

COPY

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Patsy Y. Butler, Claimant v. Morgan Stanley DW Inc. and John Joseph Moran, Respondents

Case Number: 03-03957

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimant:

Mitchell S. Ostwald, Esq.
Law Offices of Mitchell S. Ostwald
Sacramento, California

For Respondents:

John Worden, Esq.
Morgenstein & Jubelirer LLP
San Francisco, California

CASE INFORMATION

Statement of Claim filed: May 30, 2003

Claimant's Arbitration Brief filed: January 26, 2004

Claimant's Uniform Submission Agreement signed: April 30, 2003

Joint Statement of Answer filed by Respondents Morgan Stanley DW Inc. ("MSDW") and John Joseph Moran: August 11, 2003

Respondents' Arbitration Brief filed: January 26, 2004

CASE SUMMARY

Claimant alleged the following claims with respect to investments in various securities, including but not limited to, B shares of various Putnam funds and technology stocks such as Nortel, Ariba, JDS Uniphase and EMC: 1) Breach of Fiduciary Duty; 2) Fraud (including California Civil Code Sections 1709, 1710 and 1711); 3) Constructive Fraud (Civil Code Section 1573); 4) Failure to Supervise; and 5) Violation of Federal and State Securities Laws; NASD Rules of Fair Practice and NYSE Rules.

Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents also asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages in an amount according to proof, but not less than \$240,702.00;
2. Disgorgement and restitution of all earnings, profits, compensation and benefits received by the Respondents as a result of their unlawful acts and practices in an amount according to proof;
3. Lost opportunity cost of what the gain on at least \$367,000.00 would have been if suitably invested;
4. Attorney's fees and costs;
5. Pre- and post judgment interest at the legal rate;
6. Punitive damages in an amount according to proof; and
7. Such other and further relief as the Panel deems just and proper.

Respondents requested that Claimant's claims be denied and that Respondents recover their costs of defense, including reasonable attorneys' fees, and that Mr. Moran's record be expunged.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents did not file with NASD Dispute Resolution ("NASD-DR") properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered Claimant's Claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

On June 18, 2003, Claimant and Claimant's 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.

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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) All claims by Claimant, including the claim for punitive damages, are dismissed.
- 2) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent John Joseph Moran's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent John Joseph Moran must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3) Even though the Panel found in favor of Respondents, the Panel has determined that no attorney's fees are to be awarded to Respondents and each party is to bear their own attorney's fees and costs. This is based on what the Panel perceived as a lack of cooperation and good faith by Respondent MSDW, Inc. (not Respondent Moran or Respondents' attorneys) in adequately and promptly responding to Claimant's discovery requests.
- 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	= \$300.00
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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, MSDW is a party and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$2,750.00
Total Member Fees	= \$5,200.00

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 with a single arbitrator @ \$450.00/session = \$450.00
Pre-hearing conference: December 18, 2003 1 session

(1) Pre-hearing conference session with the Panel @ \$1,125.00/session = \$1,125.00
Pre-hearing conference: October 14, 2003 1 session

(12) Hearing sessions @ \$1,125.00/session = \$13,500.00
Hearing: February 2, 2004 2 sessions
February 3, 2004 2 sessions
February 4, 2004 2 sessions
February 5, 2004 2 sessions
February 24, 2004 2 sessions
February 25, 2004 2 sessions

Total Forum Fees = \$15,075.00

The Panel assessed \$7,537.50 in forum fees to Claimant.

The Panel assessed \$7,537.50 in forum fees jointly and severally to Respondents MSDW and Moran.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 7,537.50
Total Fees	= \$ 7,837.50
Less Payments	= \$(1,425.00)
Balance Due NASD-DR	= \$ 6,412.50

2. Respondent MSDW is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Less Payments	= \$(5,200.00)
Balance Due NASD-DR	= \$ 0.00

3. Respondents MSDW and Moran are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 7,537.50
<u>Less Payments</u>	= \$ (0.00)
Balance Due NASD-DR	= \$ 7,537.50

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.

