

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants

Toni L. Woody, individually, and on behalf of the
Toni L. Woody IRA

Case Number: 02-06214

Name of the Respondents

Morgan Stanley DW Inc.;
Morgan Stanley & Co., Incorporated;
Philip J. Purcell; Timmy D. Foster; and,
Sara T. Stalcup

Hearing Site: Dallas, Texas

NATURE OF THE DISPUTE

Customer vs. Member and Associated Person

REPRESENTATION OF PARTIES

Claimants Toni L. Woody ("Woody"), individually and on behalf of the Toni L. Woody IRA, hereinafter referred to as "Claimant": Appeared pro se.

Respondents Morgan Stanley DW Inc. ("MSDW"); Morgan Stanley & Co., Incorporated ("Morgan Stanley"); Philip J. Purcell ("Purcell"); Timmy D. Foster ("Foster"); and Sara T. Stalcup ("Stalcup"), hereinafter collectively referred to as "Respondents": Christine A. Kendrick, Esq., of Morgan Stanley DW, Inc., located in San Francisco, California.

CASE INFORMATION

Statement of Claim filed: October 17, 2003.

Claimant Woody signed the Uniform Submission Agreement: October 16, 2003.

Amended Statement of Claim filed on: May 16, 2003.

Claimant's Response to Purcell's Motion to Dismiss filed on: May 28, 2003.

Joint Statement of Answer and Request to Dismiss Respondent Purcell filed by Respondents on or about: December 23, 2003.

Respondent MSDW and Morgan Stanley filed a signed Uniform Submission Agreement that was not dated.

Respondent Purcell did not file a signed Uniform Submission Agreement.

Respondent Foster signed the Uniform Submission Agreement: December 19, 2003.

Respondent Stalcup signed the Uniform Submission Agreement: December 19, 2003.

Reply in Support of Motion to Dismiss Respondent Purcell filed on: June 6, 2003.

CASE SUMMARY

Claimant initially asserted the following causes of action: breach of contract; failure to execute; fraud and misrepresentation; and negligence. These causes of action resulted from Claimant's attempts to close her account after numerous errors and delays in the handling of the account and its poor performance.

Claimant's Amended Statement of Claim asserted a claim for unsuitability based upon the funds placed in her IRA account.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim and the claims alleged therein do not state facts sufficient to constitute a claim for relief;
2. The claims for fraud and misrepresentation fail as a matter of law because Claimant has not alleged such claims with the particularity required by the applicable state laws;
3. Claimant is not entitled to the recovery sought based on the doctrine of ratification;
4. Claimant's claims are barred, in whole or in part, by a contractual limitation of liability;
5. Claimant is barred by the doctrines of waiver and estoppel from the recovery sought in the Statement of Claim;
6. Each claim alleged in the Statement of Claim is barred by the principles of equity;
7. Each claim alleged in the Statement of Claim is barred by the doctrine of laches;
8. Each claim alleged in the Statement of Claim is barred by the applicable statutes of limitations;
9. Claimant knowingly and voluntarily assumed the risks of the investments, events and matters alleged, and any losses or damages incurred by Claimant was the proximate result of the risks, which Claimant knowingly assumed; and,
10. By the exercise of reasonable efforts, Claimant could have mitigated her alleged damages and therefore should be barred from recovering to the extent that she failed to do so.

RELIEF REQUESTED

Claimant initially requested:

Compensatory Damages	\$ 9,523.00
Punitive Damages	\$28,569.00
Interest	\$ 611.00
Case Preparation Costs	\$20,000.00
Other Costs (Filing Fees and Production Fees)	\$ 975.00

Claimant's Amended Statement of Claim added a claim for actual damages of \$28,358.00 representing the amount lost in Claimant's IRA account.

Respondents requested:

1. That Claimant take nothing by reason of the Statement of Claim;
2. That all claims against Respondent Purcell be dismissed with prejudice;
3. That Claimant's complaint be expunged from the record of Tim Foster and Sara Stalcup;
4. That Claimant be required to pay all costs incurred in the proceedings; and
5. For such other and further relief as the Panel deemed appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Purcell did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

At the Initial Pre-Hearing Conference held on May 19, 2003, the Panel granted Claimant's Request to Amend the Statement of Claim to include damages incurred to her IRA account.

On June 26, 2003, the Panel determined that Respondent Purcell's Motion to Dismiss was granted.

At hearing, the Claimant moved for sanctions for Respondents' failure to provide the discovery ordered by the panel. After consideration of the arguments presented by the parties, the panel determined that the Motion would be granted.

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:

1. The claims asserted by Claimant Toni L. Woody, individually, and on behalf of the
2. Toni L. Woody IRA, are dismissed and denied in their entirety;
3. Respondent Morgan Stanley DW Inc. is liable for and shall pay to Claimant Toni L. Woody, individually, and on behalf of the Toni L. Woody IRA, the sum of \$500.00 as sanctions incurred for the discovery difficulties Claimant encountered;
4. Pursuant to the Panel's decision of June 26, 2003, the claims against Respondent Philip J. Purcell are dismissed with prejudice;
5. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Timmy D. Foster and Sara T. Stalcup's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Timmy D. Foster; and Sara T. Stalcup must obtain confirmation from

a court of competent jurisdiction before the CRD will execute the expungement directive;

6. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated herein; and,
7. Any and all relief not specifically addressed herein, including punitive and/or treble damages, is denied.

