

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Robin Smith

Case Number: 03-01024

Name of the Respondents
Morgan Stanley DW Inc.;
Arthur B. Segall; and,
Carla S. Leverman

Hearing Site: Dallas, Texas

NATURE OF THE DISPUTE

Public Customer v. Member Firm and Associated Persons

REPRESENTATION OF PARTIES

Claimant Robin Smith, hereinafter referred to as "Claimant": John T. Palter, Esq. of the firm of Davis Munck, P.C., located in Dallas, Texas.

Respondents Morgan Stanley DW Inc. ("MSDW"); Arthur B. Segall ("Segall"); and Carla S. Leverman ("Leverman"), hereinafter collectively referred to as "Respondent(s)": Thomas D. Birge, Esq. of Birge & Minckley, P.C., located in Denver, Colorado, and Jeffrey F. Silverman, Esq. of Morgan Stanley DW Inc., located in San Francisco, California.

CASE INFORMATION

Statement of Claim filed: February 11, 2003.

Claimant signed the Uniform Submission Agreement: February 3, 2003.

Amended Statement of Claim filed: October 1, 2003.

Joint Statement of Answer filed by Respondents on: April 25, 2003.

Respondent MSDW signed the Uniform Submission Agreement: April 25, 2003.

Respondents Segall and Leverman did not file signed Uniform Submission Agreements.

Claimant's Motion for Leave to File Second Amended Statement of Claim filed: March 17, 2004.

Respondents' Response to Motion to Amend Statement of Claim filed: April 2, 2004.

Claimant's Reply to Response to Motion for Leave to File Second Amended Statement of Claim filed: April 14, 2004.

Claimant's Hearing Brief on Liability Issues filed on: March 29, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; breach of fiduciary duty; failure to supervise as to Morgan Stanley; negligence; gross negligence; misrepresentation; negligent misrepresentation; and violations of the Federal Securities Act of 1934. These causes of action related to Respondents' overall investment of Claimant's portfolio, involving multiple securities, into unsuitable investments that were in violation of their own plan and the exposed Claimant to an unreasonable amount of risk.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The claims are barred, in whole or in part, by the applicable statute of limitations;
2. The claims are barred because the Claimant has failed to mitigate her alleged damages;
3. The claims are barred under the doctrines of waiver, ratification, estoppel, laches and unclean hands;
4. The Claimant's damages, if any, were caused by the acts and omissions of the Claimant and not by the acts or omissions of Respondents;
5. The claims are barred because the Claimant has expressly and by her actions assumed the risks of her investment strategy;
6. The claims are barred because the Claimant lacks standing to bring an action based on the regulations of the securities industry;
7. The claims are barred for failure to state a claim upon which relief can be granted;
8. The claims are barred as a result of Claimant's failure to exercise due diligence and failure to timely disaffirm the transaction and acts complained of in the Claim, despite Claimant's knowledge of these transactions; and,
9. Claimant is barred from recovery from Respondents because any injury or damage suffered by Claimant is attributable to third persons or entities over which Respondents had no control.

RELIEF REQUESTED

Claimant Robin Smith requested:

Compensatory Damages	\$321,000.00
Punitive/Exemplary Damages	Amount to be determined by the Panel
Interest	Prejudgment and post judgment interest at the maximum legal rate
Attorneys' Fees	Unspecified amount
Other Costs	Unspecified amount
Other Monetary/Non-Monetary Relief if any:	In law or equity, to which Claimant may show herself entitled.

Respondents Morgan Stanley DW Inc., Arthur B. Segall and Carla S. Leverman requested that the Panel dismiss Claimant's claim in its entirety, enter an award in Respondents' favor, and order that this matter be expunged from Segall and Leverman's CRD record.

OTHER ISSUES CONSIDERED AND DECIDED

On April 26, 2004, the Panel denied Claimant's Motion for Leave to File Second Amended Statement of Claim.

