

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Joseph Najjar

and

03-00776
Phoenix, Arizona

Name of Respondents

Morgan Stanley DW Inc.
John P. Maskubi

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

REPRESENTATION OF PARTIES

Joseph Najjar ("**Claimant**") was represented by Geoffrey Trachtenberg, Esq., Levenbaum & Cohen, Phoenix, Arizona.

Morgan Stanley DW Inc. ("**Respondent MSDW**") and John P. Maskubi ("**Respondent Maskubi**") were represented by David Z. Seide, Esq., Morgan Stanley DW Inc., Los Angeles, California. At the time of filing Respondents' Statement of Answer, Respondents were represented by Judith M. Rosenberg, Esq., Morgan Stanley DW Inc., San Francisco, California.

CASE INFORMATION

The Statement of Claim was filed on or about February 3, 2003. Claimant's Pre-Hearing Statement was filed on or about October 20, 2003. Submission Agreement of Claimant Joseph Najjar was signed on January 28, 2003.

Statement of Answer was filed by Respondents Morgan Stanley DW Inc. and John P. Maskubi on or about March 13, 2003. Response to Claimant's Pre-Hearing letter dated October 20, 2003 was filed on or about October 23, 2003. Submission Agreement of Respondent Morgan Stanley DW Inc. was signed on March 12, 2003 by Judith M. Rosenberg. Submission Agreement of Respondent John P. Maskubi was signed on March 11, 2003.

CASE SUMMARY

Claimant alleged that Respondents' conduct constituted: breach of contract, negligence, failure to supervise, breach of fiduciary duty, misrepresentations, omissions, suitability, and securities fraud. Specifically, Claimant stated:

Mr. Maskubi thereafter invested Mr. Najjar's funds, without his consent and without obtaining proper written authorization, putting 10% into a self-entitled "high risk" technology/bio-technology mutual fund (i.e. Putnam New Opportunities Fund B) and dedicating the other 90% of the funds between ten or eleven large-capitalization telecommunications, technology or biotechnology stocks – indeed concentrating more than 75% of this money in only eight (8) "high-technology"/"telecommunications" common stocks and more than 50% of this money in an astonishing five (5) "high-technology" common stocks.,..., Not only did Mr. Maskubi utterly fail to disclose any of the risks involved in such transactions, such an allocation was completely unsuitable for someone with Mr. Najjar's financial goals and characteristics.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated

Claimant presented himself to Mr. Maskubi as a reasonably sophisticated investor who was disappointed in the lagging returns of his present investments and wished to take advantage of the then booming stock market. Mr. Maskubi's recommendations were suitable to that objective.

Claimant also failed to mitigate his alleged damages. When the market turned, Claimant was faced with a choice of selling and repositioning his investments or holding and waiting for a market recovery. Claimant chose to hold, transferred the account away from Mr. Maskubi, and then rejected Mr. Bahbah's suggestion to diversify into other sectors.

As was evident from the account statements Claimant received, market conditions caused Claimant's account value to decrease. Mr. Maskubi continued to keep in contact with Claimant, who was aware of the effect of the market on his account. Although Claimant expressed his disappointment at the state of the market, he raised no complaint concerning his investments or Mr. Maskubi's conduct.

RELIEF REQUESTED

Claimant requested an award as follows:

- A. For the sum of \$200,000.00, plus prejudgment interest at the rate of 10% per annum;
- B. For attorneys' fees and costs incurred in pursuing this matter at the rate of \$250.00 per hour, the exact amount of which will be proven at or subsequent to the arbitration;

- C. For all other compensatory, incidental and consequential damages, the exact amount which will be proven at or subsequent to the arbitration;
- D. For post-judgment interest at the rate of 10% per annum; and
- E. For such other relief as the arbitrators deem necessary and proper.

Respondents requested that the arbitration claim be dismissed in its entirety; that all costs of this proceeding be assessed against Claimant; that the arbitrators issue an order (to be confirmed by a court of competent jurisdiction) expunging this arbitration claim from Mr. Maskubi's CRD record; and for such other and further relief as is equitable under the circumstances.

