

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

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In the Matter of the Arbitration Between:

David Partington, Claimant v. J.P. Morgan Securities, Inc., Steven Carroll, and Ralph Witherell,  
Respondents

Case Number: 04-03656

Hearing Site: San Francisco, California

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Nature of the Dispute: Customer v. Member Firm and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimant:

Irwin G. Stein  
Law Offices of Timothy A.  
Canning  
Novato, California

For Respondents:

Robert J. Stumpf, Jr.  
Sheppard, Mullin, Richter &  
Hampton LLP  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: May 18, 2004

Claimant's Uniform Submission Agreement signed: March 23, 2004

Joint Statement of Answer filed by Respondents: July 14, 2004

Respondent J.P. Morgan Securities, Inc.'s Uniform Submission Agreement signed: June 15,  
2004

Respondent Steven Carroll's Uniform Submission Agreement signed: June 15, 2004

Respondent Ralph Witherell's Uniform Submission Agreement signed: not dated

### **CASE SUMMARY**

Claimant alleged fraud, negligence, breach of contract, breach of fiduciary duty, misrepresentation, unsuitability, and failure to supervise. Claimant's allegations involved PMC-Sierra, Inc. stock and stock options.

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

### **RELIEF REQUESTED**

Claimant requested \$1,320,000.00 in compensatory damages, unspecified punitive damages, and costs.

Respondents requested dismissal of Claimant's Statement of Claim in its entirety, expungement of all references to this matter from Respondent Steven Carroll's and Respondent Ralph Witherell's CRD records and costs, including attorney's fees.

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

On September 3, 2004, Claimant 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 September 7, 2004, Claimant's 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 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 February 1, 2005, Respondents filed a Motion for Summary Judgment. On February 19, 2005, Claimant filed an opposition to the motion. On March 9, 2005, the Panel held a pre-hearing conference call with the parties to hear oral argument regarding the motion. After due deliberation, the Panel denied the motion.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **FINDINGS**

The Panel finds that Respondents breached their duty of communication with the public in that Respondents failed to clearly and carefully clarify the scope and parameters of the services being offered by the Cashless Option Exercise Program in issue, and thus misled by omission. However, the Panel finds that there is no proximate relationship between this breach of duty and any loss suffered by Claimant and thus awards zero dollars.

### **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) Claimant's claims are denied in their entirety.
- 2) Respondents' requests for expungement of all references to this matter from Respondent Steven Carroll's and Respondent Ralph Witherell's CRD records are denied.
- 3) All forum fees are assessed jointly and severally to Respondents.
- 4) The parties shall bear their respective costs, except as noted above, including attorney's fees.
- 5) 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	= \$ 500.00
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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 firm J.P. Morgan Securities, Inc., is a party and the following fees are assessed:

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>

#### **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: March 15, 2005 1 session	
(2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$2,400.00
Pre-hearing conferences: November 5, 2004 1 session	
March 9, 2005 1 session	
(4) Hearing sessions @ \$1,200.00/session	= \$4,800.00
Hearings: May 17, 2005 2 sessions	
May 18, 2005 2 sessions	
<b>Total Forum Fees</b>	<b>= \$7,650.00</b>

The Panel assessed \$7,650.00 of the forum fees jointly and severally to Respondents.

**Fee Summary**

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

Initial Filing Fee	= \$ 500.00
<u>Less payments</u>	<u>= \$(1,700.00)</u>
<b>Refund Due Claimant</b>	<b>= \$(1,200.00)</b>
  
2. Respondent J.P. Morgan Securities, Inc., is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
<u>Less payments</u>	<u>= \$(8,550.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>
  
3. Respondents J.P. Morgan Securities, Inc., Steven Carroll, and Ralph Witherell are charged jointly and severally with the following fees and costs:

Forum Fees	= \$7,650.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$7,650.00</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

William W. Haskell	-	Public Arbitrator, Presiding Chair
Robin Lynn Berry	-	Public Arbitrator
Andrew R. Epstein	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
William W. Haskell  
Chair, Public Arbitrator

5-23-05  
Signature Date

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Robin Lynn Berry  
Public Arbitrator

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

\_\_\_\_\_  
Andrew R. Epstein  
Non-Public Arbitrator

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

5/24/05  
Date of Service

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Robin Lynn Berry	-	Public Arbitrator
Andrew R. Epstein	-	Non-Public Arbitrator

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