

**Stipulated Award  
NASD Dispute Resolution**

In the Matter of the Arbitration Between:  
Vinay and Nehaben Patel, Claimants

Case Number: 04-04793

v.

Hearing Site: Indianapolis, Indiana

Max International Broker-Dealer Corporation, Sandeep Bardia,  
Eton Chan, Nigel Allister Gilbert and David Scott Isolano,  
Respondents.

**NATURE OF THE DISPUTE**

Customer vs. Member Firm and Associated Persons

**REPRESENTATION OF PARTIES**

Vinay and Nehaben Patel (the "Patels"), hereinafter collectively referred to as "Claimants"; Timothy Feil, Esq. of Finkelstein & Feil, LLP, located in Garden City, New York.

Respondent, Max International Broker-Dealer Corporation ("MAXI"), hereinafter referred to as "Respondent MAXI": Stephen S. Lux, Esq. of Shustak Jalil & Heller, located in San Diego, California. Mr. Lux withdrew as counsel for MAXI on May 19, 2005. Mr. Lux then re-filed his appearance for MAXI on October 13, 2005.

Respondents, Eton Chan ("Chan"), Nigel Allister Gilbert ("Gilbert") and David Scott Isolano ("Isolano"), all appeared *pro se*.

Respondent, Sandeep Bardia ("Bardia"), did not file an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: July 7, 2004  
Claimants, Vinay and Nehaben Patel, jointly signed the Uniform Submission Agreement: June 30, 2004

Statement of Answer and Counterclaim filed by Respondent, Max International Broker-Dealer Corporation, on or about: August 9, 2004  
MAXI signed the Uniform Submission Agreement: August 24, 2004

Statement of Answer filed by Respondent, Eton Chan, on or about: August 9, 2004  
Chan signed the Uniform Submission Agreement: August 24, 2004

Statement of Answer filed by Respondent, Nigel Allister Gilbert, on or about: August 20, 2004  
Gilbert signed the Uniform Submission Agreement: August 10, 2004

Statement of Answer filed by Respondent, David Scott Isolano, on or about: August 9, 2004  
Isolano signed the Uniform Submission Agreement: August 23, 2004

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Respondents, Isolano, Chan and Gilbert, each filed a Motion to Dismiss on November 1, 2004. Claimants filed a response to Respondents' motion on November 29, 2004. Respondents filed a Reply to Claimants' response on December 6, 2004.

Respondent Gilbert filed an individual Motion to Dismiss on January 7, 2005. Claimants filed a response on April 18, 2005.

Respondent Bardia did not file a Statement of Answer or a signed Uniform Submission Agreement.

### CASE SUMMARY

Claimants asserted the following causes of action: misrepresentation, fraud, unsuitability, breach of fiduciary duty, churning and failure to supervise. The causes of action relate to various stocks including, Sirius Satellite Radio, Inc., Genta, Inc.com and Delta Airlines.

Unless specifically admitted in its Answer, Respondent MAXI denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimants were full advised of the relative risks inherent in margin trading, options trading, in the investments made in the account, and knowingly chose to assume those risks.
2. Claimants by their own actions or inactions, are barred from recovery based on their own negligence, contributory negligence or comparative negligence.
3. Claimants' alleged damages were proximately caused by Claimants.
4. All transactions effected in Claimants' account were thoroughly discussed with Claimants, were authorized by Claimants, to cost to transact, dollar size, and return were in the control of the Claimants and the transactions were done for the sole purpose of benefit to the clients.
5. By Claimants' numerous discussions with Respondent, Claimants' authorization and instruction to proceed with transactions at issue, Claimants' failure to complain after receiving confirmations and statements, viewing their account through Respondents' website, and their failure to follow advice, which would have mitigated possible losses, Claimants have ratified and approved the subject transactions.
6. The Statement of Claim and the allegations made therein are barred by equitable doctrines of waiver, unclean hands, estoppel, laches, release and accord and satisfaction.
7. No misrepresentations or omissions of a material fact have ever been made by Respondent or its representatives concerning the investment transactions at issue in this proceeding. Moreover, Claimants were thoroughly advised of all pertinent aspects of the investment transactions.
8. There was no intent by Respondent to defraud Claimants, nor any reckless disregard of the financial consequences to Claimant, in connection with any of the transactions at issue.
9. Any recommendations were made in good faith and are not actionable as a matter of law.
10. Claimants' losses were a direct result of Claimants' decision to ignore the advice of his broker.
11. Extraordinary market conditions and events not caused by or in control of Respondent existed to cause certain losses that have been alleged by Claimants.

