

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

John R. Barber & Ruth J. Simmons Barber, as Trustees of the Barber Family Trust, Claimants v.
Morgan Stanley DW Inc. (f/k/a Morgan Stanley Dean Witter) and Alan M. Corwin, Respondents

Case Number: 02-07736

Hearing Site: Seattle, Washington

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

REPRESENTATION OF PARTIES

For Claimant:

Richard D. Turner, Esq.
Eisenhower & Carlson,
PLLC
Tacoma, Washington

For Respondent Morgan Stanley DW Inc.:

Christopher B. Wells, Esq.
Lane Powell Spears Lubersky
LLP
Seattle, Washington

For Respondent Alan M. Corwin:

Alan M. Corwin
Pro Se
Olympia, Washington

CASE INFORMATION

Statement of Claim filed: December 20, 2002

Restated Statement of Claim filed: June 30, 2003

Claimants John R. Barber and Ruth J. Simmons Barber as Trustees of the Barber Family Trust's
Joint Uniform Submission Agreement signed: December 14, 2002

Statement of Answer filed by Respondent Morgan Stanley DW Inc.: April 4, 2003

Statement of Answer to Restated Statement of Claim filed by Morgan Stanley DW Inc.: June 11,
2004

Respondent Morgan Stanley DW Inc.'s (f/k/a Morgan Stanley Dean Witter and hereinafter
Morgan Stanley DW Inc.) Uniform Submission Agreement signed: April 4, 2003

Respondent Alan M. Corwin's Uniform Submission Agreement signed: April 3, 2003

CASE SUMMARY

In their initial Statement of Claim, Claimants asserted the following causes of action: unauthorized trading, unsuitability, violation of the Washington Securities Act, violation of the Washington State Consumer Protection Act, intentional and negligent false representations, violation of duty of loyalty owed to Claimants, breach of fiduciary duty, misrepresentation, and constructive trust. Claimant's allegations involved unspecified securities.

Unless otherwise admitted in its Answer, Respondent Morgan Stanley DW Inc. denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted the following defenses: failure to state a claim for relief, fraud and misrepresentation have not been plead with particularity, ratification, estoppel, waiver, Claimants' claims are barred by equity principles, laches, statutes of limitation, assumption of risk, and failure to mitigate.

In their Restated Statement of Claim, Claimants asserted the following causes of action: violation of the Washington State Securities Act and the Washington State Consumer Protection Act, unsuitability, churning, fraud, negligent misrepresentation, breach of fiduciary duty, constructive trust, and breach of contract.

Unless otherwise admitted in its Answer to Restated Statement of Claim, Respondent Morgan Stanley DW Inc. denied the allegations of wrongdoing set forth in Claimants' Restated Statement of Claim and asserted the following defenses: failure to state a claim for relief, fraud and misrepresentation have not been plead with particularity, ratification, estoppel, waiver, Claimants' claims are barred by equity principles, laches, statutes of limitation, assumption of risk, and failure to mitigate.

Respondent Alan M. Corwin informed the Panel at the hearing that he would like to adopt Respondent Morgan Stanley DW Inc.'s Answer to Restated Statement of Claim as his response to the Restated Statement of Claim.

RELIEF REQUESTED

Claimants, in their initial Statement of Claim, requested up to \$500,000.00 in compensatory damages, return of excess commissions, lost opportunity costs, pre- and post-judgment interest, and costs, including attorney's fees and NASD fees.

Claimants, in their Restated Statement of Claim, did not make a specific request for relief.

Respondent Morgan Stanley DW Inc., in its initial Statement of Answer, requested dismissal of Claimants' initial Statement of Claim in its entirety and costs.

Respondent Morgan Stanley DW Inc., in its Statement of Answer to Claimants' Restated Statement of Claim, requested dismissal of Claimants' Restated Statement of Claim and costs,

including an assessment of forum fees against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

On June 30, 2003, Claimants filed a Restated Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(b). On June 11, 2004, Respondent Morgan Stanley DW Inc. filed a Statement of Answer to Claimants' Restated Statement of Claim. The Panel hereby consents to the filing of both of these pleadings and to Respondent Alan M. Corwin's adoption of Respondent Morgan Stanley DW Inc.'s Answer to Claimants' Restated Statement of Claim as Mr. Corwin's response to the Restated Statement of Claim.

