

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Tim A. Freese and Kimberlee A. Freese, Trustees of the Freese Family Trust, Timothy Allen Freese, Trustee Mechanical Design Inc. Pension Plan dated December 28, 1994, and Mechanical Design Inc. Profit Sharing Plan dated January 18, 1995, Tim A. Freese, Trustee.

and

01-03111
Phoenix, Arizona

Name of Respondents

Morgan Stanley DW Inc.
William H. Pluchel

REPRESENTATION OF PARTIES

Tim A. Freese and Kimberlee A. Freese, Trustees of the Freese Family Trust, Timothy Allen Freese, Trustee Mechanical Design Inc. Pension Plan dated December 28, 1994, and Mechanical Design Inc. Profit Sharing Plan dated January 18, 1995, Tim A. Freese, Trustee ("**Claimants**") were represented by Frank Lewis, Esq., Begam Lewis Marks & Wolfe, Phoenix, Arizona.

Morgan Stanley DW Inc. ("**Respondent MSDW**") and William H. Pluchel ("**Respondent Pluchel**") (collectively as "**Respondents**") were represented by Abe Lampart, Esq. and Jill Rowe, Esq., Buchhalter Nemer Fields & Younger, San Francisco, California. Respondents were previously represented by Wendy R. Robinson, Esq., Morgan Stanley, San Francisco, California.

CASE INFORMATION

The Statement of Claim was filed on or about June 12, 2001. Claimants' July 7, 2003 Briefs Number 1 & 2 were filed on or about July 8, 2003. Claimants' July 28, 2003 Brief was filed on or about July 29, 2003. Submission Agreement of Claimants was signed on June 7, 2001 by Tim A. Freese and Kimberlee A. Freese.

Respondents Morgan Stanley DW Inc. and William H. Pluchel filed Respondents' Answer to Statement of Claim on or about August 30, 2001. Respondents' Supplemental Pre-Hearing Brief was filed on or about April 15, 2003. Respondents' Third Arbitration Brief was filed on or about July 8, 2003. Respondents Reply Brief was filed on or about July 30, 2003. Wendy R. Robinson signed Submission Agreement of Respondent Morgan Stanley DW Inc. on August 28, 2001. Submission Agreement of Respondent William H. Pluchel was signed on August 28, 2001.

CASE SUMMARY

Claimant alleged that:

The respondents have violated applicable security laws, and in particular Section 44-1991 of the Arizona Revised Statutes; the respondents have violated rules and regulations of the federal and state securities laws; the respondents have violated the rules and regulations of the New York Stock Exchange and National Association of Securities Dealers; the respondents and especially Pluchel, were in a fiduciary relationship with the claimants and they breached and violated fiduciary duty; the respondents and especially Pluchel, made unsuitable recommendations to the claimants in violation of their duty to claimants not to make unsuitable recommendation; the respondents breached their contract with claimants including the covenant of good faith and fair dealing.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated:

...Claimant Timothy Freese is an intelligent, experienced investor who fully controlled the accounts at all times. In fact, Mr. Freese moved his security investment accounts from Charles Schwab to Morgan Stanley specifically because he wanted Mr. Pluchel to provide him with aggressive investment suggestions, including high-yield junk bonds.

The evidence will show that Mr. Freese was well aware of the increased risk involved in such investments.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested the following relief:

The claimants seek damages against the respondents, jointly and severally as set forth below.

The Claimants seek damages, rescissionary liquidated and consequential, suffered by them as a result of the conduct, activities and omissions of the respondents. The claimants also seek attorneys fees, costs and prejudgment interest.

The damages of the claimants' are such as shall be proved at the time of the hearing of this matter, which are in excess of \$500,000.00.