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12. As a matter of law, Claimants have failed to state any valid claim upon which relief can be granted and is not entitled to recover for any of the alleged losses and damages asserted.
13. No private right of action exists for a violation of rules of any exchange or other regulatory authority, nor does a private right of action exist for the violation of Max International policy or procedure.
14. All common law tort claims asserted in Statement of Claim are barred by the economic loss doctrine.
15. The claims set forth in the Statement of Claim are barred in whole or in part by applicable statutes of limitations and NASD rules.
16. As a matter of law, Claimant is precluded from any recovery of punitive damages in this proceeding.
17. At all relevant times, Respondent had reasonable and adequate supervisory procedures for its account executives which it reasonably and diligently implemented and followed.
18. All the transactions, which Respondent effected in Claimants' account, were suitable for Claimants' investment objectives and financial status and were entirely consistent with the financial goals expressed by Claimant.
19. The alleged damages for which Claimant seeks to hold Respondent liable were proximately caused by Claimants' own failure to use reasonable means to properly mitigate damages.
20. Claimants have waived any objections to the subject matter transactions, their suitability, or authorizations or any alleged losses therefrom, and should be estopped from asserting any claims regarding them at this time.
21. Claimants are bound by their signature, by the representations made, and the directions Claimants gave in completing Claimants' customer account agreement, margin agreements, option agreements, and account documentation on behalf of Max International Account Nos. 13931744 and 1392164.
22. Claimants are barred from recovery by doctrine of *in pari delicto*.
23. Claimants are not entitled to recovery against Respondent because at all times Respondent acted in good faith and exercised reasonable diligence.
24. Claimants' losses were proximately caused by their own decisions, conduct and/or negligence.
25. Claimants, by making allegations in their claim against Respondent, knowing such allegations are false and made only to defraud, damage and harass Respondent, is attempting to exert undue influence over Respondent in order to gain an improper advantage and is precluded from any recovery against Respondent therefore.

Respondents, David Isolano and Eton Chan, requested that the claims asserted against them be dismissed in its entirety, for costs, attorney's fees, prejudgment interest, expungement of this arbitration from their registration records maintained by NASD Central Registration Depository ("CRD"), and for such other relief as the panel deems just and proper. Isolano and Chan also asserted the following affirmative defenses:

1. Claimants were fully advised of the relative risks inherent in margin trading, options trading, in the investments made in the account, and knowingly chose to assume those risks.
2. Claimants by their own actions or inactions, are barred from recovery based on their own negligence, contributory negligence or comparative negligence.
3. Claimants' alleged damages were proximately caused by Claimants.
4. All transactions effected in Claimants' account were thoroughly discussed with

