

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Henry Bookspan, Trustee of the G.S.T. Exempt Trust B and the G.S.T. Exempt Trust C of the Henry and Sophie Bookspan Family Trust, Dated 01/12/98, Claimant v. Morgan Stanley DW Inc., Sinan E. Battah, and James Scott Robinson, Respondents

Case Number: 02-00668

Hearing Site: San Diego, California

REPRESENTATION OF PARTIES

For Claimant:

Erwin J. Shustak, Esq.
Shustak Jalil & Heller
San Diego, California

For Respondents:

David R. Maurer, Esq.
Stradling Yocca Carlson & Rauth
Newport Beach, California

CASE INFORMATION

Statement of Claim filed: February 11, 2002

Claimant's Response to Respondents' Motion in Limine filed: September 27, 2002

Claimant's Uniform Submission Agreement signed: December 23, 2001

Joint Statement of Answer filed by Respondents Morgan Stanley DW Inc., Sinan E. Battah, and James Scott Robinson: April 8, 2002

Statement of Answer filed by Respondent Sinan E. Battah: April 5, 2002

Respondents Morgan Stanley DW Inc. and Sinan E. Battah's Motion in Limine filed:
September 24, 2002

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: April 2, 2002

CASE SUMMARY

Claimant alleged violation of §10(b) and Rule 10b-5 of the Securities and Exchange Act of 1934; abuse of an elderly person in violation of California Welfare and Institutions Code § 15610.30; violation of California Business and Professions Code § 17200; aiding and abetting of violations of the foregoing California laws; fraud; negligent misrepresentation; negligence; breach of fiduciary duty; breach of contract; breach of the implied covenant of good faith and fair dealing; and unauthorized trading. Claimant also alleged that Morgan Stanley DW Inc. was jointly and severally liable as a “control person” for Sinan E. Battah pursuant to 15 U.S.C. § 78t(a) and under the doctrine of *respondeat superior*.

In particular, Claimant alleged that Claimant, a widower aged 88 years old at the time of the transaction in question, was wrongfully induced to purchase 500 shares of the Initial Public Offering of Alcatel Optronics S.A. The purchase was made at a price of \$71.952 per share, for a gross cost of \$35,976.25, on October 20, 2002. By the time of the filing of Claimant’s Statement of Claim, approximately 1-½ years later, Alcatel was trading at between \$4.50 and \$6.00 per share. At the time of the entry of this award, moreover, Alcatel is trading at about \$1.75 per share.

Respondents generally denied the Claimant’s claims, and they also asserted, as affirmative defenses, that Claimant had by his actions (a) ratified the transactions in question, (b) waived any action against Respondents by his failure to act, (c) caused his own injuries by his contributory or comparative negligence, and/or (d) failed to mitigate his damages.

RELIEF REQUESTED

Claimant requested a total award of approximately \$50,000.00, inclusive of interest, legal fees, punitive damages and statutory damages.

Respondents requested dismissal of the Claimant’s Statement of Claim in its entirety, and reimbursement for arbitration cost, including attorney’s fees. Respondents Sinan E. Battah and James Scott Robinson also requested expungement of Claimant’s claims from their CRD records.

OTHER ISSUES CONSIDERED AND DECIDED

On August 8, 2002, Claimant dismissed with prejudice Respondent James Scott Robinson.

The parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD. Also, as noted above, just before the Final Hearing, Respondents filed a Motion in Limine, seeking to prevent admission into evidence of the reasons for Respondent Sinan E. Battah’s termination from Morgan Stanley DW Inc.; this Motion was granted in part and denied in part – i.e., the evidence was admitted, but only for limited purposes.

Respondent Sinan E. Battah 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 Arbitrator on all issues submitted.

Respondent James Scott Robinson 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 is bound by the determination of the Arbitrator on all issues submitted.

The parties agreed that a handwritten, signed Award may be entered.

