

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

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In the Matter of the Arbitration Between:  
Morgan Stanley DW Inc., Claimant v. Gregory Scharlach, Respondent

Case Number: 03-00175

Hearing Site: San Francisco, California

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Nature of the Dispute: Member vs. Associated Person

**REPRESENTATION OF PARTIES**

For Claimant:

John R. St. John  
St. John, Wallace, Brennan & Folan  
LLP  
Torrance, California

For Respondent:

Gregory Scharlach  
Millbrae, California

**CASE INFORMATION**

Statement of Claim filed on or about: January 8, 2003

Claimant's Pre-Hearing Brief filed: February 10, 2004

Claimant Morgan Stanley DW Inc.'s ("Morgan Stanley") Uniform Submission Agreement  
signed: May 2002

**CASE SUMMARY**

Claimant alleged that Respondent breached the terms of his promissory note dated January 14, 1999 ("Note") and alleged that Respondent is indebted to Claimant in the sum of \$55,050.00 for money lent by Morgan Stanley to Respondent.

**RELIEF REQUESTED**

Claimant requested:

1. The principal balance due and owing under the Note in the amount of \$55,050.00;
2. Interest accrued during the term of the Note at the contract rate of 6%;
3. The costs of collection and of this proceeding, including attorney's fees, as agreed to under the terms of the Note; and

4. Any and all further relief that the Panel deems just and proper.

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

On February 20, 2003, 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.

Respondent did not file with NASD Dispute Resolution ("NASD-DR") a Statement of Answer or properly executed submission to arbitration. The Panel determined that Respondent has been properly served with Claimant's Statement of Claim and further determined that Respondent is required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and is bound by the determination of the Panel on all issues submitted.

On or about January 13, 2004, the Panel ruled that the evidentiary hearing scheduled for February 25, 2004, shall take place via telephone.

Respondent did not appear at the evidentiary hearing in this matter. Pursuant to Rule 10318 of the Code, the Panel determined that Respondent received proper notice of the hearing and ruled to proceed in Respondent's absence.

Claimant 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. Respondent is liable for and shall pay to Claimant the sum of \$55,050.00 in compensatory damages.
2. Respondent is liable for and shall pay to Claimant the sum of \$15,360.55 in interest at 6% per annum from January 14, 1999 through February 25, 2004.
3. Respondent is liable for and shall pay to Claimant the sum of \$1,298.13 in costs.
4. Respondent is liable for and shall pay to Claimant the sum of \$3,629.50 in attorney's fees pursuant to the terms of the Note.

5. All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$1,000.00

#### **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, Morgan Stanley is a party and the following fees are assessed:

Member Surcharge = \$1,100.00

Pre-Hearing Process Fee = \$ 750.00

Hearing Process Fee = \$1,700.00

Total Member Fees = \$3,550.00

#### **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/Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$750.00/session = \$750.00

Pre-hearing conference: January 13, 2004 1 session

(1) Hearing session @ \$750.00/session = \$750.00

Hearing: February 25, 2004 1 session

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Total Forum Fees = \$1,500.00

The Panel assessed the \$1,500.00 in forum fees to Respondent.

Fee Summary

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

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 3,550.00
Total Fees	= \$ 4,550.00
Less Payments	= \$ (3,600.00)
Balance Due NASD	= \$ 950.00

2. Respondent is charged with the following fees and costs:

Forum Fees	= \$ 1,500.00
Less Payments	= \$ (0.00)
Balance Due NASD	= \$ 1,500.00

All balances are payable to NASD Dispute Resolution and are payable upon the receipt of the Award pursuant to Rule 10 (g) of the Code.

ARBITRATION PANEL

Frank Weaver, Esq.	-	Non-Public Arbitrator, Presiding Chair
Jerold R. Babin	-	Non-Public Arbitrator
Robert Fisher	-	Non-Public Arbitrator

Concurring Arbitrators' signatures

  
Frank Weaver, Esq.  
Chair, Non-Public Arbitrator

2/27/04  
Signature Date

Jerold R. Babin  
Non-Public Arbitrator

                      
Signature Date

Robert Fisher  
Non-Public Arbitrator

                      
Signature Date

3/02/04  
Date of Service

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Total Fees	= \$ 4,550.00
Less Payments	= \$(3,600.00)
Balance Due NASD-DR	= \$ 950.00

2. Respondent is charged with the following fees and costs:

Forum Fees	= \$ 1,500.00
Less Payments	= \$ (0.00)
Balance Due NASD-DR	= \$ 1,500.00

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


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Jerold R. Babin	-	Non-Public Arbitrator
Robert Fisher	-	Non-Public Arbitrator

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Chair, Non-Public Arbitrator

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2. Respondent is charged with the following fees and costs:

Forum Fees	= \$ 1,500.00
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Balance Due NASD-DR	= \$ 1,500.00

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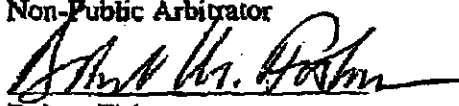
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