

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Michael Shinkle, Claimant v. Oak Tree Securities, Inc., Mark Walsvick, Gary Hooker,  
Daniel Quesada, Legacy Financial Services, Inc., Respondents

Case Number: 04-00730

Hearing Site: San Francisco, California

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Nature of the Dispute: Customer v. Members and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimant:

Timothy A. Canning, Esq.  
Attorney at Law  
Novato, California

For Respondents

Oak Tree Securities Inc. ("Oak Tree"),  
Gary Hooker ("Hooker"), and  
Daniel Quesada ("Quesada"):

Robert L. Gonser, Esq.  
Resolution Law Group P.C.  
Lafayette, California

For Respondents

Mark Walsvick ("Walsvick") and  
Legacy Financial Services, Inc. ("Legacy"):

Edward S. Zusman, Esq.  
Craig M. Hughes, Esq.  
Markun Zusman Compton LLP  
San Francisco, California

**CASE INFORMATION**

Initial Statement of Claim filed: February 3, 2004

Claimant's Uniform Submission Agreement signed: January 22, 2004

Statement of Answer filed by Respondent Oak Tree: March 29, 2004

Respondent Oak Tree's Uniform Submission Agreement signed: March 29, 2004

Statement of Answer filed by Respondent Walsvick: March 29, 2004

Respondent Walsvick's Uniform Submission Agreement signed: March 24, 2004

Amended Statement of Claim deemed filed: March 31, 2005

Claimant's Amended Uniform Submission Agreement signed: January 21, 2005

Answer to Amended Statement of Claim filed by Legacy: May 16, 2005

Answer to Amended Statement of Claim filed by Quesada: July 6, 2005

Answer to Amended Statement of Claim filed by Hooker: July 6, 2005

### **CASE SUMMARY**

In the Initial Statement of Claim, Claimant alleged fraud, negligence, breach of contract, breach of fiduciary duty, failure to follow customer's instructions, misrepresentation, unsuitability, and failure to supervise against Oak Tree and Walsvick. Claimant's allegations involved JDS Uniphase stock and a variable annuity contract.

Respondent Oak Tree denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

Respondent Walsvick denied the allegations of wrongdoing set forth in Claimant's Statement of Claim.

In the Amended Statement of Claim, Claimant added Respondents Hooker, Quesada, and Legacy.

Respondent Hooker denied the allegations of wrongdoing set forth in Claimant's Amended Statement of Claim.

Respondent Quesada denied the allegations of wrongdoing set forth in Claimant's Amended Statement of Claim.

Respondent Legacy denied the allegations of wrongdoing set forth in Claimant's Amended Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested approximately \$3,250,000.00 million in compensatory damages relating to the JDS Uniphase stock, \$60,000.00 in compensatory damages relating to the variable annuity contract, unspecified punitive damages, interest, and costs.

Respondents requested dismissal of Claimant's Statements of Claim in its entirety and costs. Respondents Oak Tree and Legacy also requested attorney's fees.

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

Respondent Hooker, Quesada, and Legacy did not file with the NASD Dispute Resolution a properly executed submission agreement but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

On February 17, 2004 and February 18, 2004, Claimant and Claimant's counsel, respectively, 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.

On January 26, 2005, Claimant filed a request to amend his Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(b). On February 23, 2005, Respondent Oak Tree filed an opposition. On February 25, 2005, Respondent Walsvick filed an opposition. On March 23, 2005, the Panel granted Claimant's request to file an Amended Statement of Claim. On March 31, 2005, Claimant provided proof of service of the Amended Statement of Claim on all respondents.

On May 16, 2005, Respondent Legacy filed a Motion to Dismiss together with its Answer to the Amended Statement of Claim. On October 21, 2005, at the Chairperson's request, Respondent Legacy filed a supplemental brief in support of its motion. On November 21, 2005, Claimant filed an opposition. On January 9, 2006, the Panel conducted a telephonic hearing with the parties on this motion. After due deliberation, the Panel denied Respondent Legacy's Motion to Dismiss without prejudice.

During the evidentiary hearing, Respondent Hooker made a motion for non-suit. Claimant opposed. After due deliberation, the Panel denied the motion.

