

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

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In the Matter of the Arbitration Between:

Dorigol, S.A., (Claimant) vs. J.P. Morgan & Co. Inc., Morgan Guaranty Trust Company of New York, and John Scott Muirhead, Jr., (Respondents)

Case Number: 99-05013

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Dorigol, S.A., hereinafter referred to as "Claimant": Marc A. Stadtmayer, Esq., Eckhaus & Olson, New York, NY.

Respondents, J.P. Morgan & Co. Inc. ("JPMC"), Morgan Guaranty Trust Company of New York ("MGTC"), and John Scott Muirhead, Jr. ("Muirhead"), hereinafter collectively referred to as "Respondents": Benjamin S. Kaminetzky, Esq., Davis Polk & Wardwell, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: November 3, 1999.

Claimant signed the Uniform Submission Agreement: December 8, 1999.

Joint Statement of Answer filed by JPMC and MGTC on or about: January 18, 2000.

JPMC signed the Uniform Submission Agreement: January 12, 2000.

MGTC signed the Uniform Submission Agreement: January 12, 2000.

Statement of Answer filed by Muirhead on or about: August 30, 2000.

Muirhead signed the Uniform Submission Agreement: August 30, 2000.

**CASE SUMMARY**

Claimant asserted the following causes of action: (1) fraudulent misrepresentation and concealment; (2) willful deceptions, fraud, and cheating in violation of the Commodity Exchange Act Section 4b; (3) scheme or artifice to defraud in violation of the Commodity Exchange Act Section 4o; (4) deception, cheating, and fraud in violation of Section 32.9 of the Rules of the Commodity Futures Trading Commission, 17 CFR Section 32.9; (5) misrepresentations and omissions in violation of Section 10(b) of the 1934 Security and Exchange Act and Rule 10b-5 promulgated thereunder; (6) negligent misrepresentations and omissions; (7) breach of fiduciary duty; (8) violation of New York Gen. Bus. Law Section 351; (9) gambling; (10) unjust enrichment; and (11) breach of contract.

Unless specifically admitted in their Answer, JPMC and MGTC denied the allegations made in the Statement of Claim and asserted the following defenses: (1) the Statement of Claim fails to state a cause of action; (2) Claimant assumed the risk of the losses for which it seeks to recover; (3) Claimant's claims are barred, in whole or in part, by Claimant's own contributory or comparative negligence; (4) Claimant is barred from asserting its claims for relief by the doctrines of modification, unclean hands, estoppel, and waiver; (5) Claimant is barred from asserting its claims for relief by reason of its own conduct and the conduct of its officers and authorized representatives; (6) Claimant knew, or had the means available to know, the truth of the matters allegedly misrepresented or not disclosed; (7) Claimant authorized, directed, ratified, or otherwise caused or approved all of the trading done in the portfolio; (8) JPMC and its employees acted in good faith at all times relevant to the Statement of Claim; (9) Claimant's claims are barred, in whole or in part, by Claimant's failure to mitigate its alleged damages; (10) Claimant's claims are barred, in whole or in part, by Claimant's waiver of any actual or perceived conflict of interest on the part of JPMC or its employees; (11) Claimant's claims are barred and/or offset, in whole or in part, because Claimant agreed to indemnify and hold JPMC harmless against any and all liabilities, loss, damage, costs, and expenses of any kind which may be incurred by JPMC; (12) any losses sustained by Claimant were not caused by JPMC or its employees, but rather were caused by the actions or inactions of others, and by market and other events beyond the control of JPMC; (13) Claimant's claims are barred by the terms of the agreements between Claimant and JPMC; (14) the Statement of Claim fails to set forth with sufficient particularity the circumstances constituting the alleged wrong; and (15) Claimant's claims are barred by failure to comply with the requirements of the Securities Litigation Reform Act of 1995.

Unless specifically admitted in his Answer, Muirhead denied the allegations made in the Statement of Claim and incorporated by reference the defenses asserted in the Answer of JPMC and MGTC.

### **RELIEF REQUESTED**

Claimant requested:

- a. Compensatory damages in the approximate amount of \$7,000,000.00. In addition, during the hearings, Claimant also put forth 2 other requests for compensatory damages: Exhibit 30 for \$9,100,000.00 and Exhibit 31 for \$3,300,000.00.
- b. Damages for Respondents' breach of contract in an amount to be determined at the arbitration;
- c. Punitive and exemplary damages in an amount to be determined at the arbitration; and
- d. Reasonable attorneys' fees, together with the costs and disbursements of this action, and such other relief as the Panel may deem just and appropriate.