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- Claimants, were authorized by Claimants, to cost to transact, dollar size, and return were in the control of the Claimants and the transactions were done for the sole purpose of benefit to the clients.
5. By Claimants' numerous discussions with Respondent, Claimants' authorization and instruction to proceed with transactions at issue, Claimants' failure to complain after receiving confirmations and statements, viewing their account through Respondents' website, and their failure to follow advice, which would have mitigated possible losses, Claimants have ratified and approved the subject transactions.
  6. The Statement of Claim and the allegations made therein are barred by equitable doctrines of waiver, unclean hands, estoppel, laches, release and accord and satisfaction.
  7. No misrepresentations or omissions of a material fact have ever been made by Respondent or its representatives concerning the investment transactions at issue in this proceeding. Moreover, Claimants were thoroughly advised of all pertinent aspects of the investment transactions.
  8. There was no intent by Respondent to defraud Claimants, nor any reckless disregard of the financial consequences to Claimant, in connection with any of the transactions at issue.
  9. Any recommendations were made in good faith and are not actionable as a matter of law.
  10. Claimants' losses were a direct result of Claimants' decision to ignore the advice of his broker.
  11. Extraordinary market conditions and events not caused by or in control of Respondent existed to cause certain losses that have been alleged by Claimants.
  12. As a matter of law, Claimants have failed to state any valid claim upon which relief can be granted and is not entitled to recover for any of the alleged losses and damages asserted.
  13. No private right of action exists for a violation of rules of any exchange or other regulatory authority, nor does a private right of action exists for the violation of Max International policy or procedure.
  14. All common law tort claims asserted in Statement of Claim are barred by the economic loss doctrine.
  15. The claims set forth in the Statement of Claim are barred in whole or in part by applicable statutes of limitations and NASD rules.
  16. As a matter of law, Claimant is precluded from any recovery of punitive damages in this proceeding.
  17. At all relevant times, Respondent had reasonable and adequate supervisory procedures for its account executives which it reasonably and diligently implemented and followed.
  18. All the transactions, which Respondent effected in Claimants' account, were suitable for Claimants' investment objectives and financial status and were entirely consistent with the financial goals expressed by Claimant.
  19. The alleged damages for which Claimant seeks to hold Respondent liable were proximately caused by Claimants' own failure to use reasonable means to properly mitigate damages.
  20. Claimants have waived any objections to the subject matter transactions, their suitability, or authorizations or any alleged losses therefrom, and should be estopped from asserting any claims regarding them at this time.
  21. Claimants are bound by their signature, by the representations made, and the directions Claimants gave in completing Claimants' customer account agreement, margin agreements, option agreements, and account documentation on behalf of Max

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International Account Nos. 13931744 and 1392164.

22. Claimants are barred from recovery by doctrine of *in pari delicto*.
23. Claimants are not entitled to recovery against Respondent because at all times Respondent acted in good faith and exercised reasonable diligence.
24. Claimants' losses were proximately caused by their own decisions, conduct and/or negligence.
25. Claimants, by making allegations in their claim against Respondent, knowing such allegations are false and made only to defraud, damage and harass Respondent, is attempting to exert undue influence over Respondent in order to gain an improper advantage and is precluded from any recovery against Respondent therefore.

Respondent, Nigel Gilbert, requested that the claims asserted against him be dismissed in its entirety.

#### **RELIEF REQUESTED**

Claimants requested \$156,000.00 compensatory and punitive damages; \$312,000.00 in treble damages; attorney's fees and filing fees.

Respondent MAXI requested that it be awarded the amount of \$2,161.25 for the debit balance owed in Claimants' account.

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

Upon review of the file and the representations made on behalf of Claimants, Vinay and Nehaben Patel, the undersigned arbitrators (the "Panel") determined that Respondents, Sandeep Bardia, has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent Bardia present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent Bardia did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

On April 27, 2005, NASD notified the parties by letter that the motion to dismiss filed individually by Respondent, Nigel Gilbert, was denied.

On May 9, 2005, the Panel issued an Order denying Respondents, Gilbert, Chan and Isonano's motions to dismiss.

On the first day of hearing on October 19, 2005, the parties settled this matter. Respondents, Isolano and Gilbert, requested for the expungement of their registration records maintained with CRD. After having heard arguments on Respondents' motion for an expungement upon which the Claimants did not appear or provide evidence, and reviewing exhibits in support thereto, the Panel entered an Order dated October 20, 2005 as follows:

Respondents, Nigel Gilbert and David Isolano, have moved for expungement in the above matter.

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Respondents entered exhibits and gave testimony, under oath, to the Panel of Arbitrators.

The Panel determined the following:

1. Neither Gilbert nor Isolano participated in any settlement with the Claimants.
2. Gilbert and Isolano were not in any manner involved in any of the alleged investment-related sales practices or violations.
3. The claims, allegations and information in the above-referenced matter as they relate to Gilbert and Isolano are false.

The Panel voted unanimously to grant expungement.