During the evidentiary hearing, the parties stipulated to the dismissal of Respondent Legacy from this matter with prejudice.

During the evidentiary hearing, Respondents Hooker, Walsvick, and Quesada requested expungement of all references to this matter from their registration records maintained by NASD Central Registration Depository. After due deliberation, the Panel decided to recommend expungement as to Respondent Hooker only.

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

- 1) Claimant's claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Gary Hooker'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 Gary Hooker must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

The Panel found that there was no persuasive evidence on which to base a finding of supervisory liability as to Respondent Hooker.

- 4) All other relief requested and 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 | = \$ 600.00 |
|--------------------------|-------------|

#### **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, the member firms Oak Tree and Legacy are parties and the following fees are assessed to each:

|                          |                      |
|--------------------------|----------------------|
| Member Surcharge         | = \$ 2,800.00        |
| Pre-Hearing Process Fee  | = \$ 750.00          |
| Hearing Process Fee      | = \$ 5,000.00        |
| <b>Total Member Fees</b> | <b>= \$ 8,550.00</b> |

#### **Adjournment Fees**

The following adjournment fees are assessed:

|                                                                                    |          |
|------------------------------------------------------------------------------------|----------|
| Adjournment of the February 1-4, 2005 hearings<br>requested by Respondent Walsvick | = waived |
|------------------------------------------------------------------------------------|----------|

|                                                                             |              |
|-----------------------------------------------------------------------------|--------------|
| Adjournment of the May 23-26, 2006 hearings<br>requested by all respondents | = \$1,200.00 |
|-----------------------------------------------------------------------------|--------------|

1. The Panel assessed the second postponement fee jointly and severally to all respondents.

### **Forum Fees and Assessments**

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion decided on the papers. A 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:

(4) Pre-hearing conference sessions with a single arbitrator  
@ \$450.00/session = \$ 1,800.00

Pre-hearing conferences: August 2, 2004 1 session  
October 10, 2005 1 session  
May 4, 2006 1 session  
June 23, 2006 1 session

(5) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 6,000.00

Pre-hearing conferences: June 15, 2004 1 session  
January 12, 2005 1 session  
August 17, 2005 1 session  
January 9, 2006 1 session  
May 17, 2006 1 session

(10) Hearing sessions @ \$1,200.00/session = \$12,000.00

Hearings: June 27, 2006 2 sessions  
June 28, 2006 2 sessions  
June 29, 2006 2 sessions  
August 2, 2006 2 sessions  
August 3, 2006 2 sessions

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**Total Forum Fees = \$19,800.00**

1. The Panel assessed \$8,250.00 of the forum fees to Claimant.
2. The Panel assessed \$600.00 of the forum fees jointly and severally to Respondents Oak Tree and Walsvick.
3. The Panel assessed \$225.00 of the forum fees Respondent Oak Tree.
4. The Panel assessed \$1,200.00 of the forum fees to Respondent Walsvick.
5. The Panel assessed \$2,025.00 of the forum fees jointly and severally to Respondents Oak Tree, Walsvick, Quesada, Legacy, and Hooker.
6. The Panel assessed \$1,050.00 of the forum fees to Respondent Legacy.
7. The Panel assessed \$6,000.00 of the forum fees jointly and severally to Respondents Oak Tree, Walsvick, and Quesada.
8. The Panel waived the \$450.00 forum fee for the May 4, 2006 conference call with the Chairperson.

### Fee Summary

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

|                                            |                      |
|--------------------------------------------|----------------------|
| Initial Filing Fee                         | = \$ 600.00          |
| Forum Fees                                 | = \$ 8,250.00        |
| Total Fees                                 | = \$ 8,850.00        |
| Less payments                              | = \$(1,800.00)       |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$ 7,050.00</b> |

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

|                                            |                    |
|--------------------------------------------|--------------------|
| Member Fees                                | = \$ 8,550.00      |
| Forum Fees                                 | = \$ 225.00        |
| Total Fees                                 | = \$ 8,775.00      |
| Less payments                              | = \$(8,550.00)     |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$ 225.00</b> |

