

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

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In the Matter of the Arbitration Between:

Dr. Timothy Novelli (Claimant) vs. Samuel C. Palmer, Morgan Stanley DW, Inc., A2Z iTV, Inc. (CA), John Jacobus and A2Z iTV, Inc. (Ohio) (Respondents)

Case Number: 04-01732

Hearing Site: Cleveland, Ohio

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Nature of the Dispute: Customer vs. Member, Associated Persons, and Non-Members

**REPRESENTATION OF PARTIES**

Claimant Dr. Timothy Novelli, hereinafter referred to as "Claimant": Andrew Mills Holford, Cole Co., L.P.A., Akron, OH.

Respondents Morgan Stanley DW, Inc ("MSDW") and John Jacobus ("Jacobus"): Elin Brenner Young, Esq., Ulmer Berne LLP, Cleveland, OH. Previously represented by Marc H. Feldman, Esq. Ulmer Berne LLP, Cleveland, OH.

Respondent Samuel C. Palmer ("Palmer"): Daniel J. McGown, Esq., Copley, OH. Previously represented by Richard S. Mitchell, Esq., Roetzel & Andress, Akron, OH.

Respondent A2Z, iTV, Inc. (CA) did not enter an appearance in this matter.

Respondent A2Z, iTV, Inc. (Ohio) did not enter an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: March 24, 2004.

Claimant signed the Uniform Submission Agreement: March 8, 2004.

Joint Statement of Answer, Motion to Dismiss and Cross-Claim filed by Respondents MSDW and Jacobus on or about: June 25, 2004.

Respondent MSDW signed the Uniform Submission Agreement: May 12, 2004.

Respondent Jacobus signed the Uniform Submission Agreement: July 8, 2004.

Statement of Answer filed by Respondent Palmer on or about: June 30, 2004.

Respondent Palmer signed the Uniform Submission Agreement: March 24, 2004.

Respondent A2Z, iTV, Inc. (CA) did not submit a Statement of Answer or Uniform Submission Agreement.

Respondent A2Z, iTV, Inc. (Ohio) did not submit a Statement of Answer or Uniform Submission

Agreement.

### **CASE SUMMARY**

Claimant asserted the following causes of action: negligence, breach of fiduciary duty, fraud, misrepresentation, violations of Federal law, violations of State Securities law, violations of client account agreement and other self regulatory law, respondeat superior, failure to supervise, breach of contract, and violation of industry rules and regulations. The causes of action relate to transactions involving the purchase and sale of securities in A2Z, iTV, Inc.

Unless specifically admitted in their Answer, Respondents MSDW and Jacobus denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Respondent Palmer denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In their Cross-Claim Respondents MSDW and Jacobus asserted that, if it is determined that Claimant is entitled to recover any alleged damages such damages from them, such damages would be solely attributable to Palmer's conduct.

Respondent Palmer denied the allegations contained in the Cross-Claim.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$357,200.00, in addition to lost opportunities had that income been available for proper investment, punitive damages in the amount of \$714,400.00, reasonable attorneys' fees and costs.

Respondents MSDW and Jacobus requested dismissal of the Statement of Claim.

In their Cross-Claim Respondents MSDW and Jacobus requested indemnification from Respondent Palmer.

Respondent Palmer requested that the Statement of Claim be dismissed with prejudice and costs.

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

Respondent A2Z, iTV, Inc. (CA) is not an NASD member and did not agree to voluntarily submit to NASD Dispute Resolution's jurisdiction.

Respondent A2Z, iTV, Inc. (Ohio) is not an NASD member and did not agree to voluntarily submit to NASD Dispute Resolution's jurisdiction.

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, the testimony and evidence presented at the hearing, the Panel

has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their entirety.
2. Respondents MSDW and Jacobus Cross-Claim is denied in its entirety.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **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 | = \$ 500.00   |
| Cross-Claim filing fee   | = \$ 2,000.00 |

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Morgan Stanley DW, Inc. is a party.

|                         |               |
|-------------------------|---------------|
| Member surcharge        | = \$ 2,800.00 |
| Pre-hearing process fee | = \$ 750.00   |
| Hearing process fee     | = \$ 5,000.00 |

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

|  |               |
|--|---------------|
| May 2-4, 2005 adjournment by Respondent Palmer | = \$ 1,200.00 |
|--|---------------|

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion 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:

|  |               |
|--|---------------|
| Two (2) Pre-hearing sessions with Panel @ \$1,200.00 | = \$ 2,400.00 |
| Pre-hearing conferences:                             |               |
| September 29, 2004                                   | 1 session     |
| January 4, 2006                                      | 1 session     |
| Seven (7) Hearing sessions @ \$1,200.00              | = \$ 8,400.00 |
| Hearing Dates:                                       |               |
| January 17, 2006                                     | 2 sessions    |
| January 18, 2006                                     | 3 sessions    |
| January 20, 2006                                     | 2 sessions    |
| <hr/>  |               |
| Total Forum Fees                                     | = \$10,800.00 |

1. The Panel has assessed \$3,600.00 of the forum fees to Claimant.
2. The Panel has assessed \$3,600.00 of the forum fees to Respondent Palmer.

3. The Panel has assessed \$3,600.00 of the forum fees jointly and severally to MSDW and Jacobus.

**Fee Summary**

1. Claimant is solely liable for:

|                                     |               |
|-------------------------------------|---------------|
| Initial Filing Fee                  | = \$ 500.00   |
| Forum Fees                          | = \$ 3,600.00 |
| Total Fees                          | = \$ 4,100.00 |
| Less payments                       | = \$ 1,700.00 |
| Balance Due NASD Dispute Resolution | = \$ 2,400.00 |

2. Respondent MSDW is solely liable for:

|                                     |               |
|-------------------------------------|---------------|
| Member Fees                         | = \$ 8,550.00 |
| Total Fees                          | = \$ 8,550.00 |
| Less payments                       | = \$ 8,550.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00     |

3. Respondents MSDW and Jacobus are jointly and severally liable for:

|                                     |               |
|-------------------------------------|---------------|
| Filing Fee                          | = \$ 2,000.00 |
| Forum Fees                          | = \$ 3,600.00 |
| Total Fees                          | = \$ 5,600.00 |
| Less payments                       | = \$ 3,200.00 |
| Balance Due NASD Dispute Resolution | = \$ 2,400.00 |

4. Respondent Palmer is solely liable for:

|                                     |               |
|-------------------------------------|---------------|
| Adjournment Fee                     | = \$ 1,200.00 |
| Forum Fees                          | = \$ 3,600.00 |
| Total Fees                          | = \$ 4,800.00 |
| Less payments                       | = \$ 0.00     |
| Balance Due NASD Dispute Resolution | = \$ 4,800.00 |

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

**ARBITRATION PANEL**

|                           |   |  |
|---------------------------|---|--|
| John S. Weisheit          | - | Public Arbitrator, Presiding Chairperson |
| Kathleen P. Helbig-Hannan | - | Public Arbitrator                        |
| Dennis W. Zauszniewski    | - | Non-Public Arbitrator                    |

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
John S. Weisheit  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Kathleen P. Helbig-Hannan  
Public Arbitrator

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

  
Dennis W. Zauszniewski  
Non-Public Arbitrator

2/2/06  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

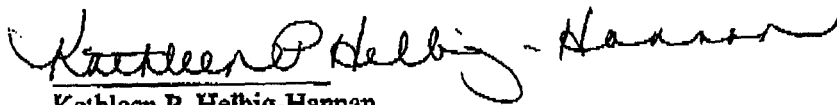
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