

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

David M. Kupfer, M.D., Claimant v. Morgan Stanley DW Inc., Respondent

Morgan Stanley DW Inc., Counter-Claimant v. David M. Kupfer, M.D., Counter-Respondent

Morgan Stanley DW Inc., Third-Party Claimant v. San Diego Asset Management, Inc. and
Wendy Feldman Purner, Third-Party Respondents

Case Number: 02-06930

Hearing Site: San Diego, California

Nature of the Disputes: Customer vs. Member

Member vs. Customer

Member v. Non-Member and Associated Person

REPRESENTATION OF PARTIES

For Claimant/Counter-Respondent

David M. Kupfer, M.D.:

Anthony J. Dain, Esq.

Procopio, Cory, Hargreaves & Savitch, LLP
San Diego, California

For Respondent/Counter-Claimant/

Third-Party Claimant

Morgan Stanley DW Inc.:

Michael A. Thurman, Esq.

Stradling Yocca Carlson & Rauth
Pasadena, California

For Third-Party Respondent

San Diego Asset Management, Inc.:

Wendy Feldman Purner

San Diego Asset Management, Inc.
San Diego, California

For Third-Party Respondent

Wendy Feldman Purner:

Wendy Feldman Purner

In Pro Per
Rancho Santa Fe, California

CASE INFORMATION

Statement of Claim filed: November 15, 2002

Statement of Answer filed by Claimant/Counter-Respondent David M. Kupfer, M.D. to Respondent/Counter-Claimant/Third-Party Claimant Morgan Stanley DW Inc.'s Counter-Claim: May 9, 2003

Claimant/Counter-Respondent David M. Kupfer, M.D.'s Uniform Submission Agreement signed: December 17, 2002

Statement of Answer, Counter-Claim, and Third-Party Claim filed by Respondent/Counter-Claimant/Third-Party Claimant Morgan Stanley DW Inc.: March 17, 2003

Amendment to Statement of Answer, Counter-Claim, and Third-Party Claim filed by Respondent/Counter-Claimant/Third-Party Claimant Morgan Stanley DW Inc.: August 27, 2003

Respondent/Counter-Claimant/Third-Party Claimant Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: February 16, 2003

CASE SUMMARY

In his Statement of Claim, Claimant/Counter-Respondent David M. Kupfer, M.D. alleged fraud, breach of fiduciary duty, negligent hiring, supervision and retention of unfit employees, negligence, and breach of contract. The dispute involved the purchase and/or sale of unspecified securities.

Respondent/Counter-Claimant/Third-Party Claimant Morgan Stanley DW Inc. denied the allegations of wrongdoing set forth in the Claimant/Counter-Respondent's Statement of Claim.

In its Counter-Claim and Third-Party Claim, Respondent/Counter-Claimant/Third-Party Claimant Morgan Stanley DW Inc. alleged any losses sustained by Claimant were caused by the actions of Claimant/Counter-Respondent David M. Kupfer, M.D. and Third-Party Respondents San Diego Asset Management, Inc. and Wendy Feldman Purner.

Claimant/Counter-Respondent David M. Kupfer, M.D. denied the allegations of wrongdoing set forth in Respondent/Counter-Claimant/Third-Party Claimant Morgan Stanley DW Inc.'s Counter-Claim.

Third-Party Respondents San Diego Asset Management, Inc. and Wendy Feldman Purner did not file a Statement of Answer to Respondent/Counter-Claimant/Third-Party Claimant Morgan Stanley DW Inc.'s Third-Party Claim.

RELIEF REQUESTED

In his Statement of Claim, Claimant/Counter-Respondent David M. Kupfer, M.D. requested compensatory damages in the amount of \$348,000.00, unspecified punitive damages, interest, attorney's fees, and costs.

Respondent/Counter-Claimant/Third-Party Claimant Morgan Stanley DW Inc. requested dismissal of the Claimant/Counter-Respondent's Statement of Claim in its entirety, "for an award in this matter be borne in whole or on a pro rata basis by and/or among Cross-Respondent David M. Kupfer and Third Party Respondents Wendy Feldman Purner and San Diego Asset Management, Inc." and that all costs in this matter be assessed against Claimant/Counter-Respondent David M. Kupfer, M.D.

Claimant/Counter-Respondent David M. Kupfer, M.D. requested dismissal of Respondent/Counter-Claimant/Third-Party Claimant Morgan Stanley DW Inc.'s Counter-Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

San Diego Asset Management, Inc. is not a member of the NASD and did not submit to NASD arbitration.

