

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 02-07591

Manisha F. Desai and Falgoon V. Desai, Claimants vs. Morgan Stanley Online n/k/a Morgan Stanley DW Inc., Respondent.

ATTORNEYS:

Claimants, Manisha F. Desai and Falgoon V. Desai, (collectively "Claimants") appeared pro se., Foster City, CA.

For Respondent, Morgan Stanley Online n/k/a Morgan Stanley DW Inc., ("Respondent") appeared in-house counsel, Keith Guilfoyle, Esq., New York, NY.

DATE FILED: December 17, 2002

CASE SUMMARY: Claimants alleged that Respondent delayed the execution of an online Real-Time telephone order to buy 900 shares of SCOC stock. Claimants further alleged that the delay resulted in the purchase at an undesirable price. Claimants maintained that because of Respondent's action, their account suffered a loss.

ARBITRATOR'S REPORT: See attached Exhibit A.

Claim Data

Claim: \$6,300.00

Interest: \$1,135.00

Punitive: Unspecified

Filing Fees: \$.00

Award Data

Award: \$787.50

Interest: At the rate of 10% p.a.
from 12/17/99 until date of
payment of award.

Punitive: \$.00

Filing Fees: \$325.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondent is liable and shall pay to the Claimant \$787.50. 2) Respondent is liable and shall pay to the Claimant interest at the rate of 10% per annum from December 17, 1999 until date of payment of award. 3) All requests for punitive damages are denied. 4) All other relief requests are denied. 5) The \$325.00 filing fee previously deposited with NASD Dispute Resolution by the Claimant, shall be retained by NASD Dispute Resolution. 6) Respondent is liable and shall pay Claimant \$325.00 as reimbursement of 100% of the filing fee.

OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent, has paid to NASD Dispute Resolution the \$325.00 Member Surcharge previously invoiced.

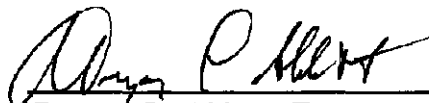
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Award 02-07591

Gregory L. Abbott, Esq.

Sole Public Arbitrator

AFFIRMATION

I, Gregory L. Abbott, Esq. do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.



Gregory L. Abbott, Esq.



Signature Date

July 9, 2003
Date of Service (For NASD-DR office use only)

IN ARBITRATION BEFORE
THE NATIONAL ASSOCIATION OF SECURITIES DEALERS

MANISHA F. DESAI AND FALGOON V.
DESAI,

Claimants,

v.

MORGAN STANLEY ONLINE n/k/a/
MORGAN STANLEY DW INC.

Respondent.

Case No. 02-07591

ARBITRATION FINDINGS AND
AWARD

After reviewing all documents submitted by both the Claimants and the Respondent herein, I find in favor of the Claimants and award them \$787.50 in damages, 10 % simple interest thereupon from December 17, 1999 until paid in full, and Claimants' costs incurred herein.

This case arises out of Claimants electronically entering a market buy order for 900 shares of Santa Cruz Operation ("SCOC") on December 17, 1999. Although Claimants allege they entered said market order at 15:39, they submitted no admissible evidence supporting the allegation, not even a sworn Affidavit. Respondent acknowledges the market order but asserts it was entered at 15:41 and alleges its execution approximately seven minutes later during the midst of a fast locked and crossed market. Respondent acknowledges that it took over four minutes before transmitting the market order to the market makers for execution who, in turn, took another two and one-half (2 1/2) minutes to fill it. Respondent's practice with any electronically entered buy order costing \$5,000.00 or more is to delay it in being sent to a market

1 maker to be filled until it has been checked by a reviewing broker for both validity of form
2 (order properly entered) and that the customer's account has adequate credit to support the order.
3 In this case, that process apparently took over four minutes. Claimants assert that their order was
4 properly formatted and that at the time of entry, their account had over \$150,000.00 of approved
5 buying power - facts which Respondent does not dispute.

6 I find that the Claimants' order was entered at 15:41 and that the market makers taking
7 two and one-half minutes to fill said order during a fast, locked, and crossed market time was not
8 negligent as a matter of law. Respondent's consuming over four minutes to submit a market buy
9 order to the market maker, however, is a different matter entirely. Respondent admits that the
10 broker-review process normally takes less than four minutes. In this instance, however, it
11 suggests that the locked and crossed market *could* - but does not assert that it *did* - have had an
12 adverse impact on that process in two ways - by a potentially increased number of orders coming
13 in which needed review and secondly, an increased amount of time might be needed to review
14 each order to determine how much buying power might be reasonably needed to fill the order.

15 Respondent fails to assert, let alone offer any evidence, that either of the above situations
16 specifically applied to the Claimants' order. Further, Respondent can not even now tell what
17 buying power Claimants had at the time of the order entry. Certainly if Claimants are correct
18 that it exceeded \$150,000.00, there should have been no delay on that account and there is no
19 evidence before me that fast market conditions were prevalent enough market-wide to result in
20 meaningfully increased order flow to Respondent's intake desk. I therefore find a four minute
21 delay in entering Claimants' market buy order to be excessive, negligent, and that Respondent is
22 liable to Claimants for the reasonable damages resulting therefrom. Although Claimants seek an
23 award of punitive damages, they fail to cite a legal basis for such and regardless, I find that
24 Respondent's actions do not rise to the level necessary to entitle an Award of punitive damages
25 herein.


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1 The question then necessarily arises as to what is the maximum amount of time under
2 these conditions that Respondent could or should have reasonably delayed the entry of the order?
3 Claimants argued that their prior experience included many orders being executed in less than
4 one minute from entry, argument which I do not doubt in the least. Because they experienced
5 less than one minute executions some of the time, however, does not establish a legitimate
6 *maximum* amount of time Respondent could reasonably take in the necessary processing of the
7 order. I hold that Respondent should have submitted the market buy order to the market makers
8 no more than two minutes after it was entered.

9 The order was entered at 15:41; it should have been transmitted to the market makers no
10 later than 15:43; and the market maker presumably would have still required two and one-half
11 minutes to fill said order, entitling Claimants to a fill at 15:45:30 or thereabouts.

12 There is, of course, the added complication that Claimants' order was for 900 shares,
13 meaning that sales of 100, 200, or 300 shares, for example might well have traded at a different
14 price than a purchase of 900 shares would have at that moment in time. To the degree that the
15 market quotes were accurate, SCOC was quoted at \$26.00 bid and \$26.125 asked at 15:45:29 -
16 quotes which are supported by the resulting time and sales. 4000 shares traded at \$26.00 at
17 15:45:32; 1000 shares traded at \$26.125 at 15:45:36; and 900 shares traded at \$26.125 at
18 15:45:37. I hold that Claimants are entitled to have filled their order at \$26.125; they were
19 charged \$27.00; and I order Claimants an Award in the principal amount of \$787.50
20 (\$0.875x900), plus 10 % simple interest (California legal rate of interest) thereupon from
21 December 17, 1999 until paid in full, along with their costs incurred herein.

22 DATED this 21st Day of May, 2003.

23 
24 Gregory L. Abbott
25 Arbitrator for NASD
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