

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

James R. & Cynthia Moriarty, Moriarty Litigation Group, Moriarty Education Trust & Moriarty Family Investment Partnership, LTD., (Claimants) vs. Edwin A. Allseitz Jr., Southwest securities, Inc., and SWS Financial, Inc., (Respondents).

Case Number:  
99-00996

Hearing Site:  
Houston, TX

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**REPRESENTATION OF PARTIES**

James R. Moriarty, Cynthia Moriarty, Moriarty Litigation Group, Inc., James & Cynthia Moriarty 1992 Education Trust and Moriarty Family Investment Partnership, Ltd. ("Claimants") were represented by Linda Brooks, Esq. Judith A. Meyer, Esq., and S. Grant Dorfman, Esq. of the firm of Ogden, Gibson, White & Brooks, L.L.P., Houston, Texas.

Edwin A. Allseitz, Jr., was represented by Don K. Leufven, Esq. of the firm of Alonso & Cersonsky, P.C., Houston, Texas; Sunpoint Securities, Inc., was represented by Andrew R. Korn, Esq. of Andrew R. Korn, P.C., Dallas, ; Southwest Securities, Inc. and Brokers Transactions Services, Inc. n/k/a SWS Financial Services, were represented by Will S. Montgomery, Esq., of the firm of Jenkins & Gilchrist, Dallas, Texas 75202.

**CASE INFORMATION**

Statement of Claim was filed on March 3, 1999.

An Amended Statement of Claim was filed on June 26, 2000,

Claimant's Uniform Submission Agreement was filed on March 3, 1999.

Respondent Edwin A. Allseitz filed his Response to the Statement of Claim on April 29, 1999.

Respondent Edwin A. Allseitz's Uniform Submission Agreement was filed on April 29, 1999.

Respondent Sunpoint Securities, Inc. filed its Response to the State of Claim on May 15, 1999.

Respondent Sunpoint Securities, Inc.'s Uniform Submission Agreement was filed on May 15, 1999.

Respondents Southwest Securities, Inc. and Brokers Transactions Services, Inc. n/k/a SWS Financial Services, filed their Responses to the Statement of Claim on May 5, 1999.

Respondents Southwest Securities, Inc. and Brokers Transactions Services, Inc. n/k/a SWS Financial Services' Uniform Submission Agreements were filed on May 17, 1999.

### CASE SUMMARY

Claimants invested with broker, Respondent Edwin A. Allseitz, Jr. ("Allseitz"), from April 1994 until May 1998, eventually opening a total of six (6) accounts. Initially, the accounts were held at Sunpoint Securities, Inc., but were transferred to Respondent Brokers Transactions Services, Inc. ("BTS"), when Allseitz transferred his registration there. Southwest Securities, Inc. ("Southwest"), which is owned by the same parent holding company as BTS, acted as the clearing agent on the accounts while they were at BTS.

Claimants alleged that Allseitz recommended unsuitable investments, and that the corporate Respondents committed numerous compliance and supervisory-related failures that contributed to their losses such as:

- 1.) Breach of Fiduciary Duty
- 2.) Common Law Fraud
- 3.) Breach of Contract
- 4.) Violations of Texas Securities Laws
- 5.) Violation of the Texas Deceptive trade Practices Act
- 6.) Unsuitability of Investments

The Claimants allegations are in connection with the purchase of shares of "New Valley", "The Brooke Group", "Marvel Entertainment bonds" & "Merry-Go-Round".

Unless specifically admitted in their answer, Respondents denied the allegations made in the Statement of claim and the Amended Statement of Claim and asserted the following defenses:

- 1.) Claimants were sophisticated, accredited investors, who sought to buy aggressive, potentially high-growth, high-risk securities.
- 2.) Respondent Allseitz further alleged that he had a reasonable basis for his recommendations, which were suitable to Claimants' stated investment objectives of short-term growth with high risk.
- 3.) Respondent Allseitz contended that Claimants had net total account gains over the time they invested of \$769,858.48, or a 21.63% annualized internal rate of return
- 4.) Respondent BTS argued that Claimants had net realized gains of approximately \$60,000 during the time they had their accounts at BTS.
- 5.) Respondent Allseitz further contended that Claimants did not incur damages when Respondent Allseitz ended their brokerage business on April 13, 1998, and that

Claimants' alleged losses from stock speculation over four months later were caused by Claimants' own decisions.

6.) Respondent Southwest sought dismissal of all claims against it on the ground that it acted only as the clearing agent on the accounts, and had no involvement with the investment.