On April 3, 2003, Claimant/Counter-Respondent signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On March 17, 2003, Respondent/Counter-Claimant/Third-Party Claimant Morgan Stanley DW Inc.'s counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

Upon review of the file and the representations made on behalf of Respondent/Counter-Claimant/Third-Party Claimant Morgan Stanley DW Inc. the undersigned Panel determined that Third-Party Respondent Wendy Feldman Purner was properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Third-Party Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Third-Party Respondent Wendy Feldman Purner did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

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) Respondent/Counter-Claimant/Third-Party Claimant Morgan Stanley DW Inc. is liable to and shall pay Claimant/Counter-Respondent David M. Kupfer, M.D. \$275,000.00 in compensatory damages.
- 2) Respondent/Counter-Claimant/Third-Party Claimant Morgan Stanley DW Inc. is liable to and shall pay Claimant/Counter-Respondent David M. Kupfer, M.D. \$300.00 as reimbursement of filing fee.
- 3) Third-Party Respondent Wendy Feldman Purner is liable to and shall pay Respondent/Counter-Claimant/Third-Party Claimant Morgan Stanley DW Inc. \$275,000.00 in compensatory damages.
- 4) Respondent/Counter-Claimant/Third-Party Claimant Morgan Stanley DW Inc.'s Counter-Claim is denied in its entirety.
- 5) The parties shall bear their respective costs, including attorney's fees.
- 6) 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 = \$ 300.00

Respondent/Counter-Claimant /Third-Party Claimant
Morgan Stanley DW Inc.'s Counter-Claim and Third-Party Claim
filing fee = \$ 1,000.00

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 = \$ 1,700.00

Pre-Hearing Process Fee = \$ 750.00

Hearing Process Fee = \$ 2,750.00

Total Member Fees = \$ 5,200.00

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 Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Chair @ \$450.00/session = \$ 450.00
Pre-hearing conference: March 10, 2004 1 session

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session = \$ 1,125.00
Pre-hearing conference: December 3, 2003 1 session

Ten (10) Hearing sessions @ \$1,125.00/session = \$11,250.00
Hearings: April 19, 2004 2 sessions
April 20, 2004 2 sessions
April 21, 2004 2 sessions
April 22, 2004 2 sessions
April 23, 2004 2 sessions

Total Forum Fees = \$12,825.00

The Panel assessed \$12,825.00 of the forum fees to Respondent/Counter-Claimant/Third-Party Claimant Morgan Stanley DW Inc.

Fee Summary

1. Claimant/Counter-Respondent David M. Kupfer, M.D. is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Less payments</u>	= \$(1,425.00)
Refund Due Claimant/Counter-Respondent David M. Kupfer, M.D.	= \$(1,125.00)

2. Respondent/Counter-Claimant/Third-Party Claimant Morgan Stanley DW Inc. is charged with the following fees and costs:

Counter-Claim/Third-Party Claim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$12,825.00</u>
Total Fees	= \$19,025.00
<u>Less payments</u>	<u>= \$(7,325.00)</u>
Balance Due NASD Dispute Resolution	= \$11,700.00

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

ARBITRATION PANEL

Stephen R. Clark	-	Public Arbitrator, Presiding Chair
Deanna Margaret Veitia	-	Public Arbitrator
James O. Johnson, Jr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Stephen R. Clark
Chair, Public Arbitrator

4-30-4
Signature Date

James O. Johnson, Jr.
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

Deanna Margaret Veitia
Public Arbitrator

Signature Date

May 12, 2004
Date of Service

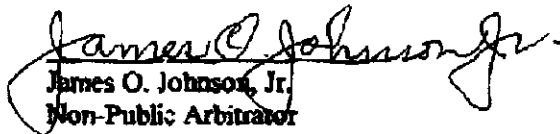
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Deanna Margaret Veitia	-	Public Arbitrator
James O. Johnson, Jr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Stephen R. Clark
Chair, Public Arbitrator

Signature Date


James O. Johnson, Jr.
Non-Public Arbitrator

May 6, 2004
Signature Date

Dissenting Arbitrator's Signature

Deanna Margaret Veitia
Public Arbitrator

Signature Date

May 12, 2004
Date of Service

ARBITRATION PANEL

Stephen R. Clark	-	Public Arbitrator, Presiding Chair
Deanna Margaret Veitia	-	Public Arbitrator
James O. Johnson, Jr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

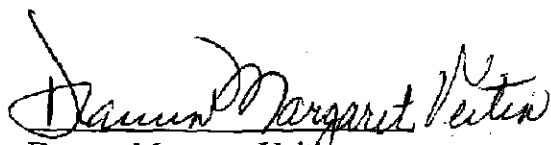
Stephen R. Clark
Chair, Public Arbitrator

Signature Date

James O. Johnson, Jr.
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature


Deanna Margaret Veitia
Public Arbitrator

5/10/04
Signature Date

May 12, 2004
Date of Service