

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

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In the Matter of the Arbitration Between:

Wondewossen Mekbib, Claimant v. UBS PaineWebber, Inc., V. John Threlkeld, and Morgan Stanley Dean Witter, Respondents

Case Number: 04-00934

Hearing Site: San Francisco, California

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

**REPRESENTATION OF PARTIES**

For Claimant:

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

For Respondents UBS PaineWebber, Inc. ("UBS")  
and V. John Threlkeld ("Threlkeld"):

Peter R. Boutin, Esq.  
Gordon C. Young, Esq.  
Keesal, Young and Logan  
San Francisco, California

For Respondent Morgan Stanley Dean Witter ("MSDW"):

Christine A. Kendrick, Esq.  
Morgan Stanley DW Inc.  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: February 12, 2004

Claimant's Uniform Submission Agreement signed: February 10, 2004

Joint Statement of Answer filed by Respondents UBS and Threlkeld: June 23, 2004

Respondent UBS's Uniform Submission Agreement signed: May 17, 2004

Statement of Answer and Motion to Dismiss filed by Respondent MSDW: June 4, 2004

Respondent MSDW's Uniform Submission Agreement signed: May 17, 2004

### **CASE SUMMARY**

Claimant alleged fraud, negligence, breach of contract, breach of fiduciary duty, misrepresentation and failure to supervise. Claimant's allegations involved shares of VaxGen (VXGN).

Respondents UBS and Threlkeld denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

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

### **RELIEF REQUESTED**

Claimant requested \$1,000,000.00 in compensatory damages, unspecified punitive damages, reimbursement of hearing session fees and filing fees, and disciplinary referrals.

Respondents UBS and Threlkeld requested dismissal of Claimant's Statement of Claim in its entirety, expungement of this claim from Respondent Threlkeld's CRD records, and costs.

Respondent MSDW requested dismissal of Claimant's Statement of Claim in its entirety and costs.

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

Respondent Threlkeld did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure ("Code") and having answered the claim is bound by the determination of the Panel on all issues submitted.

On November 8, 2004, and November 11, 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.

On January 6, 2005, Respondents UBS and Threlkeld's counsel signed a Waiver Agreement on Respondents UBS and Threlkeld's behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On May 17, 2004, Respondent MSDW's counsel signed a Waiver Agreement on Respondent MSDW's behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On June 4, 2004, Respondent MSDW filed a Motion to Dismiss together with its Answer to the Statement of Claim. On March 31, 2005, Claimant filed an opposition to the motion. On April 18, 2005, Respondent MSDW filed a reply brief in support of its motion. On May 6, 2005, a pre-hearing conference, attended by the parties and the Panel, was held. After due deliberation in executive session, the Panel denied Respondent MSDW's Motion to Dismiss without prejudice.

On September 2, 2005, Claimant dismissed his claims against Respondent MSDW with prejudice.

On September 6, 2005, NASD received notice from Respondents UBS and Threlkeld that the remaining parties settled this matter and that a Stipulated Award would be requested. On September 29, 2005, the remaining parties submitted a stipulated request that Claimant's claims against Respondents UBS and Threlkeld be dismissed with prejudice and that the above-referenced matter be expunged from Respondent Threlkeld's registration records maintained by the CRD. On October 11, 2005, the Panel asked the parties to disclose the amount of the settlement prior to deciding the expungement request. On October 14, 2005, Respondents UBS and Threlkeld disclosed the amount of the settlement to the Panel. On October 19, 2005, the Panel granted the stipulated request for expungement and dismissal of claims.

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 and the Stipulation, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims are dismissed with prejudice.
- 2) The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent V. John Threlkeld'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 V. John Threlkeld must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 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	= \$ 375.00
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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, the member firms UBS and MSDW are parties and the following fees are assessed to each:

Member Surcharge	= \$2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$4,000.00</u>
<b>Total Member Fees</b>	<b>= \$7,000.00</b>

#### **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:

September 7-9, 2005, hearings cancelled on September 6, 2005 due to settlement of this matter	= \$ 300.00
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1. The Panel assessed \$150.00 of the cancellation fee to Claimant.
2. The Panel assessed \$150.00 of the cancellation fee jointly and severally to Respondents UBS and Threlkeld.

**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 or the parties and the Panel. The following fees are assessed:

(1) Pre-hearing conference session with a single arbitrator @ \$450.00/session = \$ 450.00  
Pre-hearing conference: August 5, 2005 1 session

(2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$2,400.00  
Pre-hearing conferences: March 11, 2005 1 session  
May 6, 2005 1 session

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**Total Forum Fees = \$2,850.00**

1. The Panel assessed \$1,050.00 of the forum fees to Claimant.
2. The Panel assessed \$300.00 of the forum fees jointly and severally to Respondents UBS and Threlkeld.
3. The Panel assessed \$1,500.00 of the forum fees to Respondent MSDW.

**Fee Summary**

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

Initial Filing Fee	= \$ 375.00
Three-Day Cancellation Fee	= \$ 150.00
<u>Forum Fees</u>	<u>= \$ 1,050.00</u>
Total Fees	= \$ 1,575.00
Retained Deposit pursuant to Rule 10332(f)	= \$ 150.00
<u>Less payments</u>	<u>=(1,575.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 150.00</b>

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

Member Fees	= \$ 7,000.00
<u>Less payments</u>	<u>=(7,000.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

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

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	<u>= \$ 1,500.00</u>
Total Fees	= \$ 8,500.00
<u>Less payments</u>	<u>=(7,000.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,500.00</b>

4. Respondents UBS and Threlkeld are charged jointly and severally with the following fees and costs:

Three-Day Cancellation Fee	= \$ 150.00
<u>Forum Fees</u>	<u>= \$ 300.00</u>
Total Fees	= \$ 450.00
<u>Less payments</u>	<u>= \$ (0.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 450.00</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**

David I. Levine	-	Public Arbitrator, Presiding Chair
James S. Martin	-	Public Arbitrator
Douglas E. DeTata	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



David I. Levine  
Chair, Public Arbitrator

10/27/05  
Signature Date

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James S. Martin  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Douglas E. DeTata  
Non-Public Arbitrator

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Signature Date

11/01/05  
Date of Service

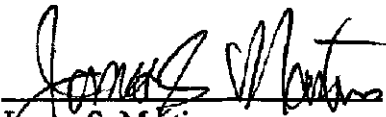
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