Respondents ask that the claim be dismissed in its entirety, that Respondents be awarded their costs, that all forum fees be charged to Claimants and for such other further relief as the arbitrators deem appropriate.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel unanimously decided this case against the Claimants and in favor of the Respondents. In addition to denying the claims on the merits, the Panel finds Claimants' claims to be barred by the 2 year statute of limitations, finding that the Claimants knew or should have known of the claimed violation of A.R.S. 44-1991 more than two years before the demand for arbitration.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee = \$375.00

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. In this matter, the member firm is Morgan Stanley DW Inc.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$3,500.00

Forum Fees and Assessments

The Arbitration Panel assesses 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:

Number [#] Pre-hearing session(s) with a single arbitrator x \$450.00	= \$xxx.00
Pre-hearing conference(s): Date 1 session	

Two (2) Pre-hearing session(s) with Panel x \$1,200.00	= \$ 2,400.00
Pre-hearing conference(s): April 4, 2002 1 session	
April 25, 2002 1 session	

Twenty Two (22) Hearing sessions x \$1,200.00	= \$26,400.00
Hearing Date(s): January 13, 2003 2 sessions	
January 14, 2003 2 sessions	
January 15, 2003 2 sessions	
January 16, 2003 2 sessions	
April 22, 2003 2 sessions	
April 23, 2003 2 sessions	
April 24, 2003 2 sessions	
April 25, 2003 2 sessions	
August 5, 2003 2 sessions	
August 6, 2003 2 sessions	
August 7, 2003 2 sessions	

Total Forum Fees	= \$28,800.00
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The Arbitration Panel has assessed \$14,400.00 of the forum fees to Tim A. Freese and Kimberlee A. Freese, Trustees of the Freese Family Trust, Timothy Allen Freese, Trustee Mechanical Design Inc. Pension Plan dated December 28, 1994, and Mechanical Design Inc. Profit Sharing Plan dated January 18, 1995, Tim A. Freese, Trustee.

The Arbitration Panel has assessed \$14,400.00 of the forum fees jointly and severally to Morgan Stanley DW Inc. and William H. Pluchel.

Fee Summary

Claimants, Tim A. Freese and Kimberlee A. Freese, Trustees of the Freese Family Trust, Timothy Allen Freese, Trustee Mechanical Design Inc. Pension Plan dated December 28, 1994, and Mechanical Design Inc. Profit Sharing Plan dated January 18, 1995, Tim A. Freese, Trustee, shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	= \$14,400.00
Total Fees	= \$14,775.00
<u>Less payments</u>	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$13,200.00

Respondent, Morgan Stanley DW Inc., shall be and hereby is liable for:

Member Fees	= \$ 6,100.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$ 6,100.00
<u>Less payments</u>	= \$ 6,100.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Morgan Stanley DW Inc. and William H. Pluchel shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$14,400.00
Balance Due NASD Dispute Resolution	= \$14,400.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Frederick K. Steiner, Jr., Esq. - Public Arbitrator, Presiding Chair
Ronald Edward Hibbing, Esq. - Public Arbitrator
Carolyn K. McGough - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Frederick K. Steiner, Jr.

Frederick K. Steiner, Jr., Esq.
Public Arbitrator, Presiding Chair

September 3, 2003

Signature Date

/s/ Ronald Edward Hibbing

Ronald Edward Hibbing, Esq.
Public Arbitrator

September 7, 2003

Signature Date

/s/ Carolyn K. McGough


Carolyn K. McGough
Non-Public Arbitrator

September 3, 2003

Signature Date

NASD Dispute Resolution, Inc.
Arbitration No. 01-03111
Award Page 6 of 6

Concurring Arbitrators:


Frederick K. Steiner, Jr., Esq.
Public Arbitrator, Presiding Chair

Ronald Edward Hibbing, Esq.
Public Arbitrator

Carolyn K. McCough
Non-Public Arbitrator

NASD Dispute Resolution, Inc.

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Sept. 3, 2003
Signature Date

Signature Date

Signature Date

NASD Dispute Resolution, Inc.

Arbitration No. 01-03111

Award Page 6 of 6

Concurring Arbitrators:

Frederick K. Steiner, Jr., Esq.

Public Arbitrator, Presiding Chair

Ronald E. Hibbing

Ronald Edward Hibbing, Esq.

Public Arbitrator

Carolyn K. McCough

Non-Public Arbitrator

Signature Date

Sept 7, 2003

Signature Date

Signature Date

NASD Dispute Resolution, Inc.

Arbitration No. 01-03111

Award Page 6 of 6


Concurring Arbitrators:

Frederick K. Steiner, Jr., Esq.
Public Arbitrator, Presiding Chair

Signature Date

Ronald Edward Hibbing, Esq.
Public Arbitrator

Signature Date


Carolyn K. McCough
Non-Public Arbitrator

9/3/2003
Signature Date