

Award
NASD Dispute Resolution

COPY

In the Matter of the Arbitration Between:

Hsiao-Chen J. Chung (also known as Jennifer Chung), Claimant v. Hendraprawira Iskandar,
Michael R. Guerra, Sr., Jason B. Sinclair and Morgan Stanley DW Inc., Respondents

Case Number: 03-04093

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimant:

Timothy D. Murphy, Esq.
Law Offices of
James Jay Seltzer
Emeryville, California

For Respondents:

Eric G. Wallis, Esq.
Reed Smith Crosby Heafey LLP
Oakland, California

CASE INFORMATION

Statement of Claim filed: June 3, 2003

Claimant's Uniform Submission Agreement signed: March 25, 2003

Joint Statement of Answer filed by Respondents Hendraprawira Iskandar, Michael R. Guerra,
Sr., Jason B. Sinclair and Morgan Stanley DW Inc. ("Morgan Stanley"): September 5, 2003

Respondent Hendraprawira Iskandar's Uniform Submission Agreement signed: July 21, 2003

Respondent Michael R. Guerra, Sr.'s Uniform Submission Agreement signed: July 22, 2003

Respondent Jason B. Sinclair's Uniform Submission Agreement signed: August 26, 2003

Respondent Morgan Stanley's Uniform Submission Agreement signed: July 13, 2003

CASE SUMMARY

Claimant alleged the following claims with respect to investments in Quantum Effect Design, Inc. employee stock: 1) Just and Equitable Principles of Trade; 2) Suitability; 3) Omissions and Misrepresentations of Material Fact; 4) Violation of Margin Requirements; 5) Negligent Supervision and Failure to Supervise; 6) Violation of Corporations Code Sections 25401 and 25504.1; 7) Negligence; 8) Breach of Contract; 9) The Implied Covenant of Good Faith and Fair Dealing; and 10) Breach of Fiduciary Duty.

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

RELIEF REQUESTED

Claimant requested:

1. Damages in excess of \$2,000,000.00;
2. Punitive damages according to proof;
3. Interest;
4. Attorney's fees;
5. Costs;
6. Treble damages in the amount of \$4,000,000.00; and
7. Such further action deemed just and appropriate.

Claimant also requested a reasoned decision by the panel of arbitrators.

Respondents requested dismissal of Claimant's claims and requested that Claimant's claims be expunged from the CRD records of the Respondent Financial Advisors.

OTHER ISSUES CONSIDERED AND DECIDED

On July 9, 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.

On July 2, 2003, Respondents' 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.

During the hearing, the Panel denied Claimant's motion to disqualify Arbitrator, F. Conger Fawcett, Esq.

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 granted Respondent Morgan Stanley's motion for attorney's fees in the amount of \$250.00 to oppose the motion to disqualify Arbitrator, F. Conger Fawcett, Esq. Accordingly, Claimant is liable for and shall pay to Respondent Morgan Stanley, the sum of \$250.00 in attorney's fees.
- 3) During the hearing, the parties stipulated to the dismissal of Respondent Jason B. Sinclair and recommended expungement of this matter from Respondent Jason B. Sinclair's registration records maintained by the NASD Central Registration Depository ("CRD"). The Panel makes an affirmative finding to grant the request for expungement as to Jason B. Sinclair based on the fact Mr. Sinclair was not involved in any alleged violation. As to Respondents Jason B. Sinclair, Michael R. Guerra, Sr. and Hendraprawira Iskandar, the panel grants expungement on the finding that the claim is clearly erroneous. Accordingly, the Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Jason B. Sinclair, Michael R. Guerra, Sr. and Hendraprawira Iskandar's registration records maintained by the CRD with the understanding that pursuant to NASD Notice to Members 99-09, Respondents Jason B. Sinclair, Michael R. Guerra, Sr. and Hendraprawira Iskandar must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) Except as mentioned in paragraph 2 above, each party shall bear its own costs, including attorney's fees.
- 5) 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	= \$600.00
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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, Morgan Stanley is a party and the following fees are assessed:

Member Surcharge	= \$3,350.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$5,500.00</u>
Total Member Fees	= \$9,600.00

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 a single arbitrator @ \$450.00/session	=	\$450.00
Pre-hearing conference: November 3, 2004	1 session	
(1) Pre-hearing conference session with the Panel @ \$1,200.00/session	=	\$1,200.00
Pre-hearing conference: December 2, 2003	1 session	
(6) Hearing sessions @ \$1,200.00/session	=	\$7,200.00
Hearings: November 9, 2004	2 sessions	
November 10, 2004	2 sessions	
November 11, 2004	2 sessions	

Total Forum Fees	= \$8,850.00
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The Panel assessed \$4,425.00 in forum fees to Claimant.

The Panel assessed \$4,425.00 in forum fees to Respondent Morgan Stanley.

Fee Summary

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

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$ 4,425.00</u>
Total Fees	= \$ 5,025.00
<u>Less Payments</u>	<u>= \$(1,800.00)</u>
Balance Due NASD-DR	= \$ 3,225.00

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

Member Fees	= \$ 9,600.00
Forum Fee	= \$ 4,425.00
Total Fees	= \$ 14,025.00
Less Payments	= \$(9,600.00)
Balance Due NASD-DR	= \$ 4,425.00

All balances are payable to NASD Dispute Resolution and are payable upon the receipt of the Award pursuant to Rule 10130(g) of the Code.

ARBITRATION PANEL

Jane Bradley, Esq.	-	Public Arbitrator, Presiding Chair
F. Conger Fawcett, Esq.	-	Public Arbitrator
James R. Dickson	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Jane Bradley, Esq.
Chair, Public Arbitrator

November 17, 2004
Signature Date

F. Conger Fawcett, Esq.
Public Arbitrator

Signature Date

James R. Dickson
Non-Public Arbitrator

Signature Date

11/17/04
Date of Service

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

Member Fees	= \$ 9,600.00
Forum Fees	= \$ 4,425.00
Total Fees	= \$ 14,025.00
Less Payments	= \$(9,600.00)
Balance Due NASD-DR	= \$ 4,425.00

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James R. Dickson	-	Non-Public Arbitrator

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Jane Bradley, Esq.
Chair, Public Arbitrator

Signature Date


F. Conger Fawcett, Esq.
Public Arbitrator

11/16/04
Signature Date

James R. Dickson
Non-Public Arbitrator

Signature Date

11/17/04
Date of Service

Member Fees	= \$ 9,600.00
<u>Forum Fees</u>	= \$ 4,425.00
Total Fees	= \$ 14,025.00
<u>Less Payments</u>	= \$(9,600.00)
Balance Due NASD-DR	= \$ 4,425.00

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Public Arbitrator

Signature Date


James R. Dickson
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11/16/04

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