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	= \$ 225.00
Counter claim filing fee (expungement request)	= \$ 250.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, both Morgan Stanley DW Inc. and Morgan Stanley & Co., Incorporated are a party to this arbitration and each are assessed the following member fees:

Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,700.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

August 26-27, 2003 adjournment by Respondents MSDW Inc., Morgan Stanley, Foster and Stalcup	= \$ 750.00
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Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: August 12, 2003 1 session	
One (1) Pre-hearing session with Panel @ \$750.00	= \$ 750.00
Pre-hearing conference: May 19, 2003 1 session	
Four (4) Hearing sessions @ \$750.00	= \$ 3,000.00
Hearing Dates: September 30, 2003 2 sessions	

October 1, 2003 2 sessions

Total Forum Fees = \$ 4,200.00

The Panel has assessed the forum fees as follows:

Claimant Toni L. Woody, individually, and on behalf of the Toni L. Woody IRA	= \$ 840.00
Respondent Morgan Stanley DW Inc.	= \$ 840.00
Respondent Morgan Stanley & Co., Incorporated	= \$ 840.00
Respondent Timmy D. Foster	= \$ 840.00
Respondent Sara T. Stalcup	= \$ 840.00

EEE SUMMARY

Claimant Toni L. Woody, individually, and on behalf of the Toni L. Woody IRA is solely liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 840.00
Total Fees	= \$ 1,065.00
Less payments	= \$ 775.00
Balance Due NASD Dispute Resolution	= \$ 290.00

Respondent Morgan Stanley DW Inc. is solely liable for:

Member Fees	= \$ 3,550.00
Forum Fees	= \$ 840.00
Total Fees	= \$ 4,390.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 840.00

Respondent Morgan Stanley & Co., Incorporated is solely liable for:

Member Fees	= \$ 3,550.00
Forum Fees	= \$ 840.00
Total Fees	= \$ 4,390.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 840.00

Respondent Timmy D. Foster is solely liable for:

Forum Fees	= \$ 840.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 840.00

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Respondent Sara T. Stalcup is solely liable for:

Forum Fees	= \$ 840.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 840.00

Respondents Morgan Stanley DW Inc., Morgan Stanley & Co., Incorporated, Timmy D. Foster, and Sara T. Stalcup are jointly and severally liable for:

Adjournment Fee	= \$ 750.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 750.00

Respondents Timmy D. Foster, and Sara T. Stalcup are jointly and severally liable for:

Filing Fee	= \$ 250.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 250.00

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

ARBITRATION PANEL

Roland D. Freeman - Public Arbitrator, Presiding Chairperson
Stephen L. Avar - Public Arbitrator
Raymond E. Jennison - Non-Public Arbitrator

Concurring Arbitrators' Signatures



Roland D. Freeman
Public Arbitrator, Presiding Chairperson


11/5/03
Signature Date

Stephen L. Avar
Public Arbitrator

Signature Date

Raymond E. Jennison
Non-Public Arbitrator

Signature Date

11/17/03  Date of Service (For NASD Dispute Resolution office use only)

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Respondent Sara T. Stalcup is solely liable for:

Forum Fees	= \$ 840.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 840.00

Respondents Morgan Stanley DW Inc., Morgan Stanley & Co., Incorporated, Timmy D. Foster, and Sara T. Stalcup are jointly and severally liable for:

Adjournment Fee	= \$ 750.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 750.00

Respondents Timmy D. Foster, and Sara T. Stalcup are jointly and severally liable for:

Filing Fee	= \$ 250.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 250.00

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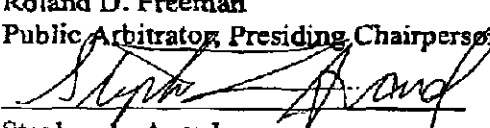
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Public Arbitrator, Presiding Chairperson

Signature Date




Stephen L. Avar
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11-5-03

Signature Date

Raymond E. Jennison
Non-Public Arbitrator

Signature Date

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Respondent Sara T. Stalcup is solely liable for:

Forum Fees	= \$ 840.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 840.00

Respondents Morgan Stanley DW Inc., Morgan Stanley & Co., Incorporated, Timmy D. Foster, and Sara T. Stalcup are jointly and severally liable for:

Adjournment Fee	= \$ 750.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 750.00

Respondents Timmy D. Foster, and Sara T. Stalcup are jointly and severally liable for:

Filing Fee	= \$ 250.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 250.00

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

ARBITRATION PANEL

Roland D. Freeman - Public Arbitrator, Presiding Chairperson
Stephen L. Avar - Public Arbitrator
Raymond E. Jennison - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Roland D. Freeman
Public Arbitrator, Presiding Chairperson

Signature Date

Stephen L. Avar
Public Arbitrator


Signature Date



Raymond E. Jennison
Non-Public Arbitrator

11/12/03

Signature Date

11/17/03  Date of Service (For NASD Dispute Resolution office use only)