

**STIPULATED AWARD  
NASD Dispute Resolution**

---

In the Matter of the Arbitration Between

**RICHARD FAULKNER,**

Claimant,

Hearing Location: Detroit, Michigan

and

Case Number: 02-07153

**MORGAN STANLEY DW, INC.**

Respondent.

---

**NATURE OF CASE**

Associated Person v. Member Firm

**REPRESENTATION OF PARTIES**

Claimant Richard Faulkner ("Faulkner" or "Claimant") was represented by Nelson P. Miller, Esq., of Fajen and Miller, P.L.L.C., located at 41 Washington Street, Grand Haven, Michigan 49417, and Paul L. Winter, Esq., of the Winter Law Firm, P.L.L.C., located at 41 Washington Street, Grand Haven, Michigan 49417.

Respondent Morgan Stanley DW, Inc. ("Morgan Stanley" or "Respondent") was represented by Cameron J. Evans, Esq. and Robert J. Muchnick, Esq., of Honigman Miller Schwartz and Cohn LLP, located at 2290 First National Building, 660 Woodward Avenue, Detroit, Michigan 48226.

**CASE INFORMATION**

The Statement of Claim was filed on or about November 19, 2002.

Faulkner's Uniform Submission Agreement was signed on or about November 19, 2002.

Morgan Stanley's Answer was filed on or about February 6, 2003.

Morgan Stanley's Counterclaim was filed on or about February 6, 2003.

Morgan Stanley's Uniform Submission Agreement was signed on or about February 3, 2003.

Morgan Stanley's Motion to Dismiss Claimant's U-5 Defamation Claim was filed on or about October 1, 2003.

### CASE SUMMARY

In the Statement of Claim, Faulkner alleged that Morgan Stanley made a defamatory statement on a Form U-5 Uniform Termination Notice for Securities Industry Registration, dated March 20, 2002. Faulkner alleged that Morgan Stanley's stated reason for Faulkner's termination from his employment with Morgan Stanley – "FAILURE TO FOLLOW COMPANY POLICY (COMPLIANCE)" – was defamatory.

In its Answer, Morgan Stanley denied the allegations in the Statement of Claim and any and all liability, and asserted the following affirmative defenses: (1) Mr. Faulkner fails to state a claim for which relief may be granted; (2) the statement which Mr. Faulkner alleges was defamatory was, and is, true; (3) Morgan Stanley had an absolute privilege, under Michigan common law, to make the statement which Mr. Faulkner alleges was defamatory; (4) Morgan Stanley had a qualified privilege, under Michigan common law, to make the statement which Mr. Faulkner alleges was defamatory; (5) Morgan Stanley had a qualified privilege, under M.C.L. 423.452, to make the statement which Mr. Faulkner alleges was defamatory; (6) to the extent he has suffered any damages, Mr. Faulkner is limited to recovering only economic damages pursuant to M.C.L. 600.2911(7); (7) to the extent Mr. Faulkner has suffered no economic damages, his claim is barred under M.C.L. 600.2911(7); (8) to the extent Mr. Faulkner has suffered any damages, such damages were solely, proximately and directly caused by the actions of the third parties over which Morgan Stanley exercised no control; and (9) to the extent Mr. Faulkner has suffered any damages, he has failed to mitigate his damages.

Morgan Stanley filed a Counterclaim against Faulkner for money owed pursuant to two promissory notes Faulkner executed in 1998 and 2002.

Faulkner denied liability on Morgan Stanley's Counterclaim, and asserted the following affirmative defenses: (1) all or a portion of the counterclaim is not arbitrable, it not being within the contemplation of the parties in any agreement to arbitrate; (2) the requested interest is usurious, such that its collection is barred, Mr. Faulkner is entitled to reimbursement, and his costs and attorney's fees should be paid; (3) it was impossible that Mr. Faulkner remain employed by Dean Witter Reynolds Inc., in light of the merger, and so there was no possibility of performing; (4) the notes were signed under duress and coercion; (5) the 1998 note was with an entity which is not a party to this action; (6) Morgan Stanley lacks standing for its claim; (7) Morgan Stanley is not the interested party (real party in interest); (8) Morgan Stanley has failed to join a necessary party to assert its claim; (9) the notes have been paid in full or in part, and their payment forgiven; and (10) Mr. Faulkner objects to Morgan Stanley's failure, if any, to join all claims.

### RELIEF REQUESTED

In the Statement of Claim, Faulkner does not seek a specific amount in damages, but requests an award of compensatory, exemplary and punitive damages, as well as costs, attorney's fees, and other unspecified relief. In Exhibit C to his Statement of Claim, Faulkner asserts that the amount in dispute is \$2,719,508.38 (divided into \$2,000,000.00 in compensatory damages and \$719,508.38 in punitive/exemplary damages.)

In its Answer, Morgan Stanley requests that the claim asserted by Faulkner be denied in its entirety and with prejudice, and Morgan Stanley be awarded its costs and attorneys' fees.