ARBITRATION PANEL

Michael J. Fish, Esq.	-	Public Arbitrator, Presiding Chair
Donald H. Korn, CFA	-	Public Arbitrator
Marilyn G. McClaskey	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Michael J. Fish, Esq.
Chair, Public Arbitrator

3/24/04
Signature Date

Donald H. Korn, CFA
Public Arbitrator

Signature Date

Marilyn G. McClaskey
Non-Public Arbitrator

Signature Date

3/25/04
Date of Service

NASD Dispute Resolution
Arbitration No. 03-03957
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3. Respondents MSDW and Moran are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 7,537.50
<u>Less Payments</u>	<u>= \$ (0.00)</u>
Balance Due NASD-DR	= \$ 7,537.50

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.

ARBITRATION PANEL

Michael J. Fish, Esq.	-	Public Arbitrator, Presiding Chair
Donald H. Korn, CFA	-	Public Arbitrator
Marilyn G. McClaskey	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Michael J. Fish, Esq.
Chair, Public Arbitrator

Signature Date

Donald H. Korn
Donald H. Korn, CFA
Public Arbitrator

3/25/04
Signature Date

Marilyn G. McClaskey
Non-Public Arbitrator

Signature Date

3/25/04
Date of Service

3. Respondents MSDW and Moran are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 7,537.50
<u>Less Payments</u>	= \$ (0.00)
Balance Due NASD-DR	= \$ 7,537.50

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.

ARBITRATION PANEL

Michael J. Fish, Esq.	-	Public Arbitrator, Presiding Chair
Donald H. Korn, CFA	-	Public Arbitrator
Marilyn G. McClasky	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Michael J. Fish, Esq.
Chair, Public Arbitrator

Signature Date

Donald H. Korn, CFA
Public Arbitrator

Signature Date

Marilyn G. McClasky

Marilyn G. McClasky
Non-Public Arbitrator

3/24/04

Signature Date

3/25/04

Date of Service

**STIPULATED AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Claimants

Amer Saleh and Nawal Amin, Individually
and as Conservators for Hassen Saleh

and

Case Number: 03-03960
Hearing Site: Detroit, Michigan

Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.,
and Jauehwa Jan Huang

NATURE OF DISPUTE

Customers v. Member and Associated Person

REPRESENTATION OF PARTIES

Amer Saleh and Nawal Amin, Individually and as Conservators for Hassen Saleh ("Claimants") were represented by Mark L. Kowalsky, Esq., and Simon Hill, Esq., Hertz, Schram & Saretsky, P.C., Bloomfield Hills, Michigan.

Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS") and Jauehwa Jan Huang a/k/a Jan J. Huang ("Huang"), hereinafter referred to as "Respondents," were represented by Clarence L. Pozza, Esq., and W. Scott Turnbull, Esq., Miller Canfield, Paddock and Stone, P.L.C., Detroit, Michigan

CASE INFORMATION

The Statement of Claim was filed on or about May 29, 2003. The Submission Agreement of Amer Saleh and Nawal Amin, Individually and as Conservators for Hassen Saleh was signed on or about May 15, 2003.

The Statement of Answer was filed jointly by MLPFS and Huang on or about August 29, 2004. The Submission Agreement of MLPFS was signed on or about March 10, 2004, by John P. Bevilacqua. The Submission Agreement of Huang was signed on or about March 1, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: violations of NASD and NYSE rules, the Securities Act of 1933 and the Securities Exchange Act of 1934, and rule 10b-5 promulgated thereunder; violations of the civil liability provisions of governing Blue Sky Laws; violation of the common law doctrines of fraud, misrepresentation, conversion; breach of contract; breach of fiduciary duties; negligence; and liability under the doctrines of negligent supervision, control person liability and respondeat superior. The causes of action related to Claimants' allegations that Respondents employed speculative trading and unsuitable strategies inconsistent with Claimants' requirements and investment objectives.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim fails to state a claim upon which relief can be granted; Claimants are estopped by their conduct from asserting any and all claims alleged in the Statement of Claim; and Claimants assumed the risks of the transactions and investments that they made through Respondents.

RELIEF REQUESTED

Claimants requested an award in an unspecified amount for out-of-pocket losses, lost opportunity costs, benefit-of the bargain damages, commissions, statutory damages, tax liability incurred, costs, interest, attorneys' fees, and exemplary/punitive damages.

Respondents requested that the claims asserted against them be dismissed in their entirety, that they be awarded their costs, attorneys' fees, and that Respondent Huang's CRD records be expunged.