#### **AWARD**

After considering the parties' submissions and representations, the undersigned arbitrators order as follows:

- 1.) Any and all claims asserted by Claimants, Vinay and Nehaben Patel, against Respondents, Max International Broke-Dealer Corporation, Eton Chan, Nigel Allister Gilbert and David Scott Isolano, are hereby dismissed with prejudice.
- 2.) Any and all claims asserted by Claimants, Vinay and Nehaben Patel, against Respondent, Sandeep Bardia, are hereby dismissed without prejudice.
- 3.) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents, Nigel Allister Gilbert's and David Scott Isolano's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondents Gilbert and Isolano must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact:

1. The claim, allegation, or information is false.
- 4.) Any and all relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

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### 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	= \$ 300.00
Counterclaim filing fee	= \$ 300.00

#### Adjournment Fees

Adjournments requested during these proceedings:

July 18-22, 2005, adjournment by Respondent Max International	= \$1,125.00
(waived by the Panel)	

#### 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:

October 18-21, 2005, settled by both parties	= \$ 300.00
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#### 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. In this matter, Max International Broker-Dealer Corporation is a party to this proceeding.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

#### Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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:

Four (4) Pre-hearing sessions with Panel x \$1,125.00	= \$4,500.00
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Pre-hearing conferences:	December 14, 2004	1 session
	January 20, 2005	1 session
	April 22, 2005	1 session
	July 12, 2005	1 session

One (1) Hearing session x \$1,125.00	= \$1,125.00
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Hearing Date:	October 18, 2005	1 session
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Total Forum Fees	= \$5,625.00
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Pursuant to the Panel's Order dated December 15, 2004, Respondent, Max International Broker-Dealer Corporation, shall pay the fees for the pre-conference held on December 14, 2004.

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Pursuant to NASD Dispute Resolution Code of Arbitration Procedure Rule 10306(c), forum fees are to be divided equally by the parties as follows:

1. Claimants, Vinay and Nehaben Patel, shall be jointly and severally liable for forum fees in the amount of \$900.00;
2. Respondent, Max International Broker-Dealer Corporation, shall be solely liable for forum fees in the amount of \$2,205.00 (including \$1,125.00 for pre-conference of 12/14/04);
3. Respondent, Nigel Allister Gilbert, shall be solely liable for forum fees in the amount of \$900.00;
4. Respondent, Eton Chan, shall be solely liable for forum fees in the amount of \$900.00; and
5. Respondent, David Scott Isolano, shall be solely liable for forum fees in the amount of \$900.00.

Pursuant to NASD Dispute Resolution Code of Arbitration Procedure Rule 10332(f) Claimants' remaining Hearing Session Deposit of \$225.00 is retained by NASD.

#### Fee Summary

Claimants, Vinay and Nehaben Patel, are hereby jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 900.00
Deposit amount retained by NASD pursuant to Rule 10332(f)	= \$ 225.00
<u>3-Day Cancellation Fee</u>	<u>= \$ 60.00</u>
Total Fees	= \$1,485.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 60.00

Respondent, Max International Broker-Dealer Corporation, is hereby solely liable for:

Counterclaim Filing Fee	= \$ 300.00
Member Fees	= \$5,200.00
Forum Fees	= \$2,025.00
<u>3-Day Cancellation Fee</u>	<u>= \$ 60.00</u>
Total Fees	= \$7,585.00
<u>Less payments</u>	<u>= \$6,675.00</u>
Balance Due NASD Dispute Resolution	= \$ 910.00

Respondent, Nigel Allister Gilbert, is hereby solely liable for:

Forum Fees	= \$ 900.00
<u>3-Day Cancellation Fee</u>	<u>= \$ 60.00</u>
Total Fees	= \$ 960.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 960.00

Respondent, Eton Chan, is hereby solely liable for:

Forum Fees	= \$ 900.00
<u>3-Day Cancellation Fee</u>	<u>= \$ 60.00</u>
Total Fees	= \$ 960.00
<u>Less payments</u>	<u>= \$ 0.00</u>



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Balance Due NASD Dispute Resolution = \$ 960.00

Respondent, David Scott Isolano, is hereby solely liable for:

Forum Fees = \$ 900.00

3-Day Cancellation Fee = \$ 60.00

Total Fees = \$ 960.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$ 960.00

All balances are due to NASD Dispute Resolution.

