
Award
NASD DISPUTE RESOLUTION

In the Matter of the Arbitration Between:

Name of Claimant
Raymond James & Associates, Inc.

Case Number: 03-01156

Names of Respondents
Morgan Stanley DW Inc.
Joseph Sharpe

Hearing Site: Memphis, TN

REPRESENTATION OF PARTIES

For Raymond James & Associates, Inc. ("RJA"), hereinafter referred to as "Claimant": Shepherd D. Tate, Esq., Tate, Lazarini & Beall, PLC, Memphis, TN.

For Respondent Morgan Stanley DW Inc. ("MSDW"): Brett D. Sherman, Vice President, Senior Attorney, MSDW, New York, NY.

For Respondent Joseph Sharpe ("Sharpe"): Lisa A. Krupicka, Esq., Burch, Porter & Johnson, PLLC, Memphis, TN.

CASE INFORMATION

Statement of Claim filed on or about: February 18, 2003.

Claimant signed the Uniform Submission Agreement: February 18, 2003.

Statement of Answer and Counterclaim filed by Respondent MSDW on or about: April 16, 2003.

Statement of Answer filed by Respondent Sharpe on or about: April 16, 2003.

Respondents MSDW and Sharpe did not file executed Uniform Submission Agreements.

Claimant's Response to MSDW's Counterclaim, Motion to Dismiss Counterclaim or to Sever Claims for Improper Joinder, and Motion to Preclude filed on or about: May 14, 2003.

Respondent MSDW's Response to Claimant's Motion to Bar or Sever Counterclaims and to Preclude filed on or about: June 3, 2003.

Claimant's Motion to Amend Statement of Claim ("Motion to Amend") filed on or about: March 10, 2003.

Respondent MSDW's response to Claimant's Motion to Amend filed on or about: March 25, 2003.

Response to MSDW's Opposition to Claimant's Motion to Amend filed on or about: March 27, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract and restrictive covenants; inducement to breach contract; improper solicitation of Claimant's customers; and, misappropriation and use of company records, proprietary information, trade secrets, and assets. The causes of action relate to the termination of Respondent Sharpe's employment with Claimant and subsequent employment with Respondent MSDW.

Unless specifically admitted in its Answer, Respondent MSDW denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In its Counterclaim, Respondent MSDW asserted the following causes of action: misappropriation of trade secrets; tortious interference; and, aiding and abetting breaches of contract, fiduciary duties, and duty of loyalty. The causes of action relate to the termination of a third party's employment with MSDW and subsequent employment with RJA and MSDW's assertion that RJA then solicited account transfers of MSDW customers to RJA with said third party's assistance.

Unless specifically admitted in his Answer, Respondent Sharpe denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested permanent injunctive relief, unspecified compensatory damages, interest, costs, expenses and expert witness fees, and dismissal of Respondent MSDW's Counterclaim. Claimant further requested treble damages from Respondent MSDW and compensatory damages of \$50,000.00 and attorneys' fees from Respondent Sharpe in accordance with his employment agreement with Claimant.

Respondent MSDW requested unspecified compensatory damages, attorneys' fees, costs, dismissal of the Statement of Claim, and such other and further relief as the undersigned arbitrators (the "Panel") deemed just, fair and proper.

Respondent Sharpe requested dismissal of the Statement of Claim, costs, and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

On or about March 4, 2003, the Panel issued an order which denied Claimant's request for a permanent injunction.

On or about April 2, 2003, the Panel issued an order which granted Claimant's Motion to Amend.

On or about June 13, 2003, the Panel issued an order which denied Claimant's Motion to Dismiss Counterclaim and Motion to Preclude. The Panel granted Claimant's Motion to Sever and permitted Respondent MSDW to pursue its Counterclaim in a separate action.

Respondents MSDW and Sharpe did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (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, and the post-hearing

submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondents are liable, jointly and severally, and shall pay to Claimant compensatory damages in the sum of \$50,000.00, pre-judgment interest specifically excluded. The Panel was troubled by the restrictiveness of specific language in Claimant's employment contract relative to the issue of liquidated damages being limited to the costs of obtaining a Series 7 registration. However, the Panel determined that Claimant was entitled to liquidated damages as a measure of recovery for its overall costs to hire and train its employee. The Panel further determined that, notwithstanding any common perception of what is "usual practice within the industry", employment contracts should, as a matter of principle, be enforceable and that any party who chooses to not honor his contract, or who induces one to not honor his contract, should be held liable for damages incurred as a result of such breach.

