

**PACIFIC EXCHANGE, INC.
115 Sansome Street
San Francisco, CA 94104**

In The Matter Of The Arbitration Between:

John M. Petersen, Individually and as
Trustee of the Petersen Family Trust
DTD 03-29-1990,

Claimant

v.

Morgan Stanley DW, Inc.

Respondent

PCX CASE #: 04-S008

DECISION

The undersigned Arbitrators, having read and considered the Claim submitted by Claimant and the Answer of Respondent, and having considered evidence presented at the hearings on December 13 - 16, 2005, hereby render the following Decision pursuant to Rule 12 of the Pacific Exchange:

REPRESENTATION OF PARTIES

Of Claimant:

Jeffrey M. Jones, Esq.
Law Offices of Jeffrey M. Jones, P.C.

Of Respondent:

Gilbert R. Serota, Esq.
Howard, Rice, Nemerovski, Canady, Falk & Rabkin

HISTORY OF CASE

Statement of Claim filed: June 10, 2004
Statement of Answer filed: September 3, 2004

Prehearing Conference: May 18, 2005

Hearing Dates: December 13 - 16, 2005

SUMMARY OF CASE

Claimant alleged that respondent was in breach of its fiduciary relationship to claimant, recommended unsuitable investments, failed to diversify claimant's account, committed fraud and deceit, made material misrepresentations to claimant, was negligent, was in breach of contract and violated Federal and State Securities laws.

Respondent denied claimant's claims. Respondent asserted that a broker's duties in a non-discretionary account are limited and that claimant's account was non-discretionary. Respondent also asserted that claimant ratified the disputed transactions.

ISSUES PRESENTED

Whether the allegations alleged by claimant were true and whether the claimant's accounts were non-discretionary.

RELIEF REQUESTED

Claimant requested \$420,586.52.00 in out-of-pocket damages, plus an alternative portfolio analysis of damages. Claimant requested treble damages based on his status as a disabled person. Claimant also requested punitive damages, attorney's fees and rescission.

Respondent requested that claimant's claims be denied. Respondent also requested that respondent recover the costs of its defense, including attorney's fees.

FINDINGS AND DECISION

After considering the argument and evidence of both the Claimant and Respondent in this matter, the undersigned Arbitrators make the final determination and decision of the issues presented, as set forth below:

A. Decision

1. The Panel finds that Claimant's accounts were non-discretionary. Claimant's claims, including all claims of suitability against respondent, are denied. The Panel finds in favor of Respondent.
2. All claims for monetary damages, punitive damages, costs and attorney fees are denied.
3. Forum Fees are assessed 1/2 against the Claimant and 1/2 against the Respondent. Otherwise, each party shall bear its own costs.

2. Other Determinations

1. Respondent shall reimburse Claimant's non-refundable filing fee: ☐ YES ☒ NO
2. Respondent shall reimburse Claimant's hearing session deposit: ☐ YES ☒ NO
3. Parties shall bear their own costs of arbitration: ☒ YES ☐ NO
4. Should this matter be referred to any regulatory organization (SRO or SEC) for disciplinary investigation of rule violations or violation federal securities laws? ☐ YES ☒ NO

C. Forum Fees

One prehearing conference (Full Panel)	X	\$750 =	\$ 750
Eight hearing sessions	X	\$750 =	\$6,000
Total Forum Fees =			\$6,750

Forum fees, in the amount of \$3,375.00 are assessed against Claimant.
Forum fees, in the amount of \$3,375.00 are assessed against Respondent.

Dated: 1-6-06

Laurel Gothelf - Chair
Laurel Gothelf, Chair

Dated: _____

Gary Kahn, Public Arbitrator

Dated: 1/8/06

Marilyn McCloskey ^{indus}
Marilyn McCloskey, Industry Arbitrator

I further request that if the stock broker who worked for respondent, but apparently was not a named party, had an entry on his CRD due to this case, that the entry be expunged.

Marilyn McCloskey

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B. Other Determinations

1. Respondent shall reimburse Claimant's non-refundable filing fee: ☐ YES ☒ NO
2. Respondent shall reimburse Claimant's hearing session deposit: ☐ YES ☒ NO
3. Parties shall bear their own costs of arbitration: ☒ YES ☐ NO
4. Should this matter be referred to any regulatory organization (SRO or SEC) for disciplinary investigation of rule violations or violation of federal securities laws? ☐ YES ☒ NO

C. Forum Fees

One prehearing conference X \$750 = \$ 750
(Full Panel)
Eight hearing sessions X \$750 = \$6,000

Total Forum Fees = \$6,750

Forum fees, in the amount of \$3,375.00 are assessed against Claimant.
Forum fees, in the amount of \$3,375.00 are assessed against Respondent.

Dated: 1-6-06

Laurel Gothelf - Chair
Laurel Gothelf, Chair

Dated: 1/23/06

Gary Kahn
Gary Kahn, Public Arbitrator

Dated: _____

Marilyn McCaskey, Industry Arbitrator