Respondents requested that the Statement of Claim be dismissed, and that the costs and expenses of this proceeding, including attorneys' fees, be assessed against Claimant.

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

Prior to the conclusion of the hearings in this matter, Respondents filed an Application for Attorneys' Fees and Costs. After due consideration, the Panel denied said Application.

During the hearing that took place on July 16, 2001, Claimant withdrew the following causes of action: fraudulent misrepresentation and concealment; willful deceptions, fraud, and cheating in violation of the Commodity Exchange Act Section 4b; scheme or artifice to defraud in violation of the Commodity Exchange Act Section 4c; deception, cheating, and fraud in violation of Section 32.9 of the Rules of the Commodity Futures Trading Commission, 17 CFR Section 32.9; violation of New York Gen. Bus. Law Section 351; gambling; unjust enrichment; and breach of contract.

Claimant also limited the remaining causes of action to claims based upon: (a) Respondents' failure to advise Claimant of its research department's information in June, July, and August 1998 regarding the Emerging Markets, and (b) Respondents' failure to properly calculate and implement the margin call of August 27, 1998.

The parties have 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, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are hereby denied in their entirety.
2. All other requests for relief are hereby denied.

### **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	= \$ 600.00
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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 person at the time of the events giving rise to the dispute. In this matter, J.P. Morgan & Co. Inc. is a party.

Member surcharge	= \$ 3,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 5,000.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

June 11, 12, 13, 18, 19 & 20, 2001, adjournment by Claimant	= WAIVED
Oct. 16 & 17, 2001, adjournment by Respondents	= WAIVED

**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:

Three (3) Pre-hearing sessions with Panel x \$1,200.00 = \$ 3,600.00

Pre-hearing conferences:	February 12, 2001	1 session
	June 1, 2001	1 session
	October 23, 2001	1 session

Seventeen (17) Hearing sessions x \$1,200.00 = \$20,400.00

Hearing Dates:	July 16, 2001	2 sessions
	July 17, 2001	2 sessions
	July 18, 2001	2 sessions
	July 30, 2001	2 sessions
	July 31, 2001	2 sessions

	August 2, 2001	2 sessions
	January 30, 2002	2 sessions
	January 31, 2002	2 sessions
	February 8, 2002	1 session

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Total Forum Fees = \$24,000.00

1. The Panel has assessed \$12,000.00 of the forum fees against Claimant.
2. The Panel has assessed \$12,000.00 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$12,000.00</u>
Total Fees	= \$12,600.00
<u>Less payments</u>	<u>= \$ 3,000.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 9,600.00

2. JPMC be and hereby is solely liable for:

<u>Member Fees</u>	= \$ 8,600.00
<u>Total Fees</u>	= \$ 8,600.00
<u>Less payments</u>	= \$ 8,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

3. Respondents be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$12,000.00
<u>Total Fees</u>	= \$12,000.00
<u>Less payments</u>	= \$ 1,200.00
Balance Due NASD Dispute Resolution, Inc.	= \$10,800.00

All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Melvin Lyon	-	Public Arbitrator, Presiding Chair
Joseph F. Wagner, Esq.	-	Public Arbitrator
Maria C. Hermida, Esq.	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Melvin Lyon  
Melvin Lyon  
Public Arbitrator, Presiding Chair

March 8, 2002  
Signature Date

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Joseph F. Wagner, Esq.  
Public Arbitrator

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Signature Date

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Maria C. Hermida, Esq.  
Industry Arbitrator

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Signature Date

March 13, 2002  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Melvin Lyon	-	Public Arbitrator, Presiding Chair
Joseph F. Wagner, Esq.	-	Public Arbitrator
Maria C. Hermida, Esq.	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

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Melvin Lyon  
Public Arbitrator, Presiding Chair

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Signature Date

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Joseph F. Wagner, Esq.  
Public Arbitrator

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Signature Date

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*Maria C. Hermida*  
Maria C. Hermida, Esq.  
Industry Arbitrator

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*FEBRUARY 21, 2002*  
Signature Date

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*March 13, 2002*  
Date of Service (For NASD office use only)