OTHER ISSUES CONSIDERED & DECIDED

During the course of the hearing, Claimant withdrew the claims for unauthorized trading. Claimant also limited the request for damages to the time period that Respondent Maskubi was the broker for the account. (up to September, 2001).

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Morgan Stanley DW Inc. and John P. Maskubi shall be and hereby are jointly and severally liable for and shall pay to Claimant Joseph Najjar the sum of \$20,000.00 (**Twenty Thousand Dollars and No Cents**) as compensatory damages.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Morgan Stanley DW Inc.

Member surcharge	\$ 1,700.00
Pre-hearing process fee	\$ 750.00
Hearing process fee	\$ 2,750.00
Total Member Fees	\$ 5,200.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

1 Pre-hearing session(s) with Panel	x	1,125.00	\$ 1,125.00
August 4, 2003	1 session		
4 Hearing sessions	x	1,125.00	\$ 4,500.00
October 27, 2003	2 sessions		
October 28, 2003	2 sessions		
Total Forum Fees			\$ 5,625.00

The Arbitration Panel has assessed \$0.00 of the forum fees to Joseph Najjar.

The Arbitration Panel has assessed \$5,625.00 of the forum fees jointly and severally to Morgan Stanley DW Inc., and John P. Maskubi.

Fee Summary

Claimant, Joseph Najjar, shall be and hereby is liable for:

Initial Filing Fee	= \$	300.00
<u>Forum Fees</u>	= \$	0.00
Total Fees	= \$	300.00
<u>Less payments</u>	= \$	-1,425.00
Balance to be refunded by NASD Dispute Resolution	= \$	-1,125.00

Respondent, Morgan Stanley DW Inc., shall be and hereby is liable for:

Member Fees	= \$	5,200.00
<u>Forum Fees</u>	= \$	0.00
Total Fees	= \$	5,200.00
<u>Less payments</u>	= \$	-5,200.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Morgan Stanley DW Inc., and John P. Maskubi, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$	5,625.00
Total Fees	= \$	5,625.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	5,625.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Bruce R. Heurlin - Public Arbitrator, Presiding Chair
S. Jeffrey Minker - Public Arbitrator
Peter Joseph Kalman - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Bruce R. Heurlin
Bruce R. Heurlin
Public Arbitrator, Presiding Chair

October 31, 2003
Signature Date

/s/ S. Jeffrey Minker
S. Jeffrey Minker
Public Arbitrator

November 3, 2003
Signature Date

/s/ Peter Joseph Kalman
Peter Joseph Kalman
Non-Public Arbitrator

October 30, 2003
Signature Date

10/30/2003 17:13 FAX

NASD

008/008

NASD Dispute Resolution, Inc.
Arbitration No. 03-00776
Award Page 6 of 6

Concurring Arbitrators:

Bruce Heurlin
Bruce R. Heurlin
Public Arbitrator, Presiding Chair

10-31-03
Signature Date

S. Jeffrey Minker
S. Jeffrey Minker
Public Arbitrator

Signature Date

Peter Joseph Kalman
Peter Joseph Kalman
Non-Public Arbitrator

Signature Date

unintentional?

NASD Dispute Resolution, Inc.
Arbitration No. 03-00776
Award Page 6 of 6

Concurring Arbitrators:

Bruce R. Heurlin
Public Arbitrator, Presiding Chair


S. Jeffrey Minker
Public Arbitrator

Peter Joseph Kalman
Non-Public Arbitrator

Signature Date


Signature Date

Signature Date

NASD Dispute Resolution, Inc.
Arbitration No. 03-00776
Award Page 6 of 6

Concurring Arbitrators:

Bruce R. Heurlin
Public Arbitrator, Presiding Chair

Signature Date

S. Jeffrey Minkes
Public Arbitrator

Signature Date

Peter Joseph Kalman
Non-Public Arbitrator

Signature Date

10/30/2003