

Award
NASD Dispute Resolution

COPY

In the Matter of the Arbitration Between:
Tod DuBois, Claimant v. Morgan Stanley DW Inc., Respondent

Case Number: 01-06257

Hearing Site: San Francisco, California

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

For Claimant:

Rosemary J. Shockman, Esq.
Shockman Law Office
Scottsdale, Arizona

Cary S. Lapidus, Esq.
Law Offices of Cary S. Lapidus
San Francisco, California

For Respondent:

Gilbert R. Serota, Esq.
Howard Rice Nemerovski Canady
Falk & Rabkin
San Francisco, California

Timm VerDuin, Esq.
Morgan Stanley DW Inc.
San Francisco, California

CASE INFORMATION

Statement of Claim filed: December 14, 2001

Motion to Amend Statement of Claim and Amended Statement of Claim filed: June 24, 2003

Claimant's Uniform Submission Agreement filed: November 15, 2001

Statement of Answer filed by Respondent Morgan Stanley DW Inc. ("Morgan Stanley"):
February 27, 2002

Respondent's Response to Amended Statement of Claim filed: November 12, 2003

Respondent Morgan Stanley's Uniform Submission Agreement signed: April 9, 2002

CASE SUMMARY

Claimant alleged that the above-referenced dispute arises from the failure of Morgan Stanley to execute a protective collar relating to the stock of Ariba, Inc. owned by Claimant; and the purchase of unsuitable securities in one of the accounts by Morgan Stanley which resulted in losses to Claimant. Claimant also alleged the following claims: 1) Negligence; 2) Breach of Contract; 3) Breach of Fiduciary Duty; 4) Failure to Properly Supervise and Control; 5) Purchase of Unsuitable Securities; 6) Constructive Fraud; and 7) Violation of the California Corporate Securities Act.

Respondent denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondent also asserted affirmative defenses.

RELIEF REQUESTED

In his Statement of Claim, Claimant alleged that his damages are believed to be between \$4,000,000.00 and \$5,000,000.00. Claimant requested in addition to all damages, interest, including prejudgment interest at the statutory rate of 10% per year, attorneys' fees and costs.

In his Amended Statement of Claim, Claimant alleged that his damages are believed to be between \$3,000,000.00 and \$4,000,000.00. Claimant requested in addition to all damages, interest, including prejudgment interest at the statutory rate of 10% per year, attorneys' fees and costs.

Respondent requested that Claimant's Claim be dismissed and an award entered in favor of Respondent assessing all costs against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

On or about October 10, 2003, the Panel granted Claimant's Motion to Amend Statement of Claim.

On or about March 3, 2004, the parties agreed to change the hearing location in this matter from Phoenix, Arizona to San Francisco, California, and agreed to split the travel costs incurred by the Panel as a result of the change of hearing location.

On July 20, 2004, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators. Pursuant to the Code of Arbitration Procedure IM-10100 the waiver of the Claimant shall constitute and operate as a waiver for all

member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

Pursuant to stipulation of the parties, all claims relating to the investment account were dismissed.

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. Respondent Morgan Stanley is liable to and shall pay Claimant the sum of Seven Hundred Fifty Thousand Dollars (\$750,000.00). Such sum includes all prejudgment interest.
2. Respondent Morgan Stanley is liable to and shall pay Claimant the sum of Six Hundred Dollars (\$600.00) as reimbursement for Claimant's filing fee.
3. The aforementioned Award amounts shall bear interest from the date of this Award at the rate of seven percent (7%) per annum to be compounded annually until paid.
4. Except as mentioned in paragraph 2 above, each party shall bear its own costs, including attorney's fees.
5. All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR 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, Morgan Stanley is a party and the following fees are assessed:

Member Surcharge	= \$2,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$4,500.00</u>
Total Member Fees	= \$7,600.00

Adjournment Fees

The following adjournment fees are assessed:

February 3-6, 2004, adjournment by Claimant = \$1,200.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

(2) Pre-hearing conferences with a single arbitrator @ \$450.00/session	= \$900.00
Pre-hearing conferences: June 3, 2003 1 session	
January 29, 2004 1 session	
(2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$2,400.00
Pre-hearing conferences: May 12, 2003 1 session	
February 3, 2004 1 session	
(7) Hearing sessions @ \$1,200.00/session	= \$8,400.00
Hearing: September 8, 2004 2 sessions	
September 9, 2004 2 sessions	
September 10, 2004 2 sessions	
September 11, 2004 1 session	
Total Forum Fees	= \$11,700.00

The Panel assessed the \$11,700.00 in forum fees to Respondent Morgan Stanley.

Fee Summary

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

Initial Filing Fee	= \$ 600.00
<u>Adjournment Fee</u>	<u>= \$ 1,200.00</u>
Total Fees	= \$ 1,800.00
<u>Less Payments</u>	<u>= \$(3,000.00)</u>
Refund Due Claimant	= \$(1,200.00)

2. Respondent Morgan Stanley is charged with the following fees and costs:


Member Fees	= \$ 7,600.00
Forum Fees	= \$11,700.00
Total Fees	= \$19,300.00
Less Payments	= \$(7,900.00)
Balance Due NASD-DR	= \$11,400.00

All balances are payable to NASD Dispute Resolution and are payable upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Samuel L. McClaren, Esq.	-	Public Arbitrator, Presiding Chair
Beryl I. Dulsky, Esq.		Public Arbitrator
Mercedes G. Johnson	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Samuel L. McClaren, Esq.
Chair, Public Arbitrator

9/16/04
Signature Date

Beryl I. Dulsky, Esq.
Public Arbitrator

Signature Date

Mercedes G. Johnson
Non-Public Arbitrator

Signature Date

9/17/04
Date of Service