
Non-Public Arbitrator

March 28, 2005
Signature Date

April 4, 2005
Date of Service (For NASD Dispute Resolution office use only)


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Total Fees	= \$3,200.00
Less payments	= \$3,200.00
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Tama Traberman	-	Non-Public Arbitrator

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Thomas F. Icard, Jr.
Public Arbitrator, Presiding Chairperson

3/28/05
Signature Date

Donald M. Macdonald
Public Arbitrator

Signature Date

Tama Traberman
Non-Public Arbitrator

Signature Date

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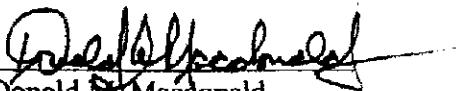
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Thomas F. Icard, Jr.
Public Arbitrator, Presiding Chairperson

Signature Date



Donald M. Macdonald
Public Arbitrator

03/29/2005

Signature Date

Tama Traberman
Non-Public Arbitrator

Signature Date

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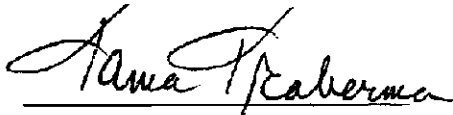
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Public Arbitrator, Presiding Chairperson

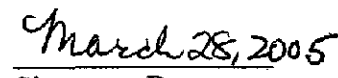
Signature Date

Donald M. Macdonald
Public Arbitrator

Signature Date



Tama Traberman
Non-Public Arbitrator



Signature Date

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