

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

William Swilley

and

Case Number: 02-05052
Hearing Site: Houston, Texas

Name of Respondent

Morgan Stanley DW, Inc.

NATURE OF DISPUTE

Customer v. Member Firm

REPRESENTATION OF PARTIES

William Swilley ("Claimant") was represented by Dennis H. Taylor, Esq., of Shepard, Smith & Bebel, P.C., in Houston, Texas.

Morgan Stanley DW, Inc. ("Respondent") was represented by Michael J. Stanley, Esq., of Beirne, Maynard & Parsons, LLP., of Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about August 28, 2002.

The Submission Agreement of Claimant William Swilley was signed on or about February 4, 2002.

Statement of Answer was filed by Respondent Morgan Stanley DW, Inc. on or about November 11, 2002.

The Submission Agreement of Respondent Morgan Stanley DW, Inc. was signed on or about November 8, 2002

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, breach of warranties and promissory estoppel, breach of fiduciary duty, misrepresentations and omissions, a

violation of Texas consumer protection laws, and violation of the Securities Exchange Act. The causes of action relate to the sale of various unit investment trusts, investing solely in technology stocks, and a Morgan Stanley Dean Witter Class B Mutual Fund, emphasis on new technology.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to mitigate his damages, Claimant has expressly and through his actions assumed the risks of his investment strategy, and Claimant is barred, in whole or in part, by the applicable statutes of limitations.

RELIEF REQUESTED

Claimant requested an award in the amount of:

| | |
|-----------------------------|-------------|
| Actual/Compensatory Damages | \$500,000 |
| Punitive Damages | Unspecified |
| Interest | Unspecified |
| Attorney's Fees | Unspecified |
| Other Costs | Unspecified |
| Other Monetary Relief | Unspecified |

Respondents requested that the claims asserted against them be denied in their entirety, and that costs and forum fees be assessed against the Claimant.

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 NASD Dispute Resolution ("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.) Respondent, Morgan Stanley DW, Inc., is liable for and shall pay to Claimant, William Swilley, the sum of \$106,200 in compensatory damages;
- 2.) Respondent, Morgan Stanley DW, Inc., is liable for and shall pay to Claimant, William Swilley, interest on the above-stated sum at the legal rate

recognized under Texas law from and including the service date of this Award through and including the date this Award is paid in full;

- 3.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 4.) That any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

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 = \$300.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings 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 = \$1700.00

Pre-hearing process fee = \$750.00

Hearing process fee = \$2750.00

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing sessions with Panel x \$1125.00 = \$1125.00

Pre-hearing conference: March 3, 2003 1 session

Six (6) Hearing sessions x \$1125.00 = \$6750.00

Hearing Dates: November 11, 2003 2 sessions

November 12, 2003 2 sessions

November 13, 2003 2 sessions

Total Forum Fees = \$7875.00

The Arbitration Panel has assessed \$3937.50 of the forum fees to William Swilley.
The Arbitration Panel has assessed \$3937.50 of the forum fees to Morgan Stanley DW, Inc.

FEE SUMMARY

Claimant, William Swilley, is liable for:

| | |
|---|--------------------|
| Initial Filing Fee | = \$ 300.00 |
| Forum Fees | = \$ 3937.50 |
| <hr/> Total Fees | <hr/> = \$ 4237.50 |
| Less payments | = \$ 1425.00 |
| <hr/> Balance Due NASD Dispute Resolution | <hr/> = \$ 2812.50 |

Respondent, Morgan Stanley DW, Inc., is liable for:

| | |
|---|--------------------|
| Member Fees | = \$ 5200.00 |
| Forum Fees | = \$ 3937.50 |
| <hr/> Total Fees | <hr/> = \$9137.50 |
| Less payments | = \$ 5200.00 |
| <hr/> Balance Due NASD Dispute Resolution | <hr/> = \$ 3937.50 |

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

ARBITRATION PANEL

John Whitney, Esq. - Public, Presiding Chair
Robert Dan Sherrill - Public Arbitrator
Hale E. Cullom - Non-Public Arbitrator

Concurring Arbitrators:

/s/ John F. Whitney
John Whitney, Esq.
Public Arbitrator, Presiding Chair

December 11, 2003
Signature Date

/s/ Robert Dan Sherrill
Robert Dan Sherrill
Public Arbitrator

December 9, 2003
Signature Date

/s/ Hale E. Cullom
Hale E. Cullom
Non-Public Arbitrator

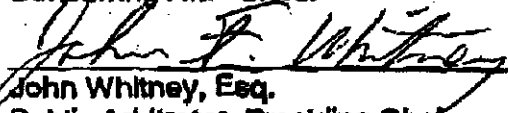
December 11, 2003
Signature Date

December 12, 2003
Date of Service (For NASD office use only)

ARBITRATION PANEL

John Whitney, Esq. - Public, Presiding Chair
Robert Dan Sherrill - Public Arbitrator
Hale E. Cullom - Non-Public Arbitrator

Concurring Arbitrators:


John Whitney, Esq.
Public Arbitrator, Presiding Chair

12/11/23
Signature Date

Robert Dan Sherrill
Public Arbitrator

Signature Date

Hale E. Cullom
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

ARBITRATION PANEL

John Whitney, Esq. - Public, Presiding Chair
Robert Dan Sherrill - Public Arbitrator
Hale E. Cullom - Non-Public Arbitrator

Concurring Arbitrators:

John Whitney, Esq.
Public Arbitrator, Presiding Chair



Robert Dan Sherrill
Public Arbitrator

Signature Date

12/9/2003

Signature Date

Hale E. Cullom
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

ARBITRATION PANEL

John Whitney, Esq. - Public, Presiding Chair
Robert Dan Sherrill - Public Arbitrator
Hale E. Cullom - Non-Public Arbitrator

Concurring Arbitrators:

John Whitney, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Robert Dan Sherrill
Public Arbitrator

Signature Date

Hale E. Cullom
Non-Public Arbitrator

12/11/03

Signature Date

Date of Service (For NASD office use only)