

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Amanda M. Evans f/k/a Amanda Samberg, Claimant v. Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley DW Inc., Colleen L. Erickson, Steven A. Hild, Steven Samberg, and Leon Samberg, Respondents

Case Number: 05-01956

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimant:

Daniel Robert Bartley, Esq.
Bartley Law Offices
Novato, California

For Respondent Merrill Lynch, Pierce,
Fenner & Smith Incorporated:

Bruce W. Day, Esq.
Day Edwards Propester &
Christensen, PC
Oklahoma City, Oklahoma

For Respondents Morgan Stanley DW Inc.,
Colleen L. Erickson, and Steven A. Hild:

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

For Respondent Steven Samberg:

No appearance

For Respondent Leon Samberg:

No appearance

CASE INFORMATION

Statement of Claim filed: April 4, 2005

Supplement to Statement of Claim filed: December 20, 2005

Second Supplement to Statement of Claim filed: December 14, 2006

Claimant's Uniform Submission Agreement signed: March 22, 2005

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated's Statement of Answer filed: June 10, 2005

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated's Response to Claimant's Supplement to Statement of Claim filed: January 13, 2006

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated's Uniform Submission Agreement signed: not dated

Respondents Morgan Stanley DW Inc., Colleen L. Erickson, and Steven A. Hild's Joint Statement of Answer and Motion to Dismiss filed: July 1, 2005

Respondents Morgan Stanley DW Inc., Colleen L. Erickson, and Steven A. Hild's Joint Statement of Answer to Claimant's Supplement to Statement of Claim and Motion to Dismiss filed: January 6, 2006

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: July 18, 2005

Respondent Colleen L. Erickson's Uniform Submission Agreement signed: July 11, 2005

Respondent Steven A. Hild's Uniform Submission Agreement signed: July 13, 2005

CASE SUMMARY

Claimant alleged violation of NASD rules, fraud, breach of fiduciary duty, and negligence, involving stock in Vitria Technology.

Unless specifically admitted in its Answers, Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in their Answers, Respondents Morgan Stanley DW Inc., Colleen L. Erickson, and Steven A. Hild denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested \$2,000,000.00 in general damages, \$1,192,179.75 in special damages, unspecified punitive damages, prejudgment interest, the imposition of a constructive trust, a judgment voiding the transfer and sale of the Vitria stock, a disciplinary referral of Respondents, and costs, including attorney's fees.

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated requested dismissal of Claimant's Statement of Claim in its entirety and costs, including attorney's fees.

Respondents Morgan Stanley DW Inc., Colleen L. Erickson, and Steven A. Hild requested dismissal of Claimant's Statement of Claim in its entirety, a recommendation of expungement from Colleen L. Erickson and Steven A. Hild's registration records, and costs.

OTHER ISSUES CONSIDERED AND DECIDED

On December 7, 2005, the Panel issued an Order allowing for the submission of Claimant's Supplement to the Statement of Claim.

On December 11, 2006, Claimant dismissed Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated with prejudice.

On December 14, 2006, during the evidentiary hearing, Claimant filed a Motion for Leave to Amend Statement of Claim Via Filing of Second Supplement to Statement of Claim. The Panel granted the motion and accepted the filing of Claimant's Second Supplement to Statement of Claim.

The Panel dismissed without prejudice Respondents Steven Samberg and Leon Samberg upon a finding that they were not required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure ("Code").

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, 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) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Colleen L. Erickson's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Colleen L. Erickson 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 finding of fact:

The claim, allegation, or information is false.

- 3) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Steven A. Hild's registration records maintained by the CRD, with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Steven A. Hild 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 finding of fact:

The claim, allegation, or information is false.

- 4) The parties shall bear their respective costs, 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	= \$ 600.00
--------------------------	-------------

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 Merrill Lynch, Pierce, Fenner & Smith Incorporated 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
Total Member Fees	= \$ 8,550.00

The member firm Morgan Stanley DW Inc. is also 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
Total Member Fees	= \$ 8,550.00

Adjournment Fees

The following adjournment fees are assessed:

July 18-21, 2006 hearing adjournment requested by Claimant	= \$ 1,200.00
--	---------------

The Panel waived \$1,200.00 of the adjournment fees.

Forum Fees and Assessments

The Panel 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 arbitrator(s), including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

2 Pre-hearing conference sessions with one arbitrator @ \$450.00/session = \$ 900.00

Pre-hearing conferences:	September 7, 2006	1 session
	October 19, 2006	1 session

4 Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 4,800.00

Pre-hearing conferences:	September 12, 2005	1 session
	December 7, 2005	1 session
	January 24, 2006	1 session
	March 15, 2006	1 session

6 Hearing sessions @ \$1,200.00/session = \$ 7,200.00

Hearings:	December 12, 2006	2 sessions
	December 13, 2006	2 sessions
	December 14, 2006	2 sessions

Total Forum Fees	= \$12,900.00
-------------------------	----------------------

1. The Panel assessed \$6,450.00 of the forum fees to Claimant.
2. The Panel assessed \$6,450.00 of the forum fees jointly and severally to Respondents Morgan Stanley DW Inc., Colleen L. Erickson, and Steven A. Hild.

Fee Summary

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

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 6,450.00
Total Fees	= \$ 7,050.00
Less payments	= \$(1,800.00)
Balance Due NASD Dispute Resolution	= \$ 5,250.00

2. Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
Less payments	= \$(13,550.00)
Refund Due Merrill Lynch, Pierce, Fenner & Smith Incorporated	= \$ 5,000.00

3. Respondent Morgan Stanley DW Inc. is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
Less payments	= \$(8,550.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondents Morgan Stanley DW Inc., Colleen L. Erickson, and Steven A. Hild are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 6,450.00
Less payments made by Morgan Stanley DW Inc.	= \$(750.00)
Balance Due NASD Dispute Resolution	= \$ 5,700.00

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

Kendall C. Reed	-	Public Arbitrator, Presiding Chair
Mary M. O'Neil	-	Public Arbitrator
Karen A. Lockwood	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Kendall C. Reed
Chair, Public Arbitrator

Signature Date



Mary M. O'Neil
Public Arbitrator

12-18-06
Signature Date

Karen A. Lockwood
Non-Public Arbitrator

Signature Date

December 19, 2006
Date of Service

ARBITRATION PANEL

Kendall C. Reed	-	Public Arbitrator, Presiding Chair
Mary M. O'Neil	-	Public Arbitrator
Karen A. Lockwood	-	Non-Public Arbitrator


Concurring Arbitrators' Signatures

Kendall C. Reed
Chair, Public Arbitrator

Signature Date

Mary M. O'Neil
Public Arbitrator

Signature Date


Karen A. Lockwood
Non-Public Arbitrator


12-18-06
Signature Date

December 19, 2006
Date of Service

ARBITRATION PANEL

Kendall C. Reed	-	Public Arbitrator, Presiding Chair
Mary M. O'Neil	-	Public Arbitrator
Karen A. Lockwood	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Kendall C. Reed
Chair, Public Arbitrator

12-18-06
Signature Date

Mary M. O'Neil
Public Arbitrator

Signature Date

Karen A. Lockwood
Non-Public Arbitrator

Signature Date

12/22/06
Date of Service