
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 02-04809

Mark Ditchkus, Bay Auto LLC SEP f/b/o
Mark Ditchkus and Mark Ditchkus, IRA

Name of the Respondent

Hearing Site: Boca Raton, Florida

Morgan Stanley DW, Inc.

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Mark Ditchkus, Bay Auto LLC SEP f/b/o Mark Ditchkus and Mark Ditchkus, IRA, hereinafter referred to as "Claimant": Adam S. Doner, Esq., Gordon & Doner, P.A., Palm Beach Gardens, Florida.

For Morgan Stanley DW, Inc., hereinafter referred to as "Respondent": Peter J. Aldrich, Esq., Peter J. Aldrich, P.A., Palm Beach Gardens, Florida.

CASE INFORMATION

Statement of Claim filed on or about: August 15, 2002.

Claimant signed the Uniform Submission Agreement: September 5, 2002.

Statement of Answer filed by Respondent on or about: December 5, 2002.

Respondent signed the Uniform Submission Agreement: November 26, 2002.

CASE SUMMARY

Claimant alleged that Respondent breached its fiduciary duty; made unsuitable purchases; engaged in fraudulent, unintentional or otherwise negligent conduct; and, made misleading claims. Claimant further asserted the following causes of action: churning; failure to exercise compliance, oversight and supervision of employees; violation of NASD Conduct Rules 3000 and 2110; violation of NYSE Rule 405; violation of Chapter 517 of the Florida Statutes; and, violation of Section 10(b)(5) of the Securities Exchange Act of 1934. Claimant maintained that, due to Respondent's actions, he suffered financial losses. The causes of action relate to the purchase and sale of shares of unspecified securities products in Claimant's accounts on margin.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$148,568.00, plus commissions and fees, interest, costs, attorney's fees in the amount of \$5,505.97 and any other relief deemed just and proper.

Respondent requested that the Panel enter an award in its favor and that all costs and fees be taxed against Claimant. In addition, Respondent asserted that it intended to seek an award of attorney's fees from a court of competent jurisdiction under Sections 517.211 and 57.105 of the Florida Statutes.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies.

AWARD

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

All claims of the Claimant are dismissed in their entirety.

All requests for attorneys' fees are denied.

All requests for interest are denied.

Any and all claims for relief not specifically addressed herein, including Claimant's claim for relief pursuant to Chapter 517 of the Florida Statutes, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 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 that employed the associated person at the time of the event giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

Adjournment Fees

No requests for adjournments were filed in this matter.

Injunctive Relief Fees

No injunctive relief fees were incurred in this matter.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Hearing sessions @ \$1,125.00	= \$2,250.00
<u>Hearing Date:</u> February 2, 2004 <u>2 sessions</u>	
Total Forum Fees	= \$2,250.00

The Panel has assessed \$1,125.00 of the forum fees to Claimant.

The Panel has assessed \$1,125.00 of the forum fees to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to: additional copies of arbitrator awards; copies of audio transcripts; retrieval of documents from archives; interpreters; and, security.

No administrative costs were incurred in this matter.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 1,125.00
Total Fees	= \$ 1,425.00
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 1,125.00
Total Fees	= \$ 6,325.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 1,125.00

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

ARBITRATION PANEL

J. Philip Knight	-	Public Arbitrator, Presiding Chairperson
Matthew V. Rigg, CFP, MIB	-	Public Arbitrator
Nicholas A. Natale	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
J. Philip Knight
Public Arbitrator, Presiding Chairperson

02/07/04
Signature Date

/s/
Matthew V. Rigg, CFP, MIB
Public Arbitrator

02/05/04
Signature Date

/s/
Nicholas A. Natale
Non-Public Arbitrator

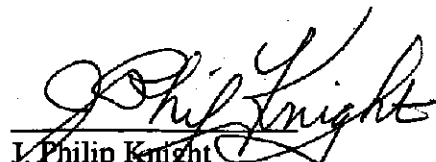
02/05/04
Signature Date

02/11/04
Date of Service (For NASD Dispute Resolution office use only)

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J. Philip Knight
Public Arbitrator, Presiding Chairperson

2-7-04
Signature Date

Matthew V. Rigg, CFP, MIB
Public Arbitrator

Signature Date

Nicholas A. Natale
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

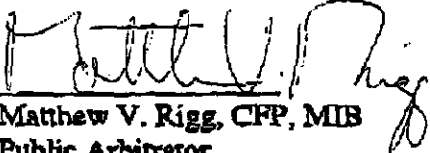
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Non-Public Arbitrator

02/05/2004

Signature Date

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