

**Award  
FINRA Dispute Resolution**

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**In the Matter of the Arbitration Between:**

**Claimants**

**Marie Atake  
Pat Atake**

**Case Number: 08-00049**

**Respondents**

**Strasbourger Pearson Tulcin Wolff, Inc.  
Legend Merchant Group, Inc.  
Randy Fields**

**Hearing Site: Los Angeles, California**

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**Nature of the Dispute: Customers vs. Members and Associated Person**

**REPRESENTATION OF PARTIES**

**Claimants, Marie Atake and Pat Atake hereinafter collectively referred to as "Claimants":  
Montgomery G. Griffin, Esq., Law Offices of Montgomery G. Griffin, Newport Beach,  
California.**

**Respondent, Strasbourger Pearson Tulcin Wolff, Inc. ("SPTW"): Ron Moschetta,  
Strasbourger Pearson Tulcin Wolff, Inc., Garden City, New York.**

**Respondent, Legend Merchant Group, Inc. ("LMG"): Joseph Pastore, III, Esq., Fox  
Rothschild, LLP, Stamford, Connecticut.**

**Respondent, Randy Fields ("Fields"): Jonathan Kurta, Esq., Sichenzia Ross Friedman  
Ference LLP, New York, New York.**

**CASE INFORMATION**

**Statement of Claim filed on or about: January 3, 2008**

**Claimants signed the Submission Agreement: December 26, 2007**

**Statement of Answer filed by Respondent SPTW on or about: March 17, 2008**

**Statement of Answer filed by Respondent Fields on or about: March 26, 2008**

**Statement of Answer filed by Respondent LMG on or about: April 8, 2008**

**Respondent Fields signed the Submission Agreement: March 4, 2008**

**Respondent LMG signed the Submission Agreement: April 11, 2008**

### **CASE SUMMARY**

Claimants asserted violations of industry standards, and violations of law and equitable principles. Claimants' dispute involved various investments including equity holdings.

Unless specifically admitted in their Answers, all Respondents denied the allegations made in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested:

1. Out of pocket damages in an amount believed to be in excess of \$400,000.00;
2. Expectation damages in an amount believed to exceed \$500,000.00;
3. Consequential damages subject to proof at the hearing;
4. Interest on the losses at the rate of 10% per annum;
5. Punitive damages to deter this type of conduct;
6. Cost of this proceeding incurred by Claimants, including attorneys fees, expert witness fees; and
7. For such other and further relief as the Panel deems proper.

Respondent SPTW requested that the Panel enter an award in its favor for the relief sought, and grant such other relief as the Panel deems appropriate.

Respondent LMG requested that the Panel dismiss the Statement of Claim with prejudice and issue such other and further relief as the Panel deems just, equitable and proper.

Respondent Fields requested that the Panel dismiss the Statement of Claim with prejudice and issue such other and further relief as the Panel deems just, equitable and proper.

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

The Panel acknowledges that they have each read the pleadings and other materials filed by the parties.

On February 5, 2010, Claimants notified FINRA that they settled their claims with Respondent Fields. On February 28, 2010, Claimants settled their claims with Respondent LMG. On Monday March 1, 2010, an Evidentiary Hearing was held at the FINRA Los Angeles Office to hear the case against the remaining Respondent SPTW. Respondent SPTW was not represented at the Hearing on March 1, 2010.

Respondent SPTW did not file with FINRA Dispute Resolution a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and having answered the claim, is bound by the determination of the Panel on all issues submitted.

Upon review of the file and the representations made on behalf of the Claimants, the undersigned Panel determined that Respondent SPTW 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 present, in accordance with the Code. The Panel decided to proceed with the hearing as it was found SPTW was properly notified of the hearing and choose not to participate.

In the morning evidentiary hearing session, Claimants' counsel Mr. Griffin presented his case. He called Ron Moschetta as a witness. Mr. Moschetta testified by telephone as he was excused by the Chair from appearing in person. The Panel noted that Mr. Moschetta is currently the CEO and majority owner of SPTW. At the time the Claimants' accounts were at SPTW, Mr. Moschetta stated he was not an owner of the firm and had no supervisory responsibility for Randy Fields, although he was acquainted with Mr. Fields. The Panel also noted that Mr. Moschetta appeared as a witness in response to the Chair's Order for Appearance of February 18, 2010, as requested by the Claimants. In the afternoon session Claimant Marie Atake testified. Both Mr. Moschetta and Claimant Marie Atake were duly sworn in.

The Claimants have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **STIPULATED AWARD**

The Claimants and Respondent LMG entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing with regards to Claimants' claims against Respondent LMG and upon motion of both parties for an entry of an award, and the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. On February 26, 2010, Claimants entered into a settlement agreement with Respondent LMG wherein Claimants released all claims against Respondent LMG which Claimants ever had from the beginning of the world through February 26, 2010, including but not limited to all claims concerning, relating to or arising out of Claimants' investments placed with, through, or by Respondent LMG ("the Release"). In exchange for the Release, Respondent LMG agreed to and shall pay Claimants the total sum of \$135,000.00 (one hundred thirty-five thousand dollars) on the following payment schedule:
  - (a) \$15,000 no later than March 12, 2010;
  - (b) \$45,000 no later than April 5, 2010;
  - (c) \$40,000 no later than June 30, 2010; and
  - (d) \$35,000 no later than September 30, 2010.
  
