

Award
NASD Dispute Resolution

COPY

In the Matter of the Arbitration Between:

Nick Thomas Lomoro, Individually and as Trustee of the Nick Thomas Lomoro Revocable Living Trust Dated 11/13/97, Claimants v. Morgan Stanley DW Inc. and Andrew D. England, Respondents

Case Number: 03-04329

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimants:

Mark H. Pierce, Esq.
Olson & Pierce
San Jose, California

For Respondents:

Abe Lampart, Esq.
Law Offices of Abe Lampart, P.C.
San Francisco, California

CASE INFORMATION

Statement of Claim filed: June 13, 2003

Claimants' Opposition to Motion for More Definite Statement of Claim filed: October 17, 2003

Amended Statement of Claim filed: February 27, 2004

Claimants' Uniform Submission Agreement signed: June 5, 2003

Joint Statement of Answer and Motion for More Definite Statement of Claim filed by Respondents Morgan Stanley DW Inc. ("Morgan Stanley") and Andrew D. England: September 9, 2003

Respondents' Answer to Amended Statement of Claim filed: March 11, 2004

Respondents' Arbitration Brief filed: September 29, 2004

Respondent Morgan Stanley's Uniform Submission Agreement signed: September 9, 2003

Respondent Andrew D. England's Uniform Submission Agreement signed: September 30, 2003

CASE SUMMARY

Claimants alleged that in November 2000, Mr. Lomoro agreed to loan Respondent Andrew D. England \$5,000.00 by borrowing on Claimants' margin account. Claimants also alleged the following claims with respect to investments in various securities, including but not limited to investments in Micron and Cypress: 1) Breach of Fiduciary Duty regarding the England Loan; 2) Churning; 3) Failure to Supervise; 4) Unsuitability; 5) Breach of Fiduciary Duty; 6) Breach of Contract; 7) Morgan Stanley is Liable Under the Theory of Respondeat Superior; and 8) Unauthorized Trading.

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

RELIEF REQUESTED

Claimants requested damages estimated to exceed \$200,000.00 plus the \$5,000.00 loan made to Respondent England, prejudgment interest and post-judgment interest, and any other relief as the Panel deems just and proper.

Respondents requested that Claimants' Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On October 23, 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.

On September 9, 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.

Pursuant to the Code of Arbitration Procedure IM-10100 the waiver of the Claimants 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. The England Loan:

- The arbitration panel finds that the loan of \$5,000 made by Claimant Nick Thomas Lomoro to Respondent Andrew D. England was a breach of fiduciary duty owed to Claimant Nick Thomas Lomoro by Respondent England, and was contrary to rules established by Respondent Morgan Stanley, and shows a lack of supervision of Andrew D. England by Respondent Morgan Stanley. The panel directs Andrew D. England and Respondent Morgan Stanley, jointly and severally, to repay the loan of \$5,000.00 plus accrued interest of 10% compounded annually to Claimant Nick Thomas Lomoro. The compounded interest is to be calculated from November 17, 2000, the date the loan was made, until February 4, 2005.

2. Churning of Claimant Nick Thomas Lomoro Accounts by Respondent Andrew D. England:

- The arbitration panel finds that there was no excessive churning of the accounts and does not make an award for this claim.

3. Failure to Supervise:

- The arbitration panel finds that Morgan Stanley Branch Manager Mark Albers did improperly supervise Respondent Andrew D. England. Based on the findings, Respondents Morgan Stanley and Andrew D. England are jointly and severally liable for and shall pay to Claimant Nick Thomas Lomoro \$10,000.00.

4. Unsuitability:

- The arbitration panel finds that the investments were suitable for Claimant Nick Thomas Lomoro.

5. Breach of Fiduciary Duty:

- Other than the loan provided by Claimant Nick Thomas Lomoro to Respondent Andrew D. England, the arbitration panel finds no other breach of fiduciary responsibility on the part of the respondents.

6. Breach of Contract:

- The arbitration panel finds that there was no indication of breach of contract.

7. Morgan Stanley is Liable Under the Theory of Respondeat Superior:

- The arbitration panel finds that there was no liability on the part of Morgan Stanley under the theory of respondeat superior.

8. Unauthorized Trading:

- The arbitration panel finds that there was no indication of unauthorized trading.

9. Each party shall bear its own costs, including attorney's fees.

10. 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, Morgan Stanley is a party and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$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:

(3) Pre-hearing conference sessions with the Panel @ \$1,125.00/session	=	\$3,375.00
Pre-hearing conferences:		
January 12, 2004	1 session	
February 6, 2004	1 session	
October 22, 2004	1 session	

(9) Hearing sessions @ \$1,125.00/session = \$10,125.00

Hearing:	October 19, 2004	2 sessions
	October 20, 2004	3 sessions
	October 21, 2004	2 sessions
	February 3, 2005	2 sessions

Total Forum Fees = \$13,500.00

The Panel assessed \$6,750.00 in forum fees jointly and severally to Claimants.

The Panel assessed \$6,750.00 in forum fees jointly and severally to Respondents Morgan Stanley and Andrew D. England.

Fee Summary

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

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 6,750.00
Total Fees	= \$ 7,050.00
<u>Less Payments</u>	= \$(1,425.00)
Balance Due NASD-DR	= \$ 5,625.00

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

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

3. Respondents Morgan Stanley and Andrew D. England are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 6,750.00
<u>Less Payments by Morgan Stanley</u>	= \$(750.00)
Balance Due NASD-DR	= \$ 6,000.00

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.

ARBITRATION PANEL

Herbert Liberman	-	Public Arbitrator, Presiding Chair
John T. Collentine	-	Public Arbitrator
Robert A. Lakosil	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Herbert Liberman
Chair, Public Arbitrator

2-10-05

Signature Date

John T. Collentine
Public Arbitrator

Signature Date

Robert A. Lakosil
Non-Public Arbitrator

Signature Date

2/11/05

Date of Service

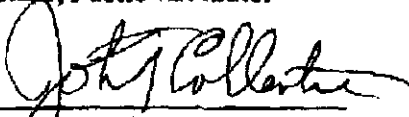
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Chair, Public Arbitrator

Signature Date



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Public Arbitrator

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Signature Date

Robert A. Lakosil
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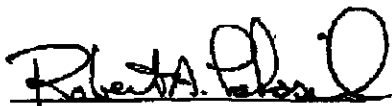
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