

COPY

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Nielsen Family Revocable Trust, Claimant v. Morgan Stanley DW Inc., Robert A. Johnson, Nancy L. Eklund, Thomas G. Taliaferro, Todd G. Beguelin, Howard J. Smith, and Brian M. Krueger, Respondents

Case Number: 02-04738

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer v. Member and Associated Persons

REPRESENTATION OF PARTIES

For Claimant:

Randall Rollins
Party Representative
San Diego, California

For Respondents:

Jason H. Anderson, Esq.
Stradling Yocca Carlson &
Rauth
Newport Beach, California

CASE INFORMATION

Statement of Claim filed: August 12, 2002

Claimant's Uniform Submission Agreement signed: August 12, 2002

Joint Statement of Answer filed by Respondents: October 9, 2002

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: October 9, 2002

Respondent Nancy L. Eklund's Uniform Submission Agreement signed: October 10, 2002

Respondent Thomas G. Taliaferro's Uniform Submission Agreement signed: October 10, 2002

Respondent Todd G. Beguelin's Uniform Submission Agreement signed: October 11, 2002

Respondent Howard J. Smith's Uniform Submission Agreement signed: October 10, 2002

Respondent Brian M. Krueger's Uniform Submission Agreement signed: October 10, 2002

CASE SUMMARY

Claimant alleged breach of contract, breach of fiduciary duty, unsuitability, misrepresentation, non-disclosure, fraud, negligence, churning, and failure to supervise. Claimant's allegations concerned Respondent Robert A. Johnson's alleged recommendation that a charitable remainder trust be formed and the trust's subsequent purchase of a variable life insurance policy. Claimant's allegations also concerned the alleged over-concentration of Claimant's accounts in B shares of *Morgan Stanley DW Inc.'s proprietary mutual funds, including but not limited to* MSDW Information Fund, MSDW Mid-Cap Equity Trust Fund, MSDW 21st Century Trend Fund, MSDW Developing Growth Fund, MSDW Strategy Fund, MSDW Value-Added Equity Fund, MSDW American Opportunities Fund, MSDW Dividend Growth Fund, and MSDW Natural Resource Fund.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested compensatory damages of \$234,768.23, punitive damages of \$704,306.49, pre- and post-judgment interest and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On December 2, 2002, Respondents' counsel signed a Waiver Agreement on their behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On December 9, 2002, Claimant's trustee, Elyse S. Nielsen, and Claimant's counsel, Timothy C. Karen, Esq., signed a Waiver Agreement on Claimant's behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On June 3, 2003, Claimant dismissed Respondent Robert A. Johnson without prejudice.

On September 3, 2003, Respondents moved the Panel to dismiss the Statement of Claim. On September 15, 2003, a telephonic pre-hearing conference was held, attended by Claimant's trustee, Elyse Nielsen, Claimant's representative, Randall Rollins, Respondents' counsel, Jason

H. Anderson, Esq., and the Panel. After due deliberation, the Panel denied the motion.

On October 2, 2003, Claimant moved the Panel to impose sanctions on Respondents for Respondents' alleged failure to comply with the Chair's discovery order. On October 7, 2003, Claimant moved the Panel to sequester Respondents' witnesses during the evidentiary hearing. On October 20, 2003, Claimant moved the Panel to bar Respondents from presenting facts and defenses not included in their Answer. On October 24, 2003, a telephonic pre-hearing conference was held, attended by Claimant's trustee, Elyse Nielsen, Claimant's representative, Randall Rollins, Respondents' counsel, Jason H. Anderson, Esq., and the Panel. After due deliberation, the Panel denied each of Claimant's referenced motions.

On December 8, 2003, Claimant dismissed Respondent Brian M. Krueger with prejudice.

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) Claimant's claims are denied in their entirety.
- 2) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Nancy L. Eklund's, Thomas G. Taliaferro's, Todd G. Beguelin's, Howard J. Smith's, and Brian M. Krueger's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondents Nancy L. Eklund, Thomas G. Taliaferro, Todd G. Beguelin, Howard J. Smith, and Brian M. Krueger must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3) 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	= \$ 375.00
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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	= \$2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$4,000.00</u>
Total Member Fees	= \$7,000.00

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:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: November 18, 2003	1 session

Four (4) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$4,800.00
Pre-hearing conferences: August 15, 2003	1 session
August 28, 2003	1 session
September 15, 2003	1 session
October 24, 2003	1 session

Three (3) Hearing sessions @ \$1,200.00/session	= \$3,600.00
Hearings: December 8, 2003	2 sessions
December 9, 2003	1 session

Total Forum Fees	= \$8,850.00
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3. The forum fee in the amount of \$1,200.00 for the August 15, 2003 pre-hearing conference is waived.

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 sundry other requests.

Claimant requested two (2) audio tapes @ \$15.00	= \$	30.00
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Fee Summary

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| Balance Due NASD Dispute Resolution | = \$ 3,300.00 |
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ARBITRATION PANEL

Robert B. Moran

Edward A. Trabin, Esq.

John B. La Rue

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Public Arbitrator, Presiding Chair

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Robert B. Moran

Chair, Public Arbitrator

Signature Date



Edward A. Trabin, Esq.

Public Arbitrator

12/12/03

Signature Date

John B. La Rue

Non-Public Arbitrator

Signature Date

12/15/03

Date of Service

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Chair, Public Arbitrator

Signature Date

Edward A. Trabin, Esq.
Public Arbitrator

Signature Date



John B. La Rue
Non-Public Arbitrator

12-12-03
Signature Date

12/15/03
Date of Service

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John B. La Rue

Public Arbitrator, Presiding Chair

Public Arbitrator

Non-Public Arbitrator

Consenting Arbitrators' Signatures


Robert B. Moran
Chair, Public Arbitrator

12-16-03
Signature Date


Edward A. Trabin, Esq.
Public Arbitrator

12/12/03
Signature Date

John B. La Rue
Non-Public Arbitrator

Signature Date

12/15/03
Date of Service