2. Further, the Claimants and Respondent LMG agreed to cooperate in good faith to distribute any funds belonging to Claimants which are still held in accounts at Respondent LMG, including, but not limited to, Claimant Marie Atake's SEP IRA account.

## **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing with regards to Claimants claims against Respondent SPTW, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel finds in favor of Claimants.
2. Respondent SPTW is liable to and shall pay Claimants the sum of \$107,895.00 for out-of-pocket, taking into account the Fields Settlement apportionment.
3. Respondent SPTW is liable to and shall pay Claimants interest on the aforementioned amount of \$107,895.00 at a rate of 5% beginning from May 20, 2003 to June 30, 2004.
4. Respondent SPTW is liable to and shall pay Claimants discovery delay sanctions in the amount of \$5,000.00.
5. Any and all relief not specifically addressed herein, including punitive damages, is denied.

## **FEES**

Pursuant to the Code, the following fees are assessed:

### **Filing Fees**

FINRA Dispute Resolution assessed a filing fee\* for each claim:

Initial claim filing fee = \$1,575.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

### **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. Accordingly, as parties, SPTW and LMG are assessed the following fees.

#### **SPTW**

Member surcharge = \$2,250.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$4,000.00

#### **LMG**

Member surcharge = \$2,250.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$4,000.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

May 19-22, 2009, adjournment by parties = waived

**Discovery-Related Motion Fees**

Fees apply for each decision rendered on a discovery-related motion.

Two (2) Decision on a discovery-related motion on the papers  
with one arbitrator @ \$200.00 = \$400.00  
Claimants submitted a discovery-related motion.  
Respondent Fields submitted a discovery-related motion.

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**Total Discovery-Related Motion Fees = \$400.00**

1. The Panel has assessed \$133.33 of the discovery related motion fees to Respondent LMG.
2. The Panel has assessed \$133.33 of the discovery related motion fees to Respondent Fields.
3. The Panel has assessed \$133.33 of the discovery related motion fees to Respondent SPTW.

**Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each session conducted. A 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:

Four (4) Pre-hearing sessions with a single arbitrator @ \$450.00/session = \$ 1,800.00  
Pre-hearing conferences: April 10, 2009 1 session  
August 31, 2009 1 session  
September 17, 2009 1 session  
January 14, 2010 1 session

Three (3) Pre-hearing sessions with Panel @ \$1,200.00/session = \$ 3,600.00  
Pre-hearing conferences: July 10, 2008 1 session  
August 6, 2009 1 session  
November 3, 2009 1 session

Two (2) Hearing sessions @ \$1,200.00/session = \$ 2,400.00  
Hearing Date: March 1, 2010 2 sessions

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**Total Hearing Session Fees = \$ 7,800.00**

1. The Panel has assessed \$1,800.00 of the hearing session fees to Respondent LMG.
2. The Panel has assessed \$1,800.00 of the hearing session fees to Respondent Fields.
3. The Panel has assessed \$4,200.00 of the hearing session fees to Respondent SPTW.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

Gerald F. Corrigan	-	Public Arbitrator, Presiding Chairperson
Rosa Linda Guadarrama	-	Public Arbitrator
Stephen Malcolm Squire	-	Non-Public Arbitrator

**Consenting Arbitrators' Signatures**

  
\_\_\_\_\_  
Gerald F. Corrigan  
Public Arbitrator, Presiding Chairperson

04/09/2010  
Signature Date

\_\_\_\_\_  
Rosa Linda Guadarrama  
Public Arbitrator

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

\_\_\_\_\_  
Stephen Malcolm Squire  
Non-Public Arbitrator

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

April 13, 2010  
\_\_\_\_\_  
Date of Service (For FINRA Dispute Resolution use only)

**ARBITRATION PANEL**

Gerald F. Corrigan	-	Public Arbitrator, Presiding Chairperson
Rosa Linda Guadarrama	-	Public Arbitrator
Stephen Malcolm Squire	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Gerald F. Corrigan  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Rosa Linda Guadarrama  
Public Arbitrator

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

  
\_\_\_\_\_  
Stephen Malcolm Squire  
Non-Public Arbitrator

April 7, 2010  
Signature Date

April 13, 2010  
Date of Service (For FINRA Dispute Resolution use only)


**ARBITRATION PANEL**

Gerald F. Corrigan	-	Public Arbitrator, Presiding Chairperson
Rosa Linda Guadarrama	-	Public Arbitrator
Stephen Malcolm Squire	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Gerald F. Corrigan  
Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
Rosa Linda Guadarrama  
Public Arbitrator

4/12/10  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Stephen Malcolm Squire  
Non-Public Arbitrator

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

4/18/10  
\_\_\_\_\_  
Date of Service (For FINRA Dispute Resolution use only)