

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

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In the Matter of the Arbitration Between:

Jim Hervosma, Claimant v. Morgan Stanley DW Inc., Isidro Z. Miramontes, Randal J. Brown,  
Alfred J. Perrine, and Daniel J. McMillan, Respondents

Case Number: 02-07571

Hearing Site: Los Angeles, California

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

**REPRESENTATION OF PARTIES**

For Claimant:

William C. Saacke, Esq.  
Law Offices of McNulty & Saacke  
Torrance, California

For Respondents:

Wendy R. Robinson, Esq.  
Morgan Stanley DW Inc.  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: December 13, 2002

Claimant's Uniform Submission Agreement signed: December 10, 2002

Joint Statement of Answer and Motion to Dismiss filed by Respondents: March 27, 2003

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: April 13, 2003

Respondent Isidro Z. Miramontes' Uniform Submission Agreement signed: March 27, 2003

Respondent Randal J. Brown's Uniform Submission Agreement signed: March 27, 2003

Respondent Alfred J. Perrine's Uniform Submission Agreement signed: March 27, 2003

Respondent Daniel J. McMillan's Uniform Submission Agreement signed: March 27, 2003

### **CASE SUMMARY**

Claimant alleged breach of fiduciary duty, fraud, intentional and negligent misrepresentation, breach of contract, negligence, failure to supervise, suitability, and improper management fee. No specific product or product type was discussed in the Statement of Claim.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested \$50,000.00 in compensatory damages, unspecified punitive damages, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, that the Claimant's complaint be expunged from the registration records of the individual registered representatives, and costs, including attorney's fees.

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

On July 2, 2003, Claimant and Claimant'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.

On September 13, 2004, Respondents made a motion for summary dismissal of the claim. On September 17, 2004, Claimant filed an opposition to the motion. On September 24, 2004, a telephonic pre-hearing conference was held to hear oral argument on the motion. On September 24, 2004, the Chair denied the motion.

The parties agreed a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, testimony, and evidence presented at the hearing, the Chair 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 Isidro Z. Miramontes' 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, Respondent Isidro Z. Miramontes must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Randal J. Brown's registration records maintained by the CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Randal J. Brown must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Alfred J. Perrine's registration records maintained by the CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Alfred J. Perrine must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
5. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Daniel J. McMillan's registration records maintained by the CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Daniel J. McMillan must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
6. The Parties shall bear their respective costs, including attorney's fees.
7. All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the 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	= \$ 175.00
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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	= \$ 875.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 1,000.00
<b>Total Member Fees</b>	<b>= \$ 2,625.00</b>

### **Adjournment Fees**

The following adjournment fee is assessed:

June 14, 15, and 16, 2004 Hearing Dates, adjournment requested by Claimant and Respondents	= \$ 450.00
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1. The Panel assessed \$225.00 of the forum fees to Claimant Jim Hervosma.
2. The Panel assessed \$225.00 of the forum fees jointly and severally to Respondents Morgan Stanley DW Inc., Isidro Z. Miramontes, Randal J. Brown, Alfred J. Perrine, and Daniel J. McMillan.

### **Forum Fees and Assessments**

The Chair 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. The following fees are assessed:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session = \$ 450.00  
Pre-hearing conference: September 24, 2004 1 session

Two (2) Hearing sessions @ \$450.00/session = \$ 900.00  
Hearings: September 30, 2004 2 sessions

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<b>Total Forum Fees</b>	<b>= \$ 1,350.00</b>
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1. The Panel assessed \$1,125.00 of the forum fees to Claimant Jim Hervosma.
2. The Panel assessed \$225.00 of the forum fees jointly and severally to Respondents Morgan Stanley DW Inc., Isidro Z. Miramontes, Randal J. Brown, Alfred J. Perrine, and Daniel J. McMillan.

**Fee Summary**

1. Claimant Jim Hervosma is charged with the following fees and costs:

Initial Filing Fee	= \$ 175.00
Adjournment Fee	= \$ 225.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,525.00
Less payments	= \$ (625.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 900.00</b>

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

Member Fees	= \$ 2,625.00
Total Fees	= \$ 2,625.00
Less payments	= \$ (2,625.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents Morgan Stanley DW Inc., Isidro Z. Miramontes, Randal J. Brown, Alfred J. Perrine, and Daniel J. McMillan are charged jointly and severally with the following fees and costs:

Adjournment Fee	= \$ 225.00
Forum Fees	= \$ 225.00
Total Fees	= \$ 450.00
Less payments	= \$ (0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 450.00</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.

ARBITRATOR

Robert E. Lawson, Sr., CPA

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Public Arbitrator, Presiding Chair

Arbitrator's Signature



Robert E. Lawson, Sr., CPA  
Chair, Public Arbitrator

10/01/2004

Signature Date

10/01/04

Date of Service