

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Robert Craig and Christine A. Hamilton

and

03-01420
Phoenix, Arizona

Name of Respondents

Morgan Stanley DW Inc.

Nature of the Dispute: Customers vs. Member.

REPRESENTATION OF PARTIES

Robert Craig and Christine A. Hamilton ("**Claimant**") was represented by Rosemary J. Shockman, Esq., Shockman Law Office, Scottsdale, Arizona.

Morgan Stanley DW Inc. ("**Respondent**") represented by Joseph E. Mais, Esq. and Brian C. Lake, Esq., Perkins Coie Brown & Bain, Phoenix, Arizona.

CASE INFORMATION

The Statement of Claim was filed on or about September 22, 2003. Supplement to Statement of Claim was filed on or about February 2, 2004. Supplement to Statement of Claim was filed on or about November 2, 2004. Submission Agreement of Claimant Robert Craig and Christine A. Hamilton was signed and undated.

Statement of Answer was filed by Respondent Morgan Stanley DW Inc. on or about January 20, 2004. Submission Agreement of Respondent Morgan Stanley DW Inc. was signed on January 16, 2004 by Anne T. Cooney.

CASE SUMMARY

Claimants asserted the following causes of action: negligence, negligent failure to supervise, breach of contract, breach of fiduciary duty, and respondeat superior liability. Claimants specifically alleged that:

1. On the eve of their retirement, the Hamiltons' long time stockbroker, Perry Allen Basch, systematically converted their life savings to high-risk, market driven variable annuities.

Basch implemented this highly unsuitable strategy despite his knowledge that the Hamiltons were retiring and had to survive on the income generated by their portfolio. In addition to needlessly placing the Hamiltons' retirement at the mercy of the market, Basch's strategy also suffered from the following fatal flaws:

2. Basch invested tax-deferred funds into variable annuities. One of the primary benefits of a variable annuity is the accumulation of earnings, tax free. Since an IRA is already tax deferred, the benefit of a variable annuity is meaningless to the investor. The same cannot be said for the broker. In this case Basch substantially increased his commissions and the Hamiltons' cost of investing by placing them in unsuitable variable annuities. There is no excuse for this. The funding of variable annuities with tax-deferred funds has been repeatedly criticized by the NASD.
3. Basch utilized a variable annuity to provide life insurance for a couple that neither needed nor wanted it. This business practice has also been the subject of numerous NASD warnings to industry members to stop this unethical practice.
4. Basch purchased variable annuities despite his knowledge that the Hamiltons would occasionally be forced to take withdrawals, subjecting them to redemption fees. This foreseeable event needlessly increased the cost of an already expensive investment.

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

The Statement of Claim misrepresents Claimants' investment history and their relationship with Financial Advisor Perry Basch. Claimants are intelligent, experienced investors who have invested in annuities as well as other investments since the 1980's. Now, after the period of unprecedented stock market declines that occurred between mid-2000 and 2002, Claimants improperly seek to "unwind" their late 1999 decision to allocate more of their portfolio into equities. As we explain below, Claimants made a conscious and informed decision to invest in variable annuities to achieve their income *and* growth objectives, and because the annuities provided desirable death benefits. Moreover, contrary to what is alleged in the Claim, Morgan Stanley and Mr. Basch at all times dealt with the Hamiltons in a professional and responsible manner, which was consistent with all applicable securities rules and regulations.

RELIEF REQUESTED

Claimants requested an award in the amount of \$300,000.00, interest, costs and attorneys' fees.

Respondent requested that the Panel dismiss the Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

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. Respondent Morgan Stanley DW, Inc. shall be and hereby is liable for and shall pay to Claimants Robert Craig and Christine A. Hamilton the sum of \$160,000.00 as compensatory damages.
2. Respondent Morgan Stanley DW, Inc. shall be and hereby is liable for and shall pay to Claimants Robert Craig and Christine A. Hamilton the sum of \$2,664.00 as costs.
3. 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.
4. 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, not specifically awarded or otherwise provided for above.

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

Adjournment Fees

Adjournments requested during these proceedings:

Hearing Date(s) February 14-18, 2005, adjournment requested by Respondent. Fee = \$1,125.00 waived by Arbitration Panel.

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
May 5, 2004	1 session			
9 Hearing sessions	x	1,125.00	\$	10,125.00
May 3, 2005	2 sessions			
May 4, 2005	2 sessions			
May 5, 2005	2 sessions			
May 6, 2005	3 sessions			
Total Forum Fees			\$	11,250.00

The Arbitration Panel has assessed \$11,250.00 of the forum fees to Morgan Stanley DW Inc.

Fee Summary

Claimants, Robert Craig and Christine A. Hamilton shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$	300.00
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
Forum Fees	= \$	11,250.00
Total Fees	= \$	16,450.00
Less payments	= \$	-5,200.00
Balance Due NASD Dispute Resolution	= \$	11,250.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Beryl I. Dulsky, Esq. - Public Arbitrator, Presiding Chair
Lee R. Barbakoff - Public Arbitrator
Victor B. Taube - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Beryl I. Dulsky
Beryl I. Dulsky, Esq.
Public Arbitrator, Presiding Chair

June 16, 2005
Signature Date

/s/ Lee R. Barbakoff
Lee R. Barbakoff
Public Arbitrator

June 14, 2004
Signature Date

/s/ Victor B. Taube
Victor B. Taube
Non-Public Arbitrator

June 15, 2005
Signature Date

June 17, 2005
Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 03-01420
Award Page 5 of 5

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

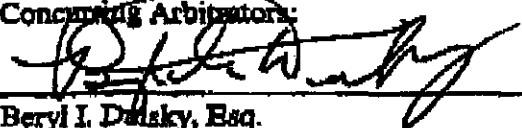
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ARBITRATION PANEL

Beryl I. Dulsky, Esq. - Public Arbitrator, Presiding Chair
Lee R. Barbakoff - Public Arbitrator
Victor B. Taube - Non-Public Arbitrator

Concerning Arbitrators:


Beryl I. Dulsky, Esq.
Public Arbitrator, Presiding Chair

6/16/05
Signature Date

Lee R. Barbakoff
Public Arbitrator

Signature Date

Victor B. Taube
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution
Arbitration No. 03-01420
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Lee R. Barbakoff - Public Arbitrator
Victor B. Taube - Non-Public Arbitrator

Concurring Arbitrators:

Beryl I. Dulsky, Esq.
Public Arbitrator, Presiding Chair


Lee R. Barbakoff
Public Arbitrator

Signature Date


Signature Date

Victor B. Taube
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution
Arbitration No. 03-01420
Award Page 5 of 5

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Lee R. Barbakoff - Public Arbitrator
Victor B. Taube - Non-Public Arbitrator

Concurring Arbitrators:

Beryl I. Dulsky, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Lee R. Barbakoff
Public Arbitrator

Signature Date

Victor B. Taube
Victor B. Taube
Non-Public Arbitrator

6/15/05
Signature Date

Date of Service (For NASD office use only)