

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Morgan Stanley DW Inc. and Morgan Stanley Funding Services Corporation, Claimants v. Paul V. Anderson, Edwin W. Trively, III, and Carolyn E. Murray, Respondents

Paul V. Anderson, Edwin W. Trively, III, and Carolyn E. Murray, Counter-Claimants v. Morgan Stanley DW Inc. and Morgan Stanley Funding Services Corporation, Counter-Respondents

Case Number: 03-02090

Hearing Site: Seattle, Washington

Nature of the Dispute: Member and Non-Member v. Associated Persons

Nature of the Dispute: Associated Persons v. Member and Non-Member

REPRESENTATION OF PARTIES

For Claimant/Counter-Respondent:

Thomas V. Dulcich, Esq.
Stephanie P. Berntsen, Esq.
Schwabe, Williamson &
Wyatt, P.C.
Seattle, Washington

For Respondent/Counter-Claimant Carolyn E. Murray:

Susan D. Evans, Esq.
Naples, Florida

For Respondents/Counter-Claimants Paul V. Anderson and
Edwin W. Trively, III:

Thomas E. Sweeney, Jr., Esq.
Sweeney & Associates, P.C.
Pittsburgh, Pennsylvania

CASE INFORMATION

Statement of Claim filed: March 21, 2003

Claimants/Counter-Respondents' Uniform Submission Agreement signed: March 19, 2003

Joint Statement of Answer filed by Respondents/Counter-Claimants Paul V. Anderson, Edwin W. Trively, III and Carolyn E. Murray: May 15, 2003

Respondent/Counter-Claimant Paul V. Anderson's Uniform Submission Agreement signed:
April 29, 2003

Respondent/Counter-Claimant Edwin W. Trively, III's Uniform Submission Agreement signed:
April 29, 2003

Respondent/Counter-Claimant Carolyn E. Murray's Uniform Submission Agreement signed:
April 29, 2003

Counterclaim filed by Respondents/Counter-Claimants Paul V. Anderson, Edwin W. Trively, III
and Carolyn E. Murray: May 15, 2003

Reply to Counterclaim filed by Claimants/Counter-Respondents Morgan Stanley DW Inc. and
Morgan Stanley Funding Services Corporation: June 6, 2003

Supplemental Reply to Counterclaim filed by Claimants/Counter-Respondents Morgan Stanley
DW Inc. and Morgan Stanley Funding Services Corporation: June 9, 2003

Objections to Claimants/Counter-Respondents' Reply to Counterclaim filed by
Respondents/Counter-Claimants Paul V. Anderson, Edwin W. Trively, III, and Carolyn E.
Murray: June 17, 2003

CASE SUMMARY

Claimants/Counter-Respondents alleged against all Respondents/Counter-Claimants: breach of contract, conversion, misappropriation of confidential information, violation of Uniform Trade Secrets Act, tortious interference with Morgan Stanley's relationships with its customers, breach of fiduciary duty, breach of duty of loyalty, unfair competition; against Respondent Paul V. Anderson: breach of promissory notes, and against Respondents/Counter-Claimants Edwin W. Trively, III and Carolyn E. Murray: repayment of training costs. Claimants/Counter-Respondents' allegations involved alleged breaches of Respondents/Counter-Claimants' employment agreements and/or promissory note agreements with Claimants/Counter-Respondents.

Respondents/Counter-Claimants denied the allegations of wrongdoing set forth in Claimants/Counter-Respondents' Statement of Claim and asserted various affirmative defenses.

Respondents/Counter-Claimants' Counterclaim alleged violation of the Age Discrimination and Employment Act ("ADEA"), violation of Title VII of the Civil Rights Act of 1964 due to gender discrimination, violation of the Montana Human Rights Act, breach of contract, and fraud in the inducement to accept employment. Respondents/Counter-Claimants' allegations were asserted in connection with their previous employment at Morgan Stanley DW Inc.

Claimants/Counter-Respondents' Reply to Counterclaim and Supplemental Reply to Counterclaim denied the allegations of wrongdoing set forth in Respondents/Counter-Claimants' Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants/Counter-Respondents requested \$281,830.00 in compensatory damages, loss of commission revenue, consequential damages, value of personal property taken, damages for unjust enrichment, pre- and post-judgment interest and costs, including attorney's fees.

Respondents/Counter-Claimants requested dismissal of Claimant's Statement of Claim in its entirety, punitive damages, and costs, including attorney's fees. Respondents/Counter-Claimants Edwin W. Trively, III and Carolyn Murray also requested unspecified compensatory damages in their Counterclaim.

