

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Ross L. Tesser, an individual, and Ross L. and Catherine H. Tesser, Trustees for the Kings Trust
DTD 7/24/95, Claimants v. Morgan Stanley DW Inc. and Schneur Zalmen Lazaroff,
Respondents

Case Number: 00-04307

Hearing Site: Los Angeles, California

Nature of the Dispute: Customers v. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimants:

Jeff Dennis Ferentz, Esq.
Law Offices of
Jeff Dennis Ferentz, Inc.
Newport Beach, California

For Respondents:

Michael A. Thurman, Esq.
Stradling Yocca Carlson
& Rauth
Pasadena, California

CASE INFORMATION

Statement of Claim filed: September 18, 2000

Claimants' Joint Uniform Submission Agreement signed: September 21, 2000

Joint Statement of Answer filed by Respondents: February 5, 2001

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed:
February 5, 2001

CASE SUMMARY

Claimants alleged breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, unsuitability, churning, fraud, deceit, omission of material facts, negligent misrepresentation, constructive fraud in violation of California Civil Code §1573, violation of federal and state securities laws and NYSE and NASD Rules, and failure to supervise. Claimants'

based their claims on Respondents' alleged "aggressive, highly speculative trading scheme utilizing large margin debt" in Claimants' accounts and the purchase and sale of options, including the writing of uncovered calls.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

RELIEF REQUESTED

Claimants requested compensatory damages of \$250,000.00, unspecified pre- and post-judgment interest, unspecified punitive damages and reimbursement of costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety and reimbursement of costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Schneur Zalmen Lazaroff did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On January 5, 2004, Claimants withdrew the allegation of churning from their Statement of Claim.

On January 7, 2004 Respondents moved the panel for a directed verdict in their favor. After due deliberation the Panel denied the motion.

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, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are denied in their entirety.
- 2) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Schneur Zalmen Lazaroff's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Schneur Zalmen Lazaroff must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3) Claimants' are jointly and severally liable to and shall pay Respondents the sum of \$10,000.00 as reimbursement for expert witness fees.
- 4) Claimants' are jointly and severally liable to and shall pay Respondents the sum of \$13,407.62 as reimbursement for other costs.
- 5) With the exception of paragraphs 3 and 4, the parties shall bear their respective costs, including attorney's fees.
- 6) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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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, the member firm Morgan Stanley DW Inc. is a party and the following fees are assessed:

Member Surcharge	= \$1,500.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$2,500.00
Total Member Fees	= \$4,600.00

Adjournment Fees

The following adjournment fees are assessed:

February 4 – 7, 2002 adjournment requested by Respondents	= Waived
June 3 – 7, 2003 adjournment requested by Respondents	= \$1,500.00

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 or the parties and the Panel. The following fees are assessed:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$2,250.00
Pre-hearing conferences:	
July 25, 2001	1 session
August 21, 2001	1 session

Nine (9) Hearing sessions @ \$1,125.00/session		= \$10,125.00
Hearings:		
January 5, 2004	2 sessions	
January 6, 2004	2 sessions	
January 7, 2004	2 sessions	
January 8, 2004	2 sessions	
January 15, 2004	1 session	
Total Forum Fees		= \$12,375.00

1. The Panel assessed the entire balance of the forum fees owed by the parties, in the amount of \$11,250.00, jointly and severally to Claimants Ross L. Tesser and the Kings Trust DTD 7/24/95.
2. NASD Dispute Resolution waived \$1,125.00 of the forum fees.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Respondent Morgan Stanley DW Inc. requested 52 photocopies @ \$.50	= \$ 26.00
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Fee Summary

1. Claimants Ross L. Tesser and the Kings Trust DTD 7/24/95 are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$11,250.00
Total Fees	= \$11,550.00
<u>Less payments</u>	= \$ (1,425.00)
Balance Due NASD Dispute Resolution	= \$ 10,125.00

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

Member Fees	= \$ 4,600.00
Administrative Fees	= \$ 26.00
<u>Less payments</u>	= \$(4,600.00)
Balance Due NASD Dispute Resolution	= \$ 26.00

3. Respondents Morgan Stanley DW Inc. and Schneur Zalmen Lazaroff are charged jointly and severally with the following fees and costs:

<u>Adjournment Fee</u>	= \$ 1,500.00
Balance Due NASD Dispute Resolution	= \$1,500.00

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

ARBITRATION PANEL

Douglas L. Stenzel, Esq.

Jerry Ellner

John C. Lees, Jr.

Public Arbitrator, Presiding Chair

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Douglas L. Stenzel

Douglas L. Stenzel, Esq.
Chair, Public Arbitrator

4/22/04
Signature Date

Jerry Ellner
Public Arbitrator

Signature Date

John C. Lees, Jr.
Non-Public Arbitrator

Signature Date

4/22/04
Date of Service

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