

ORIGINAL

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Daniel W. Powers, Claimant v. Morgan Stanley Dean Witter, William Jenkins and Marvin Baker,
Respondents

Case Number: 01-02313

Hearing Site: San Francisco, California

REPRESENTATION OF PARTIES

For Claimant:

Irwin Stein
Richard Sacks
Novato, California

For Respondents Morgan Stanley Dean Witter and
William Jenkins:

Wendy R. Robinson, Esq.
Morgan Stanley DW Inc.
San Francisco, California

For Respondent Marvin Baker:

Eric G. Wallis, Esq.
Crosby, Heafey, Roach & May
Oakland, California

CASE INFORMATION

Statement of Claim filed on or about: May 1, 2001

Claimant's Uniform Submission Agreement signed: April 1, 2001

Joint Statement of Answer filed by Respondents, Morgan Stanley Dean Witter, also known as
Morgan Stanley DW Inc. ("MSDW") and William Jenkins, on or about: July 16, 2001

Statement of Answer filed by Respondent, Marvin Baker, on or about: July 16, 2001

Respondent MSDW's Uniform Submission Agreement signed: July 16, 2001

Respondent William Jenkins' Uniform Submission Agreement signed: July 16, 2001

CASE SUMMARY

Claimant alleged the following claims with respect to Claimant's investment in bonds issued by Asia Pulp and Paper: 1) Misrepresentation; 2) Unsuitability; 3) Failure to Supervise; 4) Breach of Contract; 5) Negligence; 6) Fraud; and 7) Breach of Fiduciary Duty.

Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant.

RELIEF REQUESTED

Claimant requested:

1. \$135,000 representing the difference between the purchase price of the bonds and the actual amount received by Claimant from their sale;
2. Interest, as provided by law;
3. Return of all costs expended by Claimant in the prosecution of this action; and
4. Punitive and exemplary damages in an amount to be determined by the Arbitrators.

Respondents MSDW and Jenkins requested that Claimant's Claim be dismissed in its entirety and requested costs and expenses incurred in defense of Claimant's Claim.

Respondent Baker requested an award in his favor, costs of this proceeding, and such other relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Baker did not file with NASD Dispute Resolution ("NASD") a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure ("the Code") and, having answered Claimant's Claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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. All claims by Claimant, including the claims for punitive and exemplary damages, are dismissed.

2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent William Jenkins' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Jenkins must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Marvin Baker's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Baker must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. 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	= \$300.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, MSDW 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/Panel. The following fees are assessed:

(3) Pre-hearing conference sessions with a single arbitrator @ \$450/session = \$1,350.00

Pre-hearing conferences:	May 15, 2002	1 session
	June 14, 2002	1 session
	July 15, 2002	1 session

(1) Pre-hearing conference session with the Panel @ \$1,125.00/session = \$1,125.00
Pre-hearing conference: February 20, 2002 1 session

(5) Hearing sessions @ \$1,125.00/session = \$5,625.00
Hearings: July 16, 2002 3 sessions
July 17, 2002 2 sessions

Total Forum Fees = \$8,100.00

The Panel assessed \$4,050.00 of the forum fees to Claimant.

The Panel assessed \$4,050.00 of the forum fees jointly and severally to Respondents, MSDW and Jenkins.

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 other requests.

The parties did not incur administrative costs.

Fee Summary

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

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 4,050.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$ 4,350.00
<u>Less Payments</u>	= \$(1,425.00)
Balance Due NASD	= \$ 2,925.00

2. Respondent, MSDW, is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$ 4,600.00
<u>Less Payments</u>	= \$(4,600.00)
Balance Due NASD	= \$ 0.00

3. Respondents, MSDW and Jenkins, are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 4,050.00
<u>Administrative Costs</u>	<u>= \$ 0.00</u>
Total Fees	= \$ 4,050.00
<u>Less Payments by MSDW</u>	<u>= \$(3,375.00)</u>
Balance Due NASD-DR	= \$ 675.00

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

Michael P. Carbone, Esq.	-	Public Arbitrator, Presiding Chair
Gerald E. Ambinder, Esq.	-	Public Arbitrator
Joseph H. Sturdivant	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Michael P. Carbone, Esq.
Chair, Public Arbitrator

Signature Date



Gerald E. Ambinder
Public Arbitrator

AUG 1 2002

Signature Date

Joseph H. Sturdivant
Non-Public Arbitrator

Signature Date

August 9, 2002

Date of Service

ARBITRATION PANEL

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Joseph H. Sturdivant	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Michael P. Carbone, Esq.
Chair, Public Arbitrator

8/5/02
Signature Date

Gerald E. Ambinder
Public Arbitrator

Signature Date

Joseph H. Sturdivant
Non-Public Arbitrator

Signature Date

August 9, 2002
Date of Service

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Joseph H. Sturdivant
Non-Public Arbitrator

7/31/02

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August 9, 2002

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