

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Dean Tabai, Claimant v. Morgan Stanley DW Inc. and Trent P. Staggs, Respondents

Case Number: 03-01707

Hearing Site: San Francisco, California

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

**REPRESENTATION OF PARTIES**

For Claimant:

Timothy A. Canning, Esq.  
Novato, California

For Respondent Morgan Stanley DW Inc.:

Judith M. Rosenberg, Esq.  
Morgan Stanley DW Inc.  
San Francisco, California

For Respondent Trent P. Staggs:

Trent P. Staggs  
Sandy, Utah

**CASE INFORMATION**

Statement of Claim filed: March 6, 2003

Claimant's Uniform Submission Agreement signed: February 17, 2003

Statement of Answer filed by Respondent Morgan Stanley DW Inc. ("Morgan Stanley"): May 2, 2003

Respondent Morgan Stanley's Uniform Submission Agreement signed: May 2, 2003

**CASE SUMMARY**

Claimant alleged the following claims with respect to his margin account and in connection with investments in various securities, including but not limited to investments in INTC: 1) Fraud; 2) Negligence; 3) Breach of Contract; and 4) Breach of Fiduciary Duty. Claimant also alleged violation of NYSE and NASD Rules.

Respondent Morgan Stanley denied Claimant's allegations of wrongdoing and denied any liability to Claimant.

### **RELIEF REQUESTED**

Claimant requested:

1. Damages in the amount of \$450,000.00 or more, subject to proof at hearing, plus interest;
2. Reimbursement for the reasonable costs and fees in the prosecution of this claim, including expert witness fees and other costs associated with pursuing this arbitration; and
3. Punitive and exemplary damages.

Respondent Morgan Stanley requested:

1. That Claimant's Statement of Claim be dismissed in its entirety;
2. That all costs of this proceeding, including attorneys' fees and expert witness fees as allowed by law, be assessed against Claimant; and
3. Such other and further relief as the Panel deems appropriate.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On October 16, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators. Pursuant to the Code of Arbitration Procedure IM-10100 the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

Respondent Trent P. Staggs did not file with NASD Dispute Resolution ("NASD-DR") a Statement of Answer or properly executed submission to arbitration. The Panel determined that Respondent Staggs has been properly served with Claimant's Statement of Claim and further determined that Respondent Staggs is required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and is bound by the determination of the Panel on all issues submitted.

Respondent Trent P. Staggs did not appear at the evidentiary hearing in this matter. Pursuant to Rule 10318 of the Code, the Panel determined that Respondent Staggs received proper notice of the hearing and ruled to proceed in Mr. Staggs' absence.

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

- 1) After Claimant presented its Case in Chief in this matter, Respondent made a Motion to Dismiss all claims against all Respondents. Counsel for both parties argued the merits of the Motion. After considering the pleadings, the testimony, arguments by Counsel and the evidence presented by Claimant in his Case in Chief, the Panel granted Respondent's Motion to Dismiss. Claimant requested that the Panel reconsider its Decision and Claimant Tabai, speaking for himself, presented his oral arguments as to why the Panel should reverse its decision to grant Respondent's Motion to Dismiss. After giving due consideration to the argument presented by Claimant Tabai, the Panel reaffirmed its decision to grant Respondent's Motion to Dismiss all claims, including the claims for punitive and exemplary damages, against all Respondents.
- 2) Each party shall bear its own costs, including attorney's fees.
- 3) All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$300.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, Morgan Stanley is a party and the following fees are assessed:

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 Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$1,125.00/session = \$1,125.00  
Pre-hearing conference: January 20, 2004 1 session

(3) Hearing sessions @ \$1,125.00/session = \$3,375.00  
Hearing: June 7, 2004 2 sessions  
June 8, 2004 1 session

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**Total Forum Fees = \$4,500.00**

The Panel assessed \$2,250.00 in forum fees to Claimant.

The Panel assessed \$2,250.00 in forum fees jointly and severally to Respondents, Morgan Stanley and Trent P. Staggs.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 2,250.00
Total Fees	= \$ 2,550.00
<u>Less Payments</u>	= \$ (1,475.00)
Balance Due NASD-DR	= \$ 1,075.00

2. Respondent Morgan Stanley is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Less Payments</u>	= \$(5,200.00)
Balance Due NASD-DR	= \$ 0.00

3. Respondents Morgan Stanley and Trent P. Staggs are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 2,250.00
<u>Less Payments</u>	= \$ (0.00)
Balance Due NASD-DR	= \$ 2,250.00

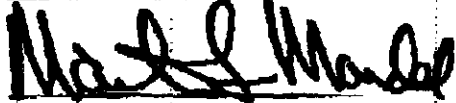
All balances are payable to NASD Dispute Resolution and are payable upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Martin Mandel  
Joseph Berzok, J.D.  
Timothy P. Bogan, CPA

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Martin Mandel  
Chair, Public Arbitrator

6/14/04  
Signature Date

Joseph Berzok, J.D.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

Timothy P. Bogan, CPA  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

6/16/04  
Date of Service

**ARBITRATION PANEL**

Martin Mandel	-	Public Arbitrator, Presiding Chair
Joseph Berzok, J.D.	-	Public Arbitrator
Timothy P. Bogan, CPA	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Martin Mandel  
Chair, Public Arbitrator

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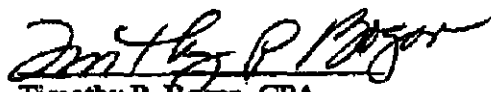
Signature Date

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Joseph Berzok, J.D.  
Public Arbitrator

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Signature Date

  
Timothy P. Bogan, CPA  
Non-Public Arbitrator

6-14-04  
Signature Date

6/16/04  
Date of Service

**ARBITRATION PANEL**

Martin Mandel	-	Public Arbitrator, Presiding Chair
Joseph Berzok, J.D.	-	Public Arbitrator
Timothy P. Bogan, CPA	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Martin Mandel  
Chair, Public Arbitrator

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Signature Date

  
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Joseph Berzok, J.D.  
Public Arbitrator

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6/15/04  
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Signature Date

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Timothy P. Bogan, CPA  
Non-Public Arbitrator

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Signature Date

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6/29/04  
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Date of Service