

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

James R. Pisaneschi and Carol J. Pisaneschi (Claimants) v. Morgan Stanley DW, Inc. and Michael Raymond Darby (Respondents)

Case Number: 03-00599

Hearing Site: Cleveland, Ohio

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

REPRESENTATION OF PARTIES

Claimants James R. Pisaneschi ("J. Pisaneschi") and Carol J. Pisaneschi ("C. Pisaneschi") and James R. Pisaneschi and Carol J. Pisaneschi JTWROS ("The Pisaneschis") hereinafter collectively referred to as "Claimants": Matthew W. Nakon, Esq., Wickens Herzer Panza Cook & Batista, L.P.A., Avon, OH.

Respondents Morgan Stanley DW, Inc. ("MSDW") and Michael Raymond Darby ("M. Darby") hereinafter collectively referred to as "Respondents": Michael A. Gross, Esq., Ulmer & Berne, LLP, Cleveland, OH.

CASE INFORMATION

Statement of Claim filed on or about: January 22, 2003.

Claimants signed the Uniform Submission Agreement: February 14, 2003.

Joint Statement of Answer filed by Respondents on or about: April 15, 2003.

Respondent MSDW did not sign the Uniform Submission Agreement.

Respondent M. Darby did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: unauthorized trading; unsuitability; failure to supervise; misrepresentations and omissions; violations of the New York Stock Exchange Rules; violations of the NASD Conduct Rules; breaches of contract; constructive fraud/breach of fiduciary duties; common law fraud; negligence; respondeat superior; and violation of Ohio's deceptive trade practices provisions. Claimants' claim involved common stock, corporate bonds, mutual funds, and municipal bond funds.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$425,000.00; pre-judgment interest at 10% per annum; disgorgement of commissions; costs of arbitration, including NASD filing fees, expert witness fees, attorneys' fees, accounting fees, expenses, and punitive damages.

Respondents requested that the case be dismissed in its entirety; that judgment be rendered in their favor; that they be awarded their costs, including reasonable attorneys' fees and forum fees; and that the Panel recommend the expungement of any and all references to this matter from Respondent M. Darby's CRD record.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, and appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

The parties have 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, and the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are jointly and severally liable for and shall pay to The Pisaneschis compensatory damages in the amount of \$3,661.00.
2. Respondents are jointly and severally liable for and shall pay to C. Pisaneschi compensatory damages in the amount of \$30,000.00.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee = \$300.00

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, Morgan Stanley DW, Inc. is a party.

Member surcharge = \$1,700.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$2,750.00

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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 = \$ 450.00
Pre-hearing conference: May 19, 2004 1 session

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$ 1,125.00
Pre-hearing conference: September 23, 2003 1 session

Eight (9) Hearing sessions @ \$1,125.00 = \$ 10,125.00
Hearing Dates: July 13, 2004 2 sessions
July 14, 2004 2 sessions
July 15, 2004 2 sessions
July 16, 2004 3 sessions

Total Forum Fees = \$ 11,700.00

1. The Panel has assessed \$11,700.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 1,575.00
<u>Refund Due Claimants</u>	= \$ 1,275.00

2. Respondent MSDW is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
<u>Total Fees</u>	= \$ 5,200.00

<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$11,700.00
<u>Total Fees</u>	= \$11,700.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$11,700.00


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

ARBITRATION PANEL

Michael L. King, J.D.	-	Public Arbitrator, Presiding Chairperson
Thomas R. Skulina, Esq.	-	Public Arbitrator
Robert V. Shepard	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument is which is my award.



Michael L. King, J.D.
Public Arbitrator, Presiding Chairperson

July 21, 2004

Signature Date

Thomas R. Skulina, Esq.
Public Arbitrator

Signature Date

Robert V. Shepard
Non-Public Arbitrator

Signature Date

July 23, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Michael L. King, J.D.	-	Public Arbitrator, Presiding Chairperson
Thomas R. Skulina, Esq.	-	Public Arbitrator
Robert V. Shepard	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.

Michael L. King, J.D.
Public Arbitrator, Presiding Chairperson

Signature Date



Thomas R. Skulina, Esq.
Public Arbitrator

7-20-04

Signature Date

Robert V. Shepard
Non-Public Arbitrator

Signature Date

July 23, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Michael L. King, J.D.	-	Public Arbitrator, Presiding Chairperson
Thomas R. Skulina, Esq.	-	Public Arbitrator
Robert V. Shepard	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

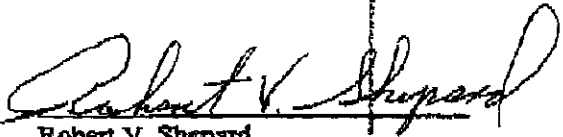
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument is which is my award.

Michael L. King, J.D.
Public Arbitrator, Presiding Chairperson

Signature Date

Thomas R. Skulina, Esq.
Public Arbitrator

Signature Date



Robert V. Shepard
Non-Public Arbitrator

July 20, 2004

Signature Date

July 23, 2003

Date of Service (For NASD Dispute Resolution use only)