Respondents are liable, jointly and severally, and shall pay to Claimant attorneys' fees in the sum of \$64,321.04 pursuant to Claimant's employment contract.

Respondents are liable, jointly and severally, and shall pay to Claimant the sum of \$500.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Any and all claims for relief not specifically addressed herein, including Claimant's request for treble damages, are 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	= \$ 500.00
Counterclaim filing fee	= \$ 500.00

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, Respondents RJA and MSDW are parties.

Claimant RJA:

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,200.00</u>
Total Member Fees	= \$4,450.00

Respondent MSDW:

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00

<u>Hearing process fee</u>	= \$2,200.00
Total Member Fees	= \$4,450.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournments were granted during these proceedings for which fees were assessed.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

1. Claimant is assessed:

Injunctive relief surcharge	= \$2,500.00
Additional arbitrator honoraria	= \$ 312.50
Arbitrator travel expenses and costs	= \$ 151.21

2. Respondents are assessed, jointly and severally:

Additional arbitrator honoraria	= \$ 312.50
Arbitrator travel expenses and costs	= \$ 548.04

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:

Five (5) Pre-hearing sessions with Panel @ \$1,000.00	= \$5,000.00
Pre-hearing conferences:	
February 28, 2003	1 session
March 3, 2003	2 sessions
April 2, 2003	1 session
June 25, 2003	1 session
Four (4) Hearing sessions @ \$1,000.00	= \$4,000.00
Hearing Dates:	
July 24, 2003	2 sessions
July 25, 2003	2 sessions
Total Forum Fees	= \$9,000.00

The Panel has assessed the total forum fees of \$9,000.00 jointly and severally to Respondents.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
Member Fees	= \$4,450.00
Injunctive Relief Fees	= \$2,500.00
Additional arbitrator honoraria	= \$ 312.50
<u>Arbitrator travel expenses and costs</u>	<u>= \$ 151.21</u>
Total Fees	= \$7,913.71
<u>Less payments</u>	<u>= \$3,625.00</u>
Balance Due NASD Dispute Resolution	= \$4,288.71

Respondent MSDW is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$4,450.00
Total Fees	= \$4,950.00
<u>Less Payments</u>	<u>= \$4,950.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Additional arbitrator honoraria	= \$ 312.50
Arbitrator travel expenses and costs	= \$ 548.04
<u>Forum Fees</u>	<u>= \$9,000.00</u>
Total Fees	= \$9,860.54
<u>Less Payments</u>	<u>= \$3,675.00</u>
Balance Due NASD Dispute Resolution	= \$6,185.54

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

ARBITRATION PANEL

Gary S. Jefferson, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Richard L. Oates	-	Non-Public Arbitrator
Eugene R. Katz	-	Non-Public Arbitrator

NASD Dispute Resolution

Arbitration No. 03-01156

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Concurring Arbitrators' Signatures

/s/

Gary S. Jefferson, Esq.

Non-Public Arbitrator, Presiding Chairperson

Signature Date

/s/

Richard L. Oates

Non-Public Arbitrator

Signature Date

/s/

Eugene R. Katz

Non-Public Arbitrator

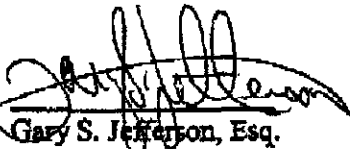
Signature Date

August 27, 2003

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

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Concurring Arbitrators' Signatures



Gary S. Jefferson, Esq.
Non-Public Arbitrator, Presiding Chairperson

8/27/03

Signature Date

Richard L. Oates
Non-Public Arbitrator

Signature Date

Eugene R. Katz
Non-Public Arbitrator

Signature Date

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


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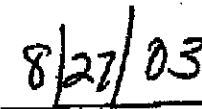
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