

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Jack E. Lauterbach

Case No. 00-04161

Name of Respondents

Morgan Stanley DW Inc.;
John M. Billingsley;
Jeffrey M. Roumfort;
NWQ Investment Management Co.; and
Michael C. Mendez

Hearing Site: Houston, Texas

REPRESENTATION OF PARTIES

Claimant Jack E. Lauterbach ("Lauterbach") was represented by Frank Pinedo, Esq., of the Law Offices of Frank Pinedo, located in Houston, Texas.

Respondents Morgan Stanley DW, Inc. ("MSDW"), John M. Billingsley ("Billingsley") and Jeffrey M. Roumfort ("Roumfort") were represented by Michael C. Massengale, Esq. of Baker & Botts, LLP, located in Houston, Texas.

Respondents NWQ Investment Management Co. ("NWQ") and Michael C. Mendez ("Mendez") were represented by Bradley M. Whalen, Esq. of Doyle, Restrepo, Harvin & Robbins, LLP, located in Houston, Texas.

CASE INFORMATION

Statement of Claim filed on or about: September 21, 2000.

Claimant signed the Uniform Submission Agreement: September 9, 2000.

Statement of Answer filed by Respondents MSDW, Billingsley and Roumfort on or about: January 12, 2001.

Respondent MSDW signed the Uniform Submission Agreement: January 12, 2001.

Respondents Billingsley and Roumfort did not file a signed Uniform Submission Agreement.

Motion to Dismiss filed by Respondents MSDW, Billingsley and Roumfort on or about: August 20, 2001.

Claimant's Response to Motion to Dismiss filed on or about: August 28, 2001.

Claimant's Amended Response to Motion to Dismiss filed on or about: August 31, 2001

Statement of Answer filed by Respondent NWQ and Mendez on or about: December 7, 2000.

Respondents NWQ and Mendez did not file a signed Uniform Submission Agreement.

Claimant's Motion to Bar Respondents NWQ and Mendez from presenting evidence at hearing filed on or about: August 20, 2001.

Response to Claimant's Motion to Bar filed by Respondents NWQ and Mendez on or about: September 4, 2001.

CASE SUMMARY

Claimant asserted the following causes of action against the Respondents: causing the purchase of unsuitable and risky investments; breach of contract; violations of the NASD Rules of Fair Practice; Violation of the Texas Deceptive Trade Practices Act; breach of fiduciary duty; negligence; and misrepresentation. These causes of action involved trades by NWQ and Mendez as Claimant's investment advisors and involved common stocks in his IRA account.

Unless specifically admitted in its Answer, Respondents MSDW, Billingsley and Rounfort denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim fails to state a claim against these respondents upon which relief can be granted;
2. If the Claimant suffered any losses, they were proximately caused by the failure of Claimant to exercise reasonable and ordinary care, caution and prudence;
3. The claims are barred, in whole or in part, by Claimant's failure to act reasonably to mitigate his damages;
4. The claims are barred, in whole or in part, because Claimant's alleged damages are impermissibly speculative; and
5. The claims are barred, in whole or in part, by the doctrines of ratification, waiver and estoppel.

Unless specifically admitted in its Answer, Respondents NWQ and Mendez denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Lauterbach's claim has no basis in law or fact, and is frivolous because the actual losses total \$86.00, but Lauterbach is requesting speculative damages based upon what he wishes he received;
2. The claims are barred by the doctrine of assumption of risk because Lauterbach assumed the risk of loss and of lost opportunity; and,
3. NWQ and Mendez acted in a good faith belief in the propriety of their conduct and lacked malice.

RELIEF REQUESTED

Claimant Jack E. Lauterbach requested:

Compensatory Damages	\$24,630.69
Punitive (Treble) Damages	\$49,261.38
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified.

Respondents MSDW, Billingsley and Rounfort requested that all claims against them be denied and that they be awarded their attorneys' fees and costs for the defense of this action.

Respondents NWQ and Mendez requested:

1. That the claimant take nothing on his claim;
2. That they receive their reasonable fee and expenses pursuant to the Texas Deceptive Trade Practices Act; and
3. For such other relief as the arbitrators deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Billingsley and Rounfort did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim and appeared at the hearing, are bound by the determination of the Panel on all issues submitted.

Respondents NWQ and Mendez did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but voluntarily submitted to this arbitration as part of their answer, and having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

The written Motion to Dismiss filed by Respondents MSDW, Billingsley and Rounfort was denied by the panel. In addition, the Claimant's Motion to Bar Respondents NWQ and Mendez from presenting evidence at hearing was denied by the panel.

At the conclusion of the Claimant's case at hearing, all Respondents moved for dismissal of the claims. After considering the arguments presented by the respective parties, the panel granted the motion in part and dismissed the claims against Respondents NWQ Investment Management Co. and Michael C. Mendez. However, the motion to dismiss presented by Respondents Morgan Stanley DW, Inc., John M. Billingsley and Jeffrey M. Rounfort was denied and the hearing continued against the remaining Respondents.

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. The Statement of Claim is dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those specifically enumerated herein; and,
3. Any and all relief not specifically addressed herein, including treble damages, is 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 = \$ 225.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firm (Morgan Stanley DW, Inc.) is a party.

