

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Steve Kernochan, Claimant v. Morgan Stanley DW Inc. and James A. Podleski, Respondents

Case Number: 02-07128

Hearing Site: Los Angeles, California

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

**REPRESENTATION OF PARTIES**

For Claimant:

Bruce R. Safran  
Northridge, California

For Respondents:

Ronald E. Wood, Esq.  
Morgan Stanley DW Inc.  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: November 21, 2002

Claimant's Uniform Submission Agreement signed: October 23, 2002

Joint Statement of Answer filed by Respondent: January 24, 2003

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: January 6, 2003

Respondent James A. Podleski's Uniform Submission Agreement signed: March 16, 2005

**CASE SUMMARY**

Claimant alleged unsuitability, misrepresentations and omissions, breach of fiduciary duties, breach of contract, negligence, and violation of State and Federal securities laws involving transactions in unspecified initial public offerings.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in an amount between \$350,000.00 and \$400,000.00, punitive damages in the amount of \$500,000.00, the return of all commissions and margin interest, and costs, including attorney's fees and disbursements. Claimant waived any damages in excess of \$1,000,000.00.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety and costs, including attorney's fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On March 11, 2004, Claimant and Claimant's representative 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 January 6, 2003, Respondents' counsel signed a Waiver Agreement on Respondents' behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

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 Respondent James A. Podleski's registration records maintained by the NASD Central Registration Depository (CRD), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent James A. Podleski 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. Any and all other relief not specifically addressed herein, including punitive damages, is denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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>
<b>Total Member Fees</b>	<b>= \$ 7,000.00</b>

#### **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 the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: March 21, 2005 1 session	
Two (2) Hearing sessions @ \$1,200.00/session	= \$ 2,400.00
Hearings: August 30, 2005 2 sessions	
<b>Total Forum Fees</b>	<b>= \$ 3,600.00</b>

The Panel assessed \$3,600.00 of the forum fees to Claimant Steve Kernochan.

#### **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 170 photocopies @ \$.50 per copy	= \$ 85.00
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**Fee Summary**

1. Claimant Steve Kernochan is charged with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 3,600.00
<u>Administrative Costs</u>	<u>= \$ 85.00</u>
Total Fees	= \$ 4,060.00
<u>Less payments</u>	<u>= \$(1,575.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,485.00</b>

2. Respondent Morgan Stanley DW Inc. is charged with the following fees and costs:

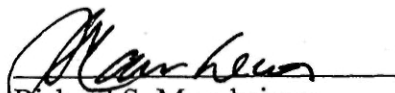
Member Fees	= \$ 7,000.00
<u>Less payments</u>	<u>= \$(7,000.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

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**

<b>Richard S. Mannheimer</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>David R. Brown</b>	-	<b>Public Arbitrator</b>
<b>Lewis H. Kairys</b>	-	<b>Non-Public Arbitrator</b>


**Concurring Arbitrators' Signatures**

  
Richard S. Mannheimer  
Chair, Public Arbitrator

8/30/05  
Signature Date

  
David R. ~~Brown~~  
Public Arbitrator

8/30/05  
Signature Date

  
Lewis H. Kairys  
Non-Public Arbitrator

8/30/05  
Signature Date

8/31/05  
Date of Service