3. Respondent Legacy is charged with the following fees and costs:

|                                            |                      |
|--------------------------------------------|----------------------|
| Member Fees                                | = \$ 8,550.00        |
| Forum Fees                                 | = \$ 1,050.00        |
| Total Fees                                 | = \$ 9,600.00        |
| Less payments                              | = \$(8,550.00)       |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$ 1,050.00</b> |

4. Respondents Oak Tree and Walsvick are charged jointly and severally with the following fees and costs:

|                                            |                    |
|--------------------------------------------|--------------------|
| Forum Fees                                 | = \$ 600.00        |
| Less payments                              | = \$ (0.00)        |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$ 600.00</b> |

5. Respondent Walsvick is charged with the following fees and costs:

|                                            |                      |
|--------------------------------------------|----------------------|
| Forum Fees                                 | = \$ 1,200.00        |
| Less payments                              | = \$ (0.00)          |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$ 1,200.00</b> |

6. Respondents Oak Tree, Walsvick, Hooker, Quesada, and Legacy are charged jointly and severally with the following fees and costs:

|                                            |                      |
|--------------------------------------------|----------------------|
| Adjournment Fees                           | = \$ 1,200.00        |
| Forum Fees                                 | = \$ 2,025.00        |
| Total Fees                                 | = \$ 3,225.00        |
| Less payments by Walsvick                  | = \$ (750.00)        |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$ 2,475.00</b> |

7. Respondents Oak Tree, Walsvick, and Quesada are charged jointly and severally with the following fees and costs:

|                                            |                      |
|--------------------------------------------|----------------------|
| Forum Fees                                 | = \$ 6,000.00        |
| <u>Less payments by</u>                    | <u>= \$ (0.00)</u>   |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$ 6,000.00</b> |

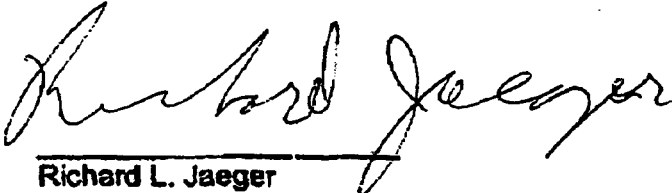
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.



**ARBITRATION PANEL**

|                   |   |                                    |
|-------------------|---|------------------------------------|
| Richard L. Jaeger | - | Public Arbitrator, Presiding Chair |
| Vivian L. Kral    | - | Public Arbitrator                  |
| Frank Weaver      | - | Non-Public Arbitrator              |

**Concurring Arbitrators' Signatures**



Richard L. Jaeger  
Chair, Public Arbitrator

8/27/2006  
Signature Date

Vivian L. Kral  
Public Arbitrator

Signature Date

Frank Weaver  
Non-Public Arbitrator

Signature Date

8/22/06  
Date of Service  
(NASD Use Only)

**ARBITRATION PANEL**

|                   |   |                                    |
|-------------------|---|------------------------------------|
| Richard L. Jaeger | - | Public Arbitrator, Presiding Chair |
| Vivian L. Kral    | - | Public Arbitrator                  |
| Frank Weaver      | - | Non-Public Arbitrator              |

**Concurring Arbitrators' Signatures**

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Richard L. Jaeger  
Chair, Public Arbitrator

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Signature Date

  
Vivian L. Kral  
Public Arbitrator

8-21-2006  
Signature Date

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Frank Weaver  
Non-Public Arbitrator

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Signature Date

8/22/06  
Date of Service  
(NASD Use Only)

ARBITRATION PANEL

|                   |   |                                    |
|-------------------|---|------------------------------------|
| Richard L. Jaeger | - | Public Arbitrator, Presiding Chair |
| Vivian L. Kral    | - | Public Arbitrator                  |
| Frank Weaver      | - | Non-Public Arbitrator              |

Concurring Arbitrators' Signatures

Richard L. Jaeger  
Chair, Public Arbitrator

Signature Date

Vivian L. Kral  
Public Arbitrator

Signature Date

  
Frank Weaver  
Non-Public Arbitrator

8/18/06  
Signature Date

8/22/06  
Date of Service  
(NASD Use Only)