Member surcharge = \$ 1,000.00
Pre-hearing process fee = \$ 600.00
Hearing process fee = \$ 1,500.00

Adjournment Fees

Adjournments requested during these proceedings: None

Forum Fees and Assessments

The panel has the authority to assess 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 sessions with Panel x \$750.00	= \$ 1,500.00
Pre-hearing conferences: March 20, 2001 1 session	
September 17, 2001 1 session	
Five (5) Hearing sessions x \$750.00	= \$ 3,750.00
Hearing Dates: January 29, 2002 3 sessions	
January 30, 2002 2 sessions	
Total Forum Fees	= \$ 5,250.00

The panel has assessed \$1,750.00 of the forum fees to Claimant Jack E. Lauterbach, \$1,750.00 of the forum fees to Respondent Morgan Stanley DW, Inc. and \$1,750.00 of the forum fees to Respondent NWQ Investment Management Co.

FEE SUMMARY

Claimant Jack E. Lauterbach is solely liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 1,750.00
Total Fees	= \$ 1,975.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,000.00

Respondent Morgan Stanley DW, Inc. is solely liable for:

Member Fees	= \$ 3,100.00
Forum Fees	= \$ 1,750.00
Total Fees	= \$ 4,850.00
Less payments	= \$ 3,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,750.00

Respondent NWQ Investment Management Co. is solely liable for:

Forum Fees	= \$ 1,750.00
Less payments	= \$.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,750.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Sharon Jevert Hemphill, Esq. - Public Arbitrator, Presiding Chair
Donald E. Fisher, Jr., Esq. - Public Arbitrator
Robert E. Otto - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Sharon Jevert Hemphill, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Donald E. Fisher, Jr., Esq.
Public Arbitrator

Signature Date

Robert E. Otto
Non-Public Arbitrator

Signature Date

Date of Service (For NASD-Dispute Resolution office use only) _____

NASD Dispute Resolution, Inc.
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FEE SUMMARY

Claimant Jack E. Lauterbach is solely liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 1,750.00
Total Fees	= \$ 1,975.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,000.00

Respondent Morgan Stanley DW, Inc. is solely liable for:

Member Fees	= \$ 3,100.00
Forum Fees	= \$ 1,750.00
Total Fees	= \$ 4,850.00
Less payments	= \$ 3,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,750.00

Respondent NWQ Investment Management Co. is solely liable for:

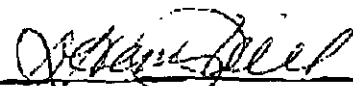
Forum Fees	= \$ 1,750.00
Less payments	= \$.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,750.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Sharon Jevett Hemphill, Esq. - Public Arbitrator, Presiding Chair
 Donald E. Fisher, Jr., Esq. - Public Arbitrator
 Robert E. Otto - Non-Public Arbitrator

Concurring Arbitrators' Signatures


 Sharon Jevett Hemphill, Esq.
 Public Arbitrator, Presiding Chair

3-13-02

Signature Date

 Donald E. Fisher, Jr., Esq.
 Public Arbitrator

 Signature Date

 Robert E. Otto
 Non-Public Arbitrator

 Signature Date

Date of Service (For NASD-Dispute Resolution office use only)

3/18/02 

FEE SUMMARY

Claimant Jack E. Lauterbach is solely liable for:

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Forum Fees	= \$ 1,750.00
Total Fees	= \$ 1,975.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,000.00

Respondent Morgan Stanley DW, Inc. is solely liable for:

Member Fees	= \$ 3,100.00
Forum Fees	= \$ 1,750.00
Total Fees	= \$ 4,850.00
Less payments	= \$ 3,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,750.00

Respondent NWQ Investment Management Co. is solely liable for:

Forum Fees	= \$ 1,750.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,750.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Sharon Jevent Hemphill, Esq. - Public Arbitrator, Presiding Chair
 Donald E. Fisher, Jr., Esq. - Public Arbitrator
 Robert E. Otto - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Sharon Jevent Hemphill, Esq.
 Public Arbitrator, Presiding Chair

Signature Date

Donald E. Fisher, Jr., Esq.
 Public Arbitrator

Signature Date

Robert E. Otto
 Non-Public Arbitrator

Signature Date

Date of Service (For NASD-Dispute Resolution office use only)

3/18/02 WSN

NASD Dispute Resolution, Inc.

Arbitration No. 00-04161

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FEE SUMMARY

Claimant Jack E. Lauterbach is solely liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 1,750.00
Total Fees	= \$ 1,975.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,000.00

Respondent Morgan Stanley DW, Inc. is solely liable for:

Member Fees	= \$ 3,100.00
Forum Fees	= \$ 1,750.00
Total Fees	= \$ 4,850.00
Less payments	= \$ 3,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,750.00

Respondent NWQ Investment Management Co. is solely liable for:

Forum Fees	= \$ 1,750.00
Less payments	= \$.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,750.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Sharon Jevent Hemphill, Esq. - Public Arbitrator, Presiding Chair

Donald E. Fisher, Jr., Esq. - Public Arbitrator

Robert E. Otto - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Sharon Jevent Hemphill, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Donald E. Fisher, Jr., Esq.
Public Arbitrator

Signature Date

Robert E. Otto

Robert E. Otto

3/14/02

Signature Date

Robert E. Otto
Non-Public Arbitrator

Date of Service (For NASD-Dispute Resolution office use only)

3/18/02

Date of Service