In its Counterclaim, Morgan Stanley seeks \$14,559.23 under the 1998 promissory note, plus all accrued interest, and \$22,500.00 under the 2002 promissory note, plus all accrued interest. Morgan Stanley also seeks interest at the rate of 12% per annum from the date of this panel's award until Faulkner has satisfied fully the total amount awarded to Morgan Stanley. Finally, Morgan Stanley seeks its attorneys' fees and costs incurred in filing and arbitrating the Counterclaim.

In his Answer to Morgan Stanley's Counterclaim, Faulkner requests that the claims asserted by Morgan Stanley be denied in their entirety, and he be awarded his costs and attorneys' fees.

### OTHER ISSUES

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

Pursuant to a Settlement Agreement and Release entered into between Faulkner and Morgan Stanley, and after considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

- (1) Faulkner's claims shall be, and hereby are, dismissed in their entirety and with prejudice;
- (2) Faulkner shall bear his own costs and expenses, including, but not limited to his attorneys' fees and the filing fees, incurred in this matter;
- (3) Faulkner shall pay to Morgan Stanley Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) for attorneys' fees Morgan Stanley incurred in filing and prosecuting its Counterclaim;
- (4) The explanation for termination as reported on the Form U5 filed for Richard L. Faulkner by Morgan Stanley DW, Inc. that is maintained by the NASD Central Registration Depository ("CRD") shall be expunged by NASD CRD. The original explanation for Faulkner's termination from his employment with Morgan Stanley DW, Inc., should be expunged and replaced with "FAILURE TO FOLLOW COMPANY POLICY" with the understanding that pursuant to NASD Notice to Members 99-09, Morgan Stanley must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
- (5) Morgan Stanley agrees to withdraw its Counterclaim; and

- (6) That any relief not specifically enumerated, including compensatory, exemplary and punitive damages, shall be, and hereby is, denied with prejudice.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fees for each claim:

Initial claim filing fee	\$ 500.00
Counterclaim filing fee	\$1,000.00

#### 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 events giving rise to the dispute. In this matter, the member firm, Morgan Stanley DW, Inc., is a party

Member surcharge	\$2,800.00
Pre-hearing process fee	\$ 750.00
Hearing process fee	\$5,000.00

#### 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:

Three (3) Pre-hearing sessions with Panel x \$1,200.00	=	\$2,400.00
Pre-hearing conferences:	July 17, 2003      1 session	
	November 10, 2003   1 session	
<hr/> Total Forum Fees		\$2,400.00

The panel has assessed \$1,200 of the forum fees to Richard L. Faulkner. The panel has assessed \$1,200 of the forum fees to Morgan Stanley DW, Inc.

NASD Dispute Resolution  
Arbitration No. 02-07153  
Award Page 5 of 31

**Fee Summary**

Claimant, Richard Faulkner, is liable for:

Initial Filing Fee	\$ 500.00
Forum Fees	\$ 1,200.00
Total Fees	\$ 1,700.00
Less payments	\$ 1,700.00
Balance Due NASD Dispute Resolution	\$ 0.00

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

Counterclaim Filing Fee	\$ 1,000.00
Member Fees	\$ 8,550.00
Forum Fees	\$ 1,200.00
Total Fees	\$10,750.00
Less payments	\$10,150.00
Balance Due NASD Dispute Resolution	\$ 600.00

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

**ARBITRATION PANEL**

Marvin L. Horowitz, Esq. - Public Arbitrator, Chairperson  
Stewart C.W. Weiner, Esq. - Public Arbitrator  
Donald L. Richardson - Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Marvin L. Horowitz, Esq.  
Public Arbitrator, Chairperson

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Stewart C.W. Weiner, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Donald L. Richardson  
Non-Public Arbitrator

  
\_\_\_\_\_  
Signature Date

6/30/04  
Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 02-07153  
Award Page 5 of 5

### Fee Summary

Claimant, Richard Faulkner, is liable for:

Initial Filing Fee	\$ 500.00
Forum Fees	\$ 1,200.00
Total Fees	\$ 1,700.00
Less payments	\$ 1,700.00
Balance Due NASD Dispute Resolution	\$ 0.00

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

Counterclaim Filing Fee	\$ 1,000.00
Member Fees	\$ 8,550.00
Forum Fees	\$ 1,200.00
Total Fees	\$10,750.00
Less payments	\$10,150.00
Balance Due NASD Dispute Resolution	\$ 600.00

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

### ARBITRATION PANEL

Marvin I. Horowitz, Esq. – Public Arbitrator, Chairperson  
Stewart C.W. Weiner, Esq. – Public Arbitrator  
Donald L. Richardson – Non-Public Arbitrator

Concurring Arbitrators:

Marvin I. Horowitz, Esq.  
Public Arbitrator, Chairperson

Signature Date

Stewart C.W. Weiner, Esq.  
Public Arbitrator

6/25/04  
Signature Date

Donald L. Richardson  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)