

Pleasanton couple win \$1 million award against Morgan Stanley and a broker in a stock options case

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Michael Coutant and his wife, Tanis, once thought they were worth at least \$10 million, thanks to their stock options from a Silicon Valley high flyer. Instead, they lost their Union City residence and Gold Country vacation home.

But after nearly a decade of financial setbacks, the Coutants have won a \$1 million-plus arbitration award from a claim they had filed against investment bank Morgan Stanley and one of its brokers, David Earle. In the claim, the Coutants alleged that Earle and his employer, Morgan Stanley, had mismanaged the stock options they had obtained from their employer, JDS Uniphase, a Silicon Valley optical equipment supplier.

The Coutants met Earle at a retirement party for a co-worker at JDS Uniphase in 2000. Earle introduced himself as a retirement specialist. At the time, the Coutants received much of their pay in the form of stock options from the South Bay high-tech firm.

Earle told the Coutants that the options in 2000 -- the final year of the dot-com bubble -- were worth \$10 million and would likely soar to a value of \$80 million in the next two decades. The Coutants hired Earle to manage their stock options. Using his

advice, they bought a vacation home near Copperopolis.

At first, things looked rosy. Riding the crest of Internet mania, JDS's stock peaked in March 2000 at \$1,172 a share. The stock turned volatile during the first half of 2000. After a brief rally during the second half of that year, it began to decline steadily in value.

Michael Coutant recalled he and his wife could have cashed in the options at \$150 or \$100 a share. But Earle, the broker, dissuaded them from conducting the transactions.

"He told us we would be leaving a lot of money on the table if we exercised the options," Coutant said in an interview with this paper. "He kept telling us the stock would turn around."

The JDS shares never recovered in any meaningful way. By the fall of 2001, the company's stock had plunged to about \$43. That was 96 percent below the record high price for JDS Uniphase. They had used the stock options as collateral for a loan to refinance their home in Union City and to buy the vacation home. The disastrous collapse of the company's stock and the associated options led to foreclosures against both properties.

Earle failed to establish a collar for the options, said Cary Lapidus, a San Francisco-based attorney who was a co-counsel for the Coutants. That financial mechanism would have enabled the Coutants to avoid the great majority of the loss in value of the stock options, Lapidus said.

"Somebody who is representing themselves as an expert should know these things," said Kathy Monday, an attorney with Modesto-based law firm Damrell, Nelson, Schrimp, Pallios, Pacher & Silva, and a co-counsel for the Coutants. "There was also a

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real failure to supervise the broker on the part of Morgan Stanley."

At the trial on the claim, the attorneys for the Coutants presented evidence that multiple financial vehicles were available to protect the couple from much of the financial losses, said Roger Schrimp, an attorney with the Damrell, Nelson firm.

"When the stock fell in value, they had no protection," Schrimp said. "They lost both their homes through foreclosure. They lost everything they had. They were upside-down financially."

The ruling obliged Morgan Stanley to pay 95 percent of the \$1,015,875 awarded to the Coutants by an arbitration panel in late February. The remaining 5 percent payment was to be split by Morgan Stanley and its broker, Earle.

"While the arbitration award is for only a small fraction of the damages sought, we strongly disagree with the ruling and do not believe that it was supported by the facts or the evidence presented," Christine Pollak, a Morgan Stanley vice president, said in an e-mailed comment about the case.

Now that the Coutants have their payment, they are planning to start over again. They hope to increase the college fund they had established for their children. And they may also buy a new home. They are now living in a rented house in Pleasanton.

"This has been a long haul," Michael Coutant said. "We're glad this is over. We're happy with the award."

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