

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Farnum Alston, individually and as trustee of the Farnum Alston IRA Combination Account, the Resources Company Defined Benefit Plan U/A 01/31/96 FBO Farnum Alston, the Resources Foundation, and the Friends of Langley Porter Institute – Edwin F. Alston Memorial Fund, Claimants v. Morgan Stanley Dean Witter Online, Inc. (formerly known as Discovery Brokerage Direct, Inc., and now known as Morgan Stanley DW Inc.), and Drew Kendall, Respondents

Case Number: 01-00644

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimants:

Tommy A. Conner, Esq.
Law Offices of Tommy A.
Connor
San Francisco, California

For Respondents:

Robert T. Sullwold, Esq.
Sullwold & Hughes
San Francisco, California

CASE INFORMATION

Statement of Claim received: February 7, 2001

Claimants' Joint Uniform Submission Agreement signed: February 20, 2001

Joint Statement of Answer filed by Respondents: April 18, 2001

Respondent Morgan Stanley Dean Witter Online, Inc.'s (formerly known as Discovery Brokerage Direct, Inc., and now known as Morgan Stanley DW Inc.) Uniform Submission Agreement signed: April 24, 2001

Respondent Drew Kendall's Uniform Submission Agreement signed: April 19, 2001

CASE SUMMARY

Claimants alleged that Respondents wrongly froze their accounts.

Respondents denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested \$134,542.02 in compensatory damages, unspecified punitive damages, and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety and costs.

OTHER ISSUES CONSIDERED AND DECIDED

On December 12, 2004, Claimants 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.

On December 29, 2004, Claimants' 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 Claimants 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.

During the hearing, Claimants dismissed Respondent Drew Kendall from this matter.

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 submission, 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) All forum fees are assessed jointly and severally to Claimants.
- 3) Except as noted above, the parties shall bear their respective costs, including attorney's fees.
- 4) 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 Dean Witter Online, Inc. (formerly known as Discovery Brokerage Direct, Inc., and now known as Morgan Stanley DW Inc.) is a party and the following fees are assessed:

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

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:

(1) Pre-hearing conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: January 23, 2002 1 session	

(4) Pre-hearing conference sessions with the Panel @ \$1,125.00/session = \$4,500.00

Pre-hearing conferences: September 12, 2001 1 session
 December 11, 2001 1 session
 October 2, 2002 1 session
 April 13, 2005 1 session

(2) Hearing sessions @ \$1,125.00/session = \$2,250.00

Hearings: June 13, 2005 2 sessions

Total Forum Fees = **\$7,200.00**

1. The Panel assessed \$3,825.00 of the forum fees jointly and severally to Claimants.
2. The \$1,125.00 in forum fees for the December 11, 2001, conference call are waived. This call was held to reschedule the hearings following the September 11, 2001 attacks on the World Trade Center in New York.
3. The \$2,250.00 in forum fees for the October 2, 2002, and April 13, 2005, conference calls are waived. These two conference calls were held to reschedule the hearings after Arbitrator Thomas A.E. Hesketh's withdrawal from this case on the eve of the previously-scheduled March 2002 hearings.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 3,825.00</u>
Total Fees	= \$ 4,125.00
<u>Less payments</u>	<u>= \$(1,425.00)</u>
Balance Due NASD Dispute Resolution	= \$ 2,700.00

2. Respondent Morgan Stanley Dean Witter Online, Inc.'s (formerly known as Discovery Brokerage Direct, Inc., and now known as Morgan Stanley DW Inc.) is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
<u>Less payments</u>	<u>= \$(4,600.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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.

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ARBITRATION PANEL

Helen Marinak Blohm	-	Public Arbitrator, Presiding Chair
Thomas J. LoSavio	-	Public Arbitrator
Joseph H. Sturdivant	-	Non-Public Arbitrator

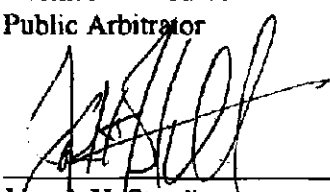
Concurring Arbitrators' Signatures

Helen Marinak Blohm
Chair, Public Arbitrator

Signature Date

Thomas J. LoSavio
Public Arbitrator

Signature Date



Joseph H. Sturdivant
Non-Public Arbitrator

6/15/05

Signature Date

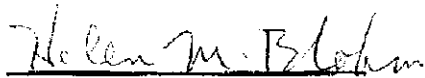
6/22/05

Date of Service

ARBITRATION PANEL

Helen Marinak Blohm	-	Public Arbitrator, Presiding Chair
Thomas J. LoSavio	-	Public Arbitrator
Joseph H. Sturdivant	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Helen Marinak Blohm
Chair, Public Arbitrator


Signature Date

Thomas J. LoSavio
Public Arbitrator

Signature Date

Joseph H. Sturdivant
Non-Public Arbitrator

Signature Date


Date of Service