

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Morgan Stanley DW Inc.

and

02-04637
Phoenix, Arizona

Name of Respondents

Michael J. & Joan W. Brubacher

Nature of the Dispute: Member vs. Customers.

REPRESENTATION OF PARTIES

Morgan Stanley DW Inc. ("Claimant") was represented by Gregory P. Gillis, Esq., Ridenour, Hinton, Harper, Kelhoffer, PLLC, Phoenix, Arizona.

Michael J. & Joan W. Brubacher ("Respondents") were represented by Bernard M. Strass, Esq., Bernard M. Strass, P.C., Phoenix, Arizona.

CASE INFORMATION

The Statement of Claim was filed on or about August 7, 2002. Motion to Exclude Presentation of Defenses and Calling of Witnesses or Presenting Exhibits was filed on or about April 1, 2004. Reply to Response to Motion to Exclude Presentation of Defenses and Calling of Witnesses or Presenting Exhibits and Response to Counter-Motion to Dismiss was filed on or about April 16, 2004. Submission Agreement of Claimant Morgan Stanley DW Inc. was signed on July 18, 2002 by Robert L. Berne.

Letter from Michael Brubacher dated August 26, 2002 contesting jurisdiction. Letter from Bernard M. Strass dated September 5, 2002 contesting jurisdiction. Response to Motion to Exclude Presentation of Defenses and Calling of Witnesses or Presenting Exhibits and Response to Counter-Motion to Dismiss was filed on or about April 13, 2004.

CASE SUMMARY

Claimant alleged that Respondents had received duplicate transfers of monies into their respective IRA accounts and have failed to return the monies transferred in error.

RELIEF REQUESTED

Claimant requested an award in the total amount of \$10,724.89 as compensatory damages; interest on the principal sum at the rate of 10% per annum from March 22, 1999 until paid; costs, expenses and disbursements, including reasonable attorneys' fees pursuant to NASD Rule 10330, the Dean Witter Client Agreement and A.R.S. §12-341.01; and for such other relief as the panel deems just and proper.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrator has determined that Respondents Michael J. & Joan W. Brubacher, had been properly served with the Statement of Claim pursuant to Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrator has also determined that Respondents Michael J. & Joan W. Brubacher had received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

On April 19, 2004, the undersigned Arbitrator issued the following ruling:

Claimant, through its counsel, has filed a Motion to Exclude Presentation of Defenses and Calling of Witnesses or Presenting Exhibits. The Brubachers, through their counsel, have filed their Response to Motion to Exclude Presentation of Defenses and Calling of Witnesses or Presenting Exhibits along with a Counter-Motion to Dismiss. Claimant then filed its Reply to the Brubachers' Response and Counter-Motion.

Upon careful review and consideration of the documents and the arguments contained therein, I hereby rule as follows:

1. The Claimant's MOTION TO EXCLUDE PRESENTATION OF DEFENSES AND CALLING OF WITNESSES OR PRESENTING EXHIBITS is hereby GRANTED in its entirety. During our telephonic prehearing conference of December 12, 2003, Respondents' Counsel asked me, as the sole arbitrator in this matter, whether I would entertain a motion to dismiss. I agreed to entertain such a motion, and Respondents' counsel agreed to file the same not later than December 30, 2003. In addition, Respondents' counsel agreed [and it was set forth in my Prehearing Conference Scheduling Order] that if I denied Respondents' Motion to Dismiss, then Respondents deadline for filing their Answer would be February 6, 2004. To date, Respondents have filed neither a Motion to Dismiss nor an Answer. The language of the Prehearing Conference Scheduling Order is clear with respect to these deadlines, and Respondents took no action to request that the deadlines be extended.
2. The Respondents' COUNTER MOTION TO DISMISS is hereby DENIED in its entirety. As stated above, Respondents had a deadline of December 30, 2003 to file their

Motion to Dismiss. At no time did Respondents' notify me of their inability to file their Motion within that deadline, nor was any request ever presented to me to extend that deadline for any reason. I see no legitimate reason not to enforce the filing deadline of December 30, 2003 and I will therefore not accept the filing of Respondents' [Counter]Motion to Dismiss at this late hour.

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, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Michael J. & Joan W. Brubacher shall be and hereby are jointly and severally liable for and shall pay to Claimant Morgan Stanley DW Inc. the sum of \$10,774.89 (**Ten Thousand Seven Hundred Seventy Four Dollars and Eighty Nine Cents**) as compensatory damages.
2. Interest at the rate of 10% per annum is awarded on the above stated sum from and inclusive of March 22, 1999 until paid in full.
3. 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.
4. 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, not specifically awarded or otherwise provided for above.

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 = \$750.00

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(s) is Morgan Stanley DW Inc.

Member surcharge		\$	425.00
Total Member Fees		\$	425.00

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:

2	Pre-hearing session(s) with a single arbitrator	x	\$450.00	\$	900.00
	January 30, 2003	1	session		
	December 12, 2003	1	session		
1	Hearing sessions	x	450.00	\$	450.00
	April 20, 2004	1	session		
	Total Forum Fees			\$	1,350.00

The Arbitration Panel has assessed \$675.00 of the forum fees to Morgan Stanley DW Inc.
The Arbitration Panel has assessed \$675.00 of the forum fees to Michael J. & Joan W. Brubacher.

Fee Summary

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

Initial Filing Fee	= \$	750.00
Member Fees	= \$	425.00
<u>Forum Fees</u>	= \$	675.00
Total Fees	= \$	1,850.00
<u>Less payments</u>	= \$	-1,625.00
Balance Due NASD Dispute Resolution	= \$	225.00

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Respondents, Michael J. & Joan W. Brubacher, shall be and hereby are jointly and severally liable for:

Forum Fees	= \$	675.00
Total Fees	= \$	675.00
Less payments	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	675.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Michael E. Duckworth, Esq. - Public Arbitrator, Presiding Chair

Concurring Arbitrators:



Michael E. Duckworth, Esq.
Public Arbitrator, Presiding Chair

4/26/04
Signature Date