
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Esther Savitz Revocable Trust dtd 9/3/92
Jack Savitz Revocable Trust dtd 9/3/92

Case Number: 02-07416

Names of the Respondents

Morgan Stanley DW, Inc.
John S. McNally, Jr.
Martha Prestin

Hearing Site: Orlando, Florida

Third Party Respondent

Edward H. Savitz

Nature of the Dispute: Customers vs. Member and Associated Persons vs. Associated Person.

REPRESENTATION OF PARTIES

For Esther Savitz Revocable Trust dtd 9/3/92 and Jack Savitz Revocable Trust dtd 9/3/92, hereinafter collectively referred to as "Claimants": Stephen P. Milbrath, Esq., Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A., Orlando, Florida.

For Morgan Stanley DW, Inc., hereinafter referred to as "Respondent MSDW", John S. McNally, Jr., hereinafter referred to as "Respondent McNally" and Martha Prestin, hereinafter referred to as "Respondent Prestin": Joseph C. Coates, III, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida.

Edward H. Savitz, hereinafter referred to as "Third Party Respondent Savitz", appeared *pro se*.

CASE INFORMATION

Statement of Claim filed on or about: December 5, 2002.

Claimants signed Uniform Submission Agreements: November 18, 2002 and November 21, 2002.

Statement of Answer and Third Party Claim filed by Respondents MSDW, McNally and Prestin on or about: February 24, 2003.

Statement of Answer to Third Party Claim filed by Third Party Respondent Savitz on or about: April 4, 2003.

Motion to Dismiss Third Party Claim filed by Third Party Respondent Savitz on or about: July 18, 2003.

Respondent MSDW signed the Uniform Submission Agreement: March 21, 2003.

Respondent McNally signed the Uniform Submission Agreement: April 2, 2003.

Respondent Prestin signed the Uniform Submission Agreement: April 2, 2003.

Third Party Respondent Savitz signed the Uniform Submission Agreement: April 14, 2003.

CASE SUMMARY

Claimants alleged the following causes of action: 1) violation of Section 517.301, Florida Statutes; and 2) failure to supervise. The causes of action relate to the trading of securities in Claimants' accounts that include investments in shares of stock in Cisco and VanKampen Focus Port Internet.

Unless specifically admitted in their Answer, Respondents MSDW, McNally and Prestin denied the allegations made in the Statement of Claim and asserted various defenses.

Respondents MSDW, McNally and Prestin alleged the following causes of action in their Third Party Claim: 1) indemnification; and 2) contribution.

Unless specifically admitted in his Answer, Third Party Respondent Savitz denied the allegations made in the Third Party Claim and asserted various defenses.

RELIEF REQUESTED

Claimants requested: 1) compensatory damages in excess of \$500,000.00; 2) statutory damages in the approximate amount of \$500,000.00; 3) punitive damages; and 4) costs.

Respondents MSDW, McNally and Prestin requested: 1) dismissal of the Statement of Claim in its entirety; 2) 2) expungement of all reference to the above captioned arbitration from Respondents McNally's and Prestin's registration records maintained by the NASD Central Registration Depository ("CRD"); 3) contribution and/or indemnification from Third Party Respondent Savitz; 4) costs; 5) attorneys' fees; and 6) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Third Party Respondent Savitz requested dismissal of the Third Party Claim.

OTHER ISSUES CONSIDERED AND DECIDED

On or about August 21, 2003, the Panel denied Third Party Respondent Savitz's Motion to Dismiss Third Party Claim.

On or about February 10, 2004, Respondents filed their Motion to Exclude Expert Testimony of Julie Behr Zimmerman. On or about February 13, 2004, Claimants filed their Memorandum in Opposition to Motion to Exclude Expert Testimony of Julie Behr Zimmerman. At the evidentiary hearing, the Panel denied the motion with leave to reassert the motion in the event the expert witness testified as to matters of fact involving or

known from her employment with Respondent MSDW.

At the evidentiary, the parties announced that they had reached a settlement of all claims and requested expungement of all references to the above-captioned arbitration proceeding from Respondents McNally's and Prestin's registration records maintained by the NASD CRD.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

AWARD

After considering the pleadings and the parties' request for expungement, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends expungement of all references to the above-captioned arbitration proceeding from Respondent McNally's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent McNally must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
2. The Panel recommends expungement of all references to the above-captioned arbitration proceeding from Respondent Prestin's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Prestin must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 375.00
Third Party claim filing fee	= \$1,250.00

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. Accordingly, Respondent MSDW is a member firm and a party.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

Forum Fees and Assessments

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

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00 per session	= \$ 900.00
Pre-hearing conferences: December 3, 2003 1 session	
January 19, 2004 1 session	
One (1) Pre-hearing session with Panel @ \$1,200.00 per session	= \$1,200.00
Pre-hearing conference: August 21, 2003 1 session	
Three (3) Hearing sessions @ \$1,200.00 per session	= \$3,600.00
Hearing Dates: February 17, 2004 2 sessions	
February 18, 2004 1 session	
Total Forum Fees	= \$5,700.00