AWARD

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

- 1) Respondents are found to have sold the Alcatel shares to Claimant, as the Trustee of the C Trust, in *negligent* breach of their fiduciary duties to Claimant. Specifically, Respondents failed to adequately explain initial public offerings ("IPOs") to Claimant, or at the very least to assure themselves that Claimant understood the mechanics of, and risks inherent in, IPO purchases. Furthermore, Respondents failed, in the case of the Alcatel purchase in particular, to fulfill a commitment they had undertaken to review all stock purchases made on Claimant's account with Claimant's son, Irving Bookspan. As a result, Claimant's purchase of the Alcatel shares was made without sufficient understanding of the transaction into which he was entering, and without a sufficient "meeting of the minds" to create an enforceable contract.
- 2) Claimant acted with comparative negligence, in that he (and, for that matter, his son, Irving) failed to exercise due care by regularly reviewing his account statements. This resulted in Claimant's failure to learn of the purchase of the Alcatel shares for his account from the time of their acquisition on October 20, 2002, until Irving's review of Claimant's account statements during the first week of April, 2001. By that time, the price of the Alcatel shares had fallen to an end-of-the-week closing price of \$22.87.
- 3) Respondents Morgan Stanley DW Inc. and Sinan E. Battah, therefore, are jointly and severally liable to and shall pay Claimant \$11,435.00 – i.e., 500 shares at a price of \$22.87 – in compensatory damages.

- 4) Respondents Morgan Stanley DW Inc. and Sinan E. Battah are jointly and severally liable to and shall pay Claimant interest on the foregoing sum at a legal rate of 10% per annum from and after Friday, April 6, 2001, to date of this Award (i.e., 1.5 years later), or \$1,701.38.
- 5) Respondents Morgan Stanley DW Inc. and Sinan E. Battah are jointly and severally liable to and shall pay Claimant \$175.00 for reimbursement of filing fee.
- 6) The aforementioned award being premised solely upon a finding of negligence, and neither party having presented evidence of an agreement or statute which would provide for payment of attorney's fees in such a case, the parties shall bear their respective attorney's fees.
- 7) The parties shall bear their respective costs.
- 8) 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	= \$ 175.00
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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	= \$ 875.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 1,000.00
Total Member Fees	= \$ 2,625.00

Forum Fees and Assessments

The Arbitrator 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 Arbitrator. The following fees are assessed:

1 Pre-hearing conference session with the Arbitrator @ \$ 450.00/session = \$ 450.00
Pre-hearing conference: June 3, 2002 1 session

2 Hearing sessions @ \$ 450.00/session = \$ 900.00
Hearing: October 1, 2002 2 sessions

Total Forum Fees = \$ 1,350.00

The Arbitrator assessed \$ 1,350.00 of the forum fees jointly and severally to Respondents Morgan Stanley DW Inc. and Sinan E. Battah.

Fee Summary

1. Claimant Henry Bookspan, Trustee of the G.S.T Exempt Trust B and the G.S.T. Exempt Trust C of the Henry and Sophie Bookspan Family Trust, Dated 01/12/98 is charged with the following fees and costs:

Initial Filing Fee = \$ 175.00
Less payments = \$(625.00)
Refund due Claimant = \$(450.00)

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

Member Fees = \$ 2,625.00
Less payments = \$(2,625.00)
Balance Due NASD Dispute Resolution = \$ 0.00

3. Respondents Morgan Stanley DW Inc. and Sinan E. Battah are charged jointly and severally with the following fees and costs:

Forum Fees = \$ 1,350.00
Less Payment by Morgan Stanley Dean Witter, Inc. = \$(1,750.00)
Refund Due Morgan Stanley DW Inc. = \$(400.00)

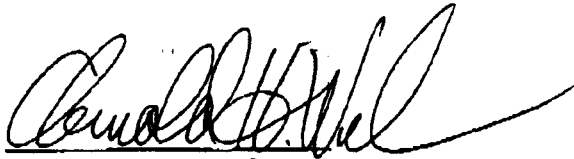
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATOR

Arnold H. Wuhrman, Esq.

Public Arbitrator, Presiding Chair

Arbitrator's Signature



Arnold H. Wuhrman, Esq.
Chair, Public Arbitrator

10/18/02
Signature Date

October 21, 2002
Date of Service