

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Robert J. Peat

Claimant,

Case Number: 03-06044

v.

Hearing Site: St. Louis, Missouri

Murjen Financial, Inc.,

Michael P. Murphy and Olympia Asset Management Ltd.

Respondents.

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**NATURE OF THE DISPUTE**

Customer vs. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Robert J. Peat ("Peat"), hereinafter referred to as "Claimant": Michael D. Hart, Esq. of the law firm Devereaux Murphy, LLC located in St. Louis, Missouri.

Murjen Financial, inc. ("Murjen"), Michael P. Murphy ("Murphy") and Olympia Asset Management Ltd. ("Olympia"), hereinafter collectively referred to as "Respondents: Charles M. O'Rourke, Esq. of Woodbury, New York.

Murphy was later represented by John E. Lawlor, Esq. of Mineloa, New York.

Murjen was later represented by Raphael Castilla, Esq. of the law firm Baker & McKenzie located in New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: August 21, 2003

Claimant signed the Uniform Submission Agreement: September 4, 2003

Respondents, Murjen, Murphy and Olympia Asset filed an Answer to the Statement of Claim on or about: November 13, 2003

Respondent Murjen signed the Uniform Submission Agreement: November 21, 2003

Respondent Murphy signed the Uniform Submission Agreement: November 21, 2003

Respondent Olympia did not submit a signed Uniform Submission Agreement.

Respondent Murjen filed an Amended Answer and Crossclaim against Murphy and Olympia for contractual indemnity on or about: February 10, 2004

Claimant filed a Motion to Sever or Dismiss the Crossclaim of Respondent Murjen on February 7, 2005. Murjen filed an Opposition to Motion to Dismiss or Sever Crossclaims on February 28, 2005. Claimant filed a Reply on March 4, 2005.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract, margin calls, exchanges, negligence, execution price, incorrect quantity, breach of fiduciary duty and misrepresentations.

The causes of action relate to various securities including, Honeywell International, Inc.; IVAX Corporation; Cisco and USG Corporation. Claimants asserted that these trades were unauthorized and unsuitable to his investment needs and objectives.

Unless specifically admitted in their Answer, Respondents Murjen, Murphy and Olympia denied the allegations made in the Statement of Claim and asserted the following affirmative defenses:

1. Claimant assumed the risk of trading stocks;
2. Claimant authorized, consented to, acquiesced in and ratified all transactions;
3. Claimant engaged in a course of conduct for almost two years and therefore, has waived or should be estopped from asserting claims;
4. All claims are barred by the applicable statute of limitations;
5. All claims are barred by the Claimant's delay (doctrine of laches); and
6. Claimant in contributorily negligent having caused the losses complained of.

#### **RELIEF REQUESTED**

Claimants requested \$500,000.00 in compensatory damages; punitive damages in the amount of \$400,000.00; costs and attorney's fees; and for further relief as the Panel deems just and proper.

Respondents Murjen, Murphy and Olympia requested that all claims be dismissed and for expungement in accordance with NASD Rules.

In its Crossclaim, Murjen for indemnification, attorney's fees, expenses, costs and for such other relief that Murjen may be entitled.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent, Olympia Asset Management Ltd, did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

Having reviewed the pleadings on Claimant's Motion to Sever or Dismiss the Crossclaim of Respondent Murjen Financial, Inc., the Panel denied Claimant's Motion on March 15, 2005.

#### **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.) Any and all claims against Respondents Murjen Financial, Inc., Michael P. Murphy and Olympia Asset Management Ltd., are dismissed with prejudice.
- 2.) The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Michael P. Murphy's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to

Members 99-09, Respondent Murphy must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

- 3.) Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
- 4.) Any and all relief not specifically enumerated, including punitive damages 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	= \$ 375.00
Cross-claim fee	= \$1,250.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

October 13-15, 2004 hearing dates, adjournment by Claimant and Respondents to mediate within NASD	= \$1,200.00 (waived by Staff)
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January 5-7, 2005 hearing dates, adjournment by Claimant and Respondents to mediate (Panel assessed \$750.00 to Peat; \$375.00 to Murjen; \$187.50 to Murphy; and \$187.50 to Olympia)	= \$1,500.00
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April 21-22, 2005 hearing dates, adjournment by Respondents (Panel assessed \$1,200.00 jointly and severally to Murphy and Olympia)	= \$1,200.00
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#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the event(s) giving rise to the dispute. In this matter, Murjen Financial, Inc. and Olympia Asset Management Ltd. are both parties to this proceeding and are assessed the following:

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

#### **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:

August 22-24, 2005 settlement (split equally among the parties)	= \$ 300.00
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### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing 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. Fees associated with these proceedings are:

Four (4) Pre-hearing sessions x \$1,200.00 = \$4,800.00

Pre-hearing Dates:	April 5, 2004	1 session
	September 10, 2004	1 session
	January 28, 2005	1 session
	June 1, 2005	1 session

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Total Forum Fees = \$4,800.00

Pursuant to NASD Dispute Resolution Code of Arbitration Procedure Rule 10306(c), forum fees are to be split equally among the parties as follows:

1. Claimant, Robert J. Peat, is solely liable for \$1,200.00 of the total forum fees.
2. Respondent, Murjen Financial, Inc. is solely liable for \$1,200.00 of the total forum fees.
3. Respondent, Michael S. Murphy, is solely liable for \$1,200.00 of the total forum fees.
4. Respondent, Olympia Asset Management Ltd., is solely liable for \$1,200.00 of the total forum fees.

### **FEE SUMMARY**

Claimant, Robert J. Peat, is hereby solely liable for:

Initial Filing Fee	= \$ 375.00
Postponement Fee	= \$ 750.00
3-Day Cancellation	= \$ 75.00
Forum Fees	= \$1,200.00
Total Fees	= \$2,400.00
Less payments	= \$1,575.00
Balance Due NASD Dispute Resolution	= \$ 825.00

Respondent, Murjen Financial, Inc., is hereby solely liable for:

Member Fees	= \$7,000.00
Cross-claim Filing Fee	= \$1,250.00
Postponement Fee	= \$ 375.00
3-Day Cancellation	= \$ 75.00
Forum Fees	= \$1,200.00
Total Fees	= \$9,900.00
Less payments	= \$9,825.00
Balance Due NASD Dispute Resolution	= \$ 75.00

Respondent, Olympia Asset Management Ltd., is hereby solely liable for:

Member Fees	= \$7,000.00
Forum Fees	= \$1,200.00
Postponement Fee	= \$ 187.50
3-Day Cancellation Fee	= \$ 75.00
Total Fees	= \$8,462.50
Less payments	= \$7,700.50
Balance Due NASD Dispute Resolution	= \$ 762.50

Respondent, Michael P. Murphy and Olympia Asset Management Ltd., are hereby jointly and severally liable for:

Postponement Fee	= \$1,200.00
<u>Less payments</u>	<u>= \$1,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent, Michael P. Murphy, is hereby solely liable for:

Forum Fee	= \$1,200.00
Postponement Fee	= \$ 187.50
<u>3-Day Cancellation Fee</u>	<u>= \$ 75.00</u>
Total Fees	= \$1,462.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$1,462.50

All balances are due to NASD Dispute Resolution.

**ARBITRATION PANEL**

David O. Kreuter	-	Public Arbitrator, Presiding Chairperson
Richard L. Pearce	-	Public Arbitrator
Carl W. Zeidler, CFP	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ David O. Kreuter  
David O. Kreuter  
Public Arbitrator, Presiding Chair

11/18/05  
Signature Date

/s/ Richard L. Pearce  
Richard L. Pearce  
Public Arbitrator

11/18/05  
Signature Date

/s/ Carl W. Zeidler, CFP  
Carl W. Zeidler, CFP  
Non-Public Arbitrator

11/18/05  
Signature Date

11/18/05  
Date of Service (For NASD office use only)

NASD Dispute Resolution

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Respondent, Michael P. Murphy and Olympia Asset Management Ltd., are hereby jointly and severally liable for:

Postponement Fee	= \$1,200.00
Less payments	= \$1,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent, Michael P. Murphy, is hereby solely liable for:

Forum Fee	= \$1,200.00
Postponement Fee	= \$ 187.50
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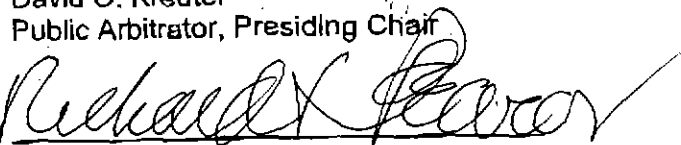
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NASD Dispute Resolution  
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 Award Page 5 of 5

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