OTHER ISSUES CONSIDERED & DECIDED

Claimants, having had an opportunity to review the records and documents produced in pre-hearing discovery, stipulated and agreed with Respondents to the expungement of all reference to the above-captioned arbitration from all registration records of Jauehwa Jan Huang.

Claimants have agreed to withdraw and dismiss all claims in this matter against all Respondents with prejudice and without costs.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

- 1.) Claimants' claims, having been withdrawn, are dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Jauehwa Jan Huang's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice

to Members 99-09, Respondent Jauehwa Jan Huang must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and

- 4.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

FEES

Pursuant to 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 = \$ 250.00

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. In this matter, the member firm is Merrill Lynch Pierce Fenner & Smith, Inc.

Member surcharge = \$ 1,500.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$ 2,200.00

Adjournment Fees

Adjournments requested during these proceedings:

November 30, 2004-December 12, 2004, requested jointly = \$ 1,000.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 Panel x \$1,000.00 = \$ 1,000.00
Pre-hearing conference: April 5, 2004 1 session

Total Forum Fees = \$ 1,000.00

Pursuant to the parties' agreement, the Arbitration Panel has assessed \$1,000.00 of the forum fees to Merrill Lynch Pierce Fenner & Smith, Inc.

Fee Summary

Claimants, Amer Saleh and Nawal Amin, Individually and as Conservators for Hassen Saleh, are jointly and severally liable for:

Initial Filing Fee	= \$ 250.00
Adjournment Fee	= \$ 500.00
Total Fees	= \$ 725.00
Less payments	= \$ 1,250.00
Balance refunded by NASD Dispute Resolution	= \$ 500.00

Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., is liable for:

Member Fees	= \$ 4,450.00
Forum Fees	= \$ 1,000.00
Total Fees	= \$ 4,950.00
Less payments	= \$ 5,500.00
Balance Refunded by NASD Dispute Resolution	= \$ 50.00

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., and Jauehwa Jan Huang, are jointly and severally liable for:

Adjournment Fee	= \$ 500.00
Total Fees	= \$ 500.00
Less payments	= \$ 500.00
Balance Due NASD Dispute Resolution	= \$ 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

James L. Karpen - Public Arbitrator, Presiding Chair
Barry Goldman, Esq. - Public Arbitrator
Diane Catherine Tietmeyer - Non-Public Arbitrator

Concurring Arbitrators:

/s/ James L. Karpen
James L. Karpen
Public Arbitrator, Presiding Chair

02/15/05
Signature Date

/s/ Barry Goldman, Esq.
Barry Goldman, Esq.
Public Arbitrator

02/15/05
Signature Date

/s/ Diane Catherine Tietmeyer
Diane Catherine Tietmeyer
Non-Public Arbitrator

02/15/05
Signature Date

02/16/05
Date of Service (For NASD office use only)

ARBITRATION PANEL

James L. Karpen - Public Arbitrator, Presiding Chair
Barry Goldman, Esq. - Public Arbitrator
Diane Catherine Tietmeyer - Non-Public Arbitrator

Concurring Arbitrators:


James L. Karpen
Public Arbitrator, Presiding Chair

8/15/05
Signature Date

Barry Goldman, Esq.
Public Arbitrator

Signature Date

Diane Catherine Tietmeyer
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Arbitration No. 02-03880
Signed Award Page 5 of 5

ARBITRATION PANEL

James L. Karpen - Public Arbitrator, Presiding Chair
Barry Goldman, Esq. - Public Arbitrator
Diane Catherine Tietmeyer - Non-Public Arbitrator

Concurring Arbitrators:

James L. Karpen
Public Arbitrator, Presiding Chair

Signature Date

Barry Goldman, Esq.
Public Arbitrator

Signature Date

Diane C. Tietmeyer

Diane Catherine Tietmeyer
Non-Public Arbitrator

2/15/05

Signature Date

Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 03-03980
Suggested Award Page 5 of 5

ARBITRATION PANEL

James L. Karpen - Public Arbitrator, Presiding Chair
Barry Goldman, Esq. - Public Arbitrator
Diane Catherine Tietmeyer - Non-Public Arbitrator

Concurring Arbitrators:

James L. Karpen
Public Arbitrator, Presiding Chair

Signature Date

Barry Goldman, Esq.
Public Arbitrator

2/15/05
Signature Date

Diane Catherine Tietmeyer
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)