Respondents Arthur B. Segall and Carla S. Leverman did not file with NASD Dispute Resolution, a properly executed submission to arbitration, but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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, 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. The claims asserted by Claimant Robin Smith against Respondents Morgan Stanley DW Inc., Arthur B. Segall and Carla S. Leverman are dismissed with prejudice and denied in their entirety;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Arthur B. Segall's and Carla S. Leverman's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Arthur B. Segall and Carla S. Leverman must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated in this decision; and,
4. Any and all relief not specifically addressed herein 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 persons at the time of the events giving rise to the dispute. Accordingly, Morgan Stanley DW Inc. is a party and the following member fees are assessed:

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

May 3-6, 2004 adjournment by Respondents	= \$ 1,125.00
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Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

One (1) Pre-hearing session with Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: October 3, 2003 1 session	
Eight (8) Hearing sessions @ \$1,125.00	= \$ 9,000.00
Hearing Dates: November 8, 2004 2 sessions	
November 9, 2004 3 sessions	
November 10, 2004 3 sessions	
<hr/> Total Forum Fees	<hr/> = \$10,125.00

The Panel has assessed \$5,062.50 of the forum fees to Claimant Robin Smith and has assessed \$5,062.50 of the forum fees jointly and severally to Respondents Morgan Stanley DW Inc., Arthur B. Segall and Carla S. Leverman.

SEE SUMMARY

Claimant Robin Smith is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 5,062.50
Total Fees	= \$ 5,362.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 3,937.50

Respondent Morgan Stanley DW Inc is solely liable for:

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

Respondents Morgan Stanley DW Inc., Arthur B. Segall and Carla S. Leverman are jointly and severally liable for:

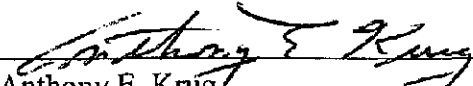
Adjournment Fee	= \$ 1,125.00
<u>Forum Fees</u>	<u>= \$ 5,062.50</u>
Total Fees	= \$ 6,187.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 6,187.50

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

ARBITRATION PANEL

Anthony E. Krug - Public Arbitrator, Presiding Chairperson
William L. Dorcy - Public Arbitrator
George F. Longino, III - Non-Public Arbitrator

Concurring Arbitrators' Signatures


Anthony E. Krug
Public Arbitrator, Presiding Chairperson

Nov. 19, 2004
Signature Date

William L. Dorcy
Public Arbitrator

Signature Date

George F. Longino, III
Non-Public Arbitrator

Signature Date

11/23/04 Klu
Date of Service (For NASD Dispute Resolution office use only)

Member Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Morgan Stanley DW Inc., Arthur B. Segall and Carla S. Leverman are jointly and severally liable for:

Adjournment Fee	= \$ 1,125.00
Forum Fees	= \$ 5,062.50
Total Fees	= \$ 6,187.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 6,187.50

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Anthony E. Krug
Public Arbitrator, Presiding Chairperson

Signature Date

William L. Dorcy
William L. Dorcy
Public Arbitrator

11-19-04
Signature Date

George F. Longino, III
Non-Public Arbitrator

Signature Date

11/23/04
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Member Fees	= \$ 5,200.00
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Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Morgan Stanley DW Inc., Arthur B. Segall and Carla S. Leverman are jointly and severally liable for:

Adjournment Fee	= \$ 1,125.00
<u>Forum Fees</u>	<u>= \$ 5,062.50</u>
Total Fees	= \$ 6,187.50
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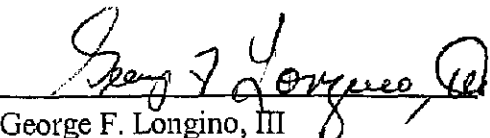
Concurring Arbitrators' Signatures

Anthony E. Krug
Public Arbitrator, Presiding Chairperson

Signature Date

William L. Dorcy
Public Arbitrator


Signature Date



George F. Longino, III
Non-Public Arbitrator

Nov 17 2004

Signature Date

11/23/04 

Date of Service (For NASD Dispute Resolution office use only)