Pursuant to the agreement of the parties, the Panel has assessed the total forum fees in the amount of \$5,700.00 to Respondent MSDW.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
<u>Retained Hearing Session Deposit pursuant to Rule 10332(f) of the Code</u>	<u>= \$1,200.00</u>
Total Fees	= \$1,575.00
<u>Less payments</u>	<u>= \$1,575.00</u>

Balance Due NASD Dispute Resolution = \$ 0.00

Respondents MSDW, McNally and Prestin are jointly and severally liable for:

<u>Third Party Claim Filing Fee</u>	= \$ 1,250.00
<u>Total Fees</u>	= \$ 1,250.00
<u>Less payments</u>	= \$ 1,250.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MSDW is solely liable for:

<u>Member Fees</u>	= \$ 7,000.00
<u>Forum Fees</u>	= \$ 5,700.00
<u>Total Fees</u>	= \$12,700.00
<u>Less payments</u>	= \$ 8,200.00
Balance Due NASD Dispute Resolution	= \$ 4,500.00

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

ARBITRATION PANEL

<i>John P. Cullem, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Kenneth J. Bennett</i>	-	<i>Public Arbitrator</i>
<i>Suzanne E. Reynolds-Brady</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
John P. Cullem, Esq.
Public Arbitrator, Presiding Chairperson

February 24, 2004
Signature Date

/s/
Kenneth J. Bennett
Public Arbitrator

February 24, 2004
Signature Date

/s/
Suzanne E. Reynolds-Brady
Non-Public Arbitrator

February 24, 2004
Signature Date

February 25, 2004
Date of Service (For NASD Dispute Resolution office use only)

Feb. 23. 2004 12:21PM

NASD

P. 6

NASD Dispute Resolution

Arbitration No. 02-07416

Stipulated Award Page 5

Balance Due NASD Dispute Resolution = \$ 0.00

Respondents MSDW, McNally and Prestin are jointly and severally liable for:

Third Party Claim Filing Fee = \$ 1,250.00

Total Fees = \$ 1,250.00

Less payments = \$ 1,250.00

Balance Due NASD Dispute Resolution = \$ 0.00

Respondent MSDW is solely liable for:

Member Fees = \$ 7,000.00

Forum Fees = \$ 5,700.00

Total Fees = \$12,700.00

Less payments = \$ 8,200.00

Balance Due NASD Dispute Resolution = \$ 4,500.00

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

ARBITRATION PANEL

John P. Cullem, Esq.

Public Arbitrator, Presiding Chairperson

Kenneth J. Bennett

Public Arbitrator

Suzanne E. Reynolds-Brady

Non-Public Arbitrator

Concurring Arbitrators' Signatures
John P. Cullem, Esq.

FEBRUARY 24, 2004

Signature Date

Public Arbitrator, Presiding Chairperson

Kenneth J. Bennett

Signature Date

Public Arbitrator

Suzanne E. Reynolds-Brady

Signature Date

Non-Public Arbitrator

Date of Service (For NASD Dispute Resolution office use only)

Balance Due NASD Dispute Resolution = \$ 0.00

Respondents MSDW, McNally and Prestin are jointly and severally liable for:

<u>Third Party Claim Filing Fee</u>	= \$ 1,250.00
<u>Total Fees</u>	= \$ 1,250.00
<u>Less payments</u>	= \$ 1,250.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MSDW is solely liable for:

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	= \$ 5,700.00
<u>Total Fees</u>	= \$12,700.00
<u>Less payments</u>	= \$ 8,200.00
Balance Due NASD Dispute Resolution	= \$ 4,500.00

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

ARBITRATION PANEL

<i>John P. Cullem, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Kenneth J. Bennett</i>	-	<i>Public Arbitrator</i>
<i>Suzanne E. Reynolds-Brady</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

John P. Cullem, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Kenneth J. Bennett
Public Arbitrator

Kenneth J. Bennett 2/24/04

Signature Date

Suzanne E. Reynolds-Brady
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

FEB 23 2004 12:20PM

NASD Dispute Resolution
Arbitration No. 02-07416
Stipulated Award Page 5

Balance Due NASD Dispute Resolution = \$ 0.00

Respondents MSDW, McNally and Prestin are jointly and severally liable for:

<u>Third Party Claim Filing Fee</u>	= \$ 1,250.00
<u>Total Fees</u>	= \$ 1,250.00
<u>Less payments</u>	= \$ 1,250.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MSDW is solely liable for:

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	= \$ 5,700.00
<u>Total Fees</u>	= \$12,700.00
<u>Less payments</u>	= \$ 8,200.00
Balance Due NASD Dispute Resolution	= \$ 4,500.00

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

ARBITRATION PANEL

John P. Cullem, Esq.	-	Public Arbitrator, Presiding Chairperson
Kenneth J. Bennett	-	Public Arbitrator
Suzanne E. Reynolds-Brady	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

John P. Cullem, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Kenneth J. Bennett
Public Arbitrator

Signature Date

Suzanne Reynolds-Brady
Suzanne E. Reynolds-Brady
Non-Public Arbitrator

February 24, 2004
Signature Date

Date of Service (For NASD Dispute Resolution office use only)