### **RELIEF REQUESTED**

**Claimants requested:**

Compensatory Damages	\$ 670,774.64
Punitive Damages	\$Unspecified
Interest	\$10% Annually
Attorneys' Fees	\$ 215,000
Other Costs	\$ 15,830.11

**Respondents SWS requested:**

Compensatory Damages	\$ None
Punitive Damages	\$ None
Interest	\$ None
Attorneys' Fees	\$ 115,000
Other Costs	\$ None

**Respondents Allseitz requested:**

Compensatory Damages	\$ None
Punitive Damages	\$ None
Interest	\$ None
Attorneys' Fees	\$ 39,204.17
Other Costs	\$ 69,937.13

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent, Sunpoint Securities, Inc. ("Sunpoint"), filed a petitions for relief under Chapter 11 of the United States Bankruptcy Code prior to the Hearing in this matter. Accordingly, pursuant to section 362 of the Bankruptcy Code, Sunpoint was removed as a respondent in this proceeding and shall not be bound by the award rendered herein.

Claimants' Request to File an Amended Statement of Claim was granted at the June 8, 2000 Pre-Hearing Conference. Respondent BTS's Motion for Leave to File an Amended Answer was reviewed by the Panel on September 22, 2000, and denied.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented, the Panel has decided in full and final resolution the issues submitted for determination as follows:

1. The Statement of claim is denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys fees, except for those specifically enumerated herein.
3. Any and all relief not specifically mentioned herein is denied by the panel.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 250.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firms are, BTS, SWS & Sunpoint Securities.

Member surcharge	= \$ 2,000
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$ 3,500

#### **Adjournment Fees**

Adjournments requested during these proceedings:

- |  |              |
|--|--------------|
| 1. February 22-25, 2000, adjournment by Allseitz | = \$ 1000.00 |
| 2. June 6-9, 2000, adjournment by SWS            | = Waived     |

**Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing session with Panel x \$1000 = \$ 2000  
 Pre-hearing conference June 6, 2000  
 Pre-Hearing conference September 21, 1999

Ten (10) Hearing sessions x \$1000  
 Hearing date : September 25, 2000 2 sessions =\$ 2000  
 Hearing date: September 26, 2000 2 sessions =\$ 2000  
 Hearing date: September 27, 2000 2 sessions =\$ 2000  
 Hearing date: September 28, 2000 2 sessions =\$ 2000  
 Hearing date: September 29, 2000 2 sessions =\$ 2000

Total Forum Fees = \$12,000

1. The Arbitration Panel has assessed \$4000 of the forum fees to Claimants.
2. The Arbitration Panel has assessed \$4000 of the forum fees to Respondents SWS and BTS *Joint and severally*.
3. The Arbitration Panel has assessed \$4000 of the forum fees to respondent, Allseitz.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 250.00
<u>Forum Fees</u>	= \$ 4000.00
<u>Total Fees</u>	= \$ 4250.00
<u>Less payments</u>	= \$ 1250.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$ 3000.00

2. Respondents, SWS & BTS be are hereby are *jointly and severally* liable for:

<u>Forum Fees</u>	= \$ 4000
<u>Less payments</u>	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 4000

3. Respondent, Allseitz, be hereby solely liable for

<u>Forum Fees</u>	=\$4000
<u>Adjournment Fees</u>	=\$1000
<u>Total Fees</u>	=\$5000
<u>Less Payments</u>	=\$1000
Balance Due NASD Dispute Resolution, Inc.	= \$4000

4. Respondent, Sunpoint Securities be and hereby is solely liable for:

<u>Member Fees</u>	= \$ 6,100.00
<u>Total Fees</u>	= \$ 6,100.00
<u>Less payments</u>	= \$ 6,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0

5. Respondent, "SWS", be and hereby is solely liable for:

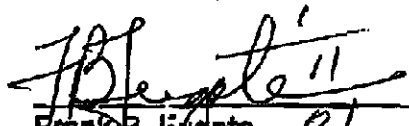
<u>Member Fees</u>	= \$ 6,100.00
<u>Total Fees</u>	= \$ 6,100.00
<u>Less payments</u>	= \$ 6,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0

6. Respondent, "BTS" , be and hereby is solely liable for:

<u>Member Fees</u>	= \$ 6,100.00
<u>Total Fees</u>	= \$ 6,100.00
<u>Less payments</u>	= \$ 6,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0

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**CONCURRING ARBITRATORS' SIGNATURES**

  
Frank B. Fugate  
Public Arbitrator, Presiding Chair

01-11-01  
Signature Date

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Walter J. McCoy, Ph.D., J.D.  
Public Arbitrator

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Signature Date

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Ruth E. Smith  
Industry Arbitrator

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Date of Service (For NASD-DR office use only)

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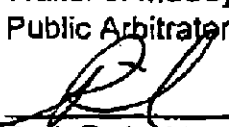
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