**ARBITRATION PANEL**

Lawrence Reginald Wagner	-	Non-Public Arbitrator, Presiding Chairperson
Fred J. Naffziger, Esq.	-	Public Arbitrator
Gary P. Price, Esq.	-	Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Lawrence Reginald Wagner  
Lawrence Reginald Wagner  
Non-Public Arbitrator, Presiding Chair

3/21/06  
Signature Date

/s/ Fred J. Naffziger, Esq.  
Fred J. Naffziger, Esq.  
Public Arbitrator

3/24/06  
Signature Date

/s/ Gary P. Price, Esq.  
Gary P. Price, Esq.  
Public Arbitrator

3/17/06  
Signature Date

3/24/06  
Date of Service (For NASD office use only)

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Respondent, Elon Chan, is hereby solely liable for:

Forum Fees	= \$ 900.00
3-Day Cancellation Fee	= \$ 60.00
Total Fees	= \$ 960.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 960.00

Respondent, David Scott Isolano, is hereby solely liable for:

Forum Fees	= \$ 900.00
3-Day Cancellation Fee	= \$ 60.00
Total Fees	= \$ 960.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 960.00

All balances are due to NASD Dispute Resolution.

#### ARBITRATION PANEL

Lawrence Reginald Wagner	-	Non-Public Arbitrator, Presiding Chairperson
Fred J. Naffziger, Esq.	-	Public Arbitrator
Gary P. Price, Esq.	-	Public Arbitrator

#### Concurring Arbitrators' Signatures

  
 Lawrence Reginald Wagner  
 Non-Public Arbitrator, Presiding Chair

3/21/06  
 Signature Date

\_\_\_\_\_  
 Fred J. Naffziger, Esq.  
 Public Arbitrator

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

\_\_\_\_\_  
 Gary P. Price, Esq.  
 Public Arbitrator

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 Signature Date

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 Date of Service (For NASD office use only)

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Balance Due NASD Dispute Resolution = \$ 960.00

Respondent, David Scott Isolano, is hereby solely liable for:

Forum Fees = \$ 800.00

3-Day Cancellation Fee = \$ 60.00

Total Fees = \$ 960.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$ 960.00

All balances are due to NASD Dispute Resolution.

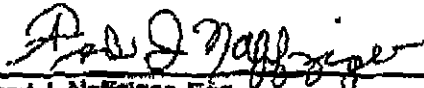
### ARBITRATION PANEL

Lawrence Reginald Wagner	-	Non-Public Arbitrator, Presiding Chairperson
Fred J. Naffziger, Esq.	-	Public Arbitrator
Gary P. Price, Esq.	-	Public Arbitrator

### Concurring Arbitrators' Signatures

Lawrence Reginald Wagner  
 Non-Public Arbitrator, Presiding Chair

Signature Date

  
 Fred J. Naffziger, Esq.  
 Public Arbitrator

March 24, 2006  
 Signature Date

Gary P. Price, Esq.  
 Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Respondent, Eton Chan, is hereby solely liable for:

Forum Fees	= \$ 900.00
3-Day Cancellation Fee	= \$ 60.00
Total Fees	= \$ 960.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 960.00

Respondent, David Scott Isolano, is hereby solely liable for:

Forum Fees	= \$ 900.00
3-Day Cancellation Fee	= \$ 60.00
Total Fees	= \$ 960.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 960.00

All balances are due to NASD Dispute Resolution.

**ARBITRATION PANEL**

Lawrence Reginald Wagner	-	Non-Public Arbitrator, Presiding Chairperson
Fred J. Naffziger, Esq.	-	Public Arbitrator
Gary P. Price, Esq.	-	Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Lawrence Reginald Wagner  
Non-Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Fred J. Naffziger, Esq.  
Public Arbitrator

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

  
\_\_\_\_\_  
Gary P. Price, Esq.  
Public Arbitrator

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Date of Service (For NASD office use only)