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) Respondents Morgan Stanley DW Inc. and Alan M. Corwin are jointly and severally liable to and shall pay Claimants John R. Barber & Ruth J. Simmons Barber, as Trustees of the Barber Family Trust, the sum of \$95,648.00 in compensatory damages.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the 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	= \$ 300.00
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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	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,750.00
Total Member Fees	= \$5,200.00

Adjournment Fees

The following adjournment fees are assessed:

May 25 – 27, 2004, adjournment requested by Claimants	= \$1,125.00
November 22-24, 2004, adjournment requested by Claimants	= \$ waived

The Panel assessed the fees for the adjournment of the May 25 – May 27, 2004 hearing dates 50% to Claimants and 50% to Respondent Morgan Stanley DW Inc.

Three-Day Cancellation Fees

Three-day cancellation fees apply when a hearing on the merits is postponed or settled within three business days before the start of the first scheduled hearing session. The following three-day cancellation fees are assessed:

Cancellation of the November 22-24, 2004 hearing dates:	= \$ waived
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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 a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conferences: June 15, 2004 1 session	

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One (1) pre-hearing conference session with the Panel @ \$1,125.00/session = \$2,250.00

Pre-hearing conferences: September 24, 2003 1 session
 October 31, 2003 1 session

Six (6) hearing sessions @ \$1,125.00/session = \$6,750.00

Hearings: September 13, 2005 2 sessions
 September 14, 2005 2 sessions
 September 15, 2005 2 sessions

Total Forum Fees = **\$9,450.00**

1. The Panel assessed \$4,725.00 of the forum fees jointly and severally to Claimants John R. Barber & Ruth J. Simmons Barber, as Trustees of the Barber Family Trust.
2. The Panel assessed \$4,725.00 of the forum fees jointly and severally to Respondents Morgan Stanley DW Inc. and Alan M. Corwin.

Fee Summary

1. Claimants John R. Barber & Ruth J. Simmons Barber, as Trustees of the Barber Family Trust are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 562.50
Forum Fees	= \$ 4,725.00
Total Fees	= \$ 5,587.50
<u>Less payments</u>	<u>= \$(1,425.00)</u>
Balance Due NASD Dispute Resolution	= \$ 4,162.50

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

Member Fees	= \$ 5,200.00
Adjournment Fee	= \$ 562.50
Total Fees	= \$ 5,762.50
<u>Less payments</u>	<u>= \$(5,200.00)</u>
Balance Due NASD Dispute Resolution	= \$ 562.50

3. Respondents Morgan Stanley DW Inc. and Alan M. Corwin are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 4,725.00
Balance Due NASD Dispute Resolution	= \$ 4,725.00

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.

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ARBITRATION PANEL

<i>Frederic E. Dorkin, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Ronald L. Peters, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Paul A. Maffeo</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures



Frederic E. Dorkin, Esq.
Chair, Public Arbitrator

Sept. 17, 2005
Signature Date

Ronald L. Peters, Esq.
Public Arbitrator

Signature Date

Paul A. Maffeo
Non-Public Arbitrator

Signature Date

9/19/05
Date of Service

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Frederic E. Dorkin, Esq.
Ronald L. Peters, Esq.
Paul A. Maffeo


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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Frederic E. Dorkin, Esq.
Chair, Public Arbitrator

Signature Date



Ronald L. Peters, Esq.
Public Arbitrator

9-17-05

Signature Date

Paul A. Maffeo
Non-Public Arbitrator

Signature Date

9/19/05

Date of Service

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Frederic E. Dorkin, Esq.
Chair, Public Arbitrator

Signature Date

Ronald L. Peters, Esq.
Public Arbitrator

Signature Date

Paul A. Maffeo

Paul A. Maffeo
Non-Public Arbitrator

Signature Date

9/19/05

Date of Service