

Award
NASD Dispute Resolution

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In the Matter of the Arbitration Between:

Duncan Fortier and Jascan Investments, Inc., Claimants v. Morgan Stanley DW Inc., Antony Gordon, William T. Lappas and Margaret Black, Respondents

Case Number: 04-00355

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimants:

Timothy A. Canning, Esq.
Richard Sacks
Novato, California

For Respondents Morgan Stanley DW Inc.,
William T. Lappas and Margaret Black:

Eric G. Wallis
Reed Smith LLP
Oakland, California

For Respondent Antony Gordon:

Rene J. Kern, Jr.
Kern & Gonzalez
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: January 20, 2004

Claimants' Pre-Hearing Brief filed: February 24, 2006

Claimants' Uniform Submission Agreement signed: January 16, 2004

Joint Statement of Answer filed by Respondents Morgan Stanley DW Inc. ("Morgan Stanley"), William T. Lappas and Margaret Black: April 23, 2004

Respondents Morgan Stanley, William T. Lappas and Margaret Black's Hearing Brief filed: February 24, 2006

Respondent Morgan Stanley's Uniform Submission Agreement signed: March 12, 2004

Respondent William T. Lappas' Uniform Submission Agreement filed: April 30, 2004

Respondent Margaret Black's Uniform Submission Agreement signed: March 12, 2004

Statement of Answer filed by Respondent Antony Gordon: May 14, 2004

Respondent Antony Gordon's Arbitration Brief filed: February 24, 2006

Respondent Antony Gordon's Uniform Submission Agreement signed: April 20, 2004

CASE SUMMARY

Claimants alleged the following claims with respect to investments in Bamboo.com and Internet Pictures Corporation ("IPIX"): 1) Fraud; 2) Negligence; 3) Breach of Contract; and 4) Breach of Fiduciary Duty.

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

RELIEF REQUESTED

Claimants requested:

1. The restoration of Claimants' account to where it would be, had Respondents hedged Claimants' position in IPIX, according to proof;
2. Reimbursement for the reasonable costs and fees in the prosecution of this claim, including expert witness fees and the costs associated with pursuing this arbitration; and
3. Punitive and exemplary damages.

Respondents Morgan Stanley, William T. Lappas and Margaret Black requested:

1. Dismissal of Claimants' claims;
2. Costs and fees;
3. That the claims against Black and Lappas be expunged from their CRD records; and
4. Such other relief as the Panel deems just and fair.

Respondent Antony Gordon requested:

1. Dismissal of Claimants' Statement of Claim in its entirety;
2. Costs; and
3. Such other relief as deemed appropriate by the Panel.

OTHER ISSUES CONSIDERED AND DECIDED

On November 2, 2004 and March 30, 2005, 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.

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.

On or about March 3, 2006, the Panel reviewed and considered the positions of the parties relative to Respondents' Motion to Dismiss of February 6, 2006. The Panel denied the Motion.

The Panel 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. During the hearing, the Panel reviewed and considered the positions of the parties relative to Respondents' Motion to Dismiss based on applicable statutes of limitations. The Panel granted Respondents' Motion with prejudice and determined that all claims by Claimants, including the claims for punitive and exemplary damages, are dismissed.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Antony Gordon's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Antony Gordon must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent William T. Lappas' registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent William T. Lappas must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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

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

6. All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$250.00
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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	= \$1,500.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,200.00
<u>Total Member Fees</u>	<u>= \$4,450.00</u>

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:

(2) Pre-hearing conference sessions with a single arbitrator @ \$450.00/session = \$900.00

Pre-hearing conferences:	September 19, 2005	1 session
	February 14, 2006	1 session

(1) Pre-hearing conference session with the Panel @ \$1,000.00/session = \$1,000.00

Pre-hearing conference:	May 27, 2005	1 session
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(4) Hearing sessions @ \$1,000.00/session		=	\$4,000.00
Hearing Dates:	March 7, 2006	2 sessions	
	March 8, 2006	2 sessions	

Total Forum Fees		=	\$5,900.00
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The Panel assessed \$4,950.00 in forum fees jointly and severally to Claimants.

The Panel assessed \$950.00 of the forum fees jointly and severally to Respondents Morgan Stanley, William T. Lappas, Margaret Black and Antony Gordon.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

Claimants requested copies of audio transcripts:	=	\$45.00
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Respondents Morgan Stanley, William T. Lappas and Margaret Black requested copies of audio transcripts:	=	\$45.00
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Fee Summary

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

Initial Filing Fee	= \$	250.00
Administrative Costs	= \$	45.00
<u>Forum Fees</u>	= \$	4,950.00
Total Fees	= \$	5,245.00
<u>Less Payments</u>	= \$(1,800.00)
Balance Due NASD Dispute Resolution	= \$	3,445.00

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

Member Fees	= \$	4,450.00
<u>Less Payments</u>	= \$(4,450.00)
Balance Due NASD Dispute Resolution	= \$	0.00

3. Respondents Morgan Stanley, William T. Lappas and Margaret Black are charged jointly and severally with the following fees and costs:

Administrative Costs	= \$	45.00
<u>Less Payments</u>	= \$(0.00)
Balance Due NASD Dispute Resolution	= \$	45.00

4. Respondents Morgan Stanley, William T. Lappas, Margaret Black and Antony Gordon are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 950.00
Less Payments	= \$(0.00)
Balance Due NASD Dispute Resolution	= \$ 950.00

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

Mario Henry Barsotti	-	Public Arbitrator, Presiding Chair
Kathryn J. Toronto	-	Public Arbitrator
Stanford G. Hirata	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Mario Henry Barsotti
Chair, Public Arbitrator

3/16/06
Signature Date

Kathryn J. Toronto
Public Arbitrator

Signature Date

Stanford G. Hirata
Non-Public Arbitrator

Signature Date

3/16/06
Date of Service

4. Respondents Morgan Stanley, William T. Lappas, Margaret Black and Antony Gordon are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 950.00
<u>Less Payments</u>	= \$(0.00)
Balance Due NASD Dispute Resolution	= \$ 950.00

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.

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Mario Henry Barsotti	-	Public Arbitrator, Presiding Chair
Kathryn J. Toronto	-	Public Arbitrator
Stanford G. Hirata	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Mario Henry Barsotti
Chair, Public Arbitrator



Kathryn J. Toronto
Public Arbitrator

Signature Date

3-15-06

Signature Date

Stanford G. Hirata
Non-Public Arbitrator

Signature Date

3/16/06

Date of Service

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4. Respondents Morgan Stanley, William T. Lippes, Margaret Black and Antony Garton are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 950.00
Less Payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 950.00

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.

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Kathryn J. Toronto	-	Public Arbitrator
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Mario Henry Barsotti
Chair, Public Arbitrator

Signature Date

Kathryn J. Toronto
Public Arbitrator

Signature Date



Stanford G. Hirata
Non-Public Arbitrator

3/16/06

Signature Date

3/16/06

Date of Service