OTHER ISSUES CONSIDERED AND DECIDED

On June 6, 2003, Claimants/Counter-Respondents filed a Motion to Dismiss Morgan Stanley Funding Services Corporation from the Counterclaim and Counts I, II, and IV of Respondents/Counter-Claimants' Counterclaim. On June 9, 2003, Claimants/Counter-Respondents filed a Motion to Dismiss Certain Counterclaims. On June 17, 2003, Respondents/Counter-Claimants filed a Response to Two Motions to Dismiss.

On October 23, 2003, Claimants/Counter-Respondents filed a Partial Motion to Dismiss. On October 28, 2003, Respondents/Counter-Claimants filed a Motion to Quash Claimants' Partial Motion to Dismiss. On November 6, 2003, Claimants/Counter-Respondents filed Morgan Stanley's Opposition to Respondents' Motion to Preclude Evidence. On November 13, 2003, Claimants/Counter-Respondents filed Morgan Stanley's Opposition to Respondents' Motion to Quash.

On December 19, 2003, the Panel deliberated regarding the above-referenced motions, and on December 30, 2003, the Panel issued an Order:

- (a) denying Respondents/Counter-Claimants' Motion to Quash Claimants' Partial Motion to Dismiss, which was based on Respondents' assertion that they did not agree to submit their employment discrimination claims to arbitration and that they had accepted the Panel only for the purposes of considering non-employment discrimination claims;
 - (i) The Panel ruled that Respondents/Counter-Claimants had waived their right to have these claims heard in court rather than in arbitration by filing these claims in an arbitration proceeding, and Claimants/Counter-Respondents had waived their right to defend against these claims in court by responding to these claims in an arbitration proceeding. The Panel further ruled that as the Financial Advisor Employment Agreement, which had been entered into by Claimant/Counter-Respondent Morgan Stanley DW Inc. and Respondent/Counter-Claimant Paul V. Anderson, states that all claims or

controversies "arising out of or relating to this Agreement, or its breach" shall be arbitrated, any employment discrimination claims that arose out of said employment agreement or its breach are subject to arbitration.

- (ii) The Panel noted that the parties had agreed to the composition of the Panel during the initial pre-hearing conference on September 25, 2003 and that the initial scheduling order dated September 26, 2003 affirmed the composition of the Panel. The parties had not objected to that order, and the Panel ruled that by failing to object to the order, the parties waived their right to object to the participation of any panel member. The Panel stated further that since the initial pre-hearing conference, both parties had submitted discovery motions that included items relating to employment discrimination claims, and the Panel had ruled on these motions. The Panel ruled that the parties' request for the Panel's intervention in these matters operated as a further waiver of any potential objections to the composition of the Panel.
 - (iii) Arbitrator Kay Johnson did not participate in the Panel's decision regarding Respondents/Counter-Claimants' Motion to Quash Claimants' Partial Motion to Dismiss. The Panel issued its ruling with respect to this motion in accordance with NASD Code of Arbitration Rule 10325.
- (b) granting Claimants/Counter-Respondents' Partial Motion to Dismiss Counts I and II of Respondents/Counter-Claimants' Counterclaim, insofar as the Counterclaim alleges age and sex discrimination;
 - (c) denying Claimants/Counter-Respondents Motions to Dismiss Counts IV and VII of Respondents/Counter-Claimants' Counterclaim; and
 - (d) granting Claimants/Counter-Respondents' Motion to Dismiss the Counterclaim against Morgan Stanley Funding Services Corporation; and
 - (e) granting Claimants/Counter-Respondents' the relief requested in Claimants/Counter-Respondents Opposition to Respondents' Motion to Preclude Evidence.

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

Initial claim:

A. Paul V. Anderson:

- 1) Respondent/Counter-Claimant Paul V. Anderson is liable to and shall pay Claimant/Counter Respondent Morgan Stanley Funding Services Corporation the sum of \$256,830.00 in compensatory damages and \$45,725.23 in pre-judgment interest, for a total of \$302,555.23.
- 2) Respondent/Counter-Claimant Paul V. Anderson is liable to and shall pay Claimant/Counter-Respondent Morgan Stanley DW Inc. the sum of \$100,000.00 in attorney's fees, pursuant to the terms of the promissory notes executed by the parties.
- 3) Respondent/Counter-Claimant Paul V. Anderson is liable to and shall pay Claimant Morgan Stanley Funding Services Corporation interest in the amount of \$35.17 per day on \$302,555.23 from January 31, 2005 until payment of this Award is made in full.

B. Carolyn E. Murray:

- 4) Respondent/Counter-Claimant Carolyn E. Murray is liable to and shall pay Claimant/Counter-Respondent Morgan Stanley DW Inc. the sum of \$8,333.33 in compensatory damages and \$1,555.40 in pre-judgment interest, for a total of \$9,888.40.
- 5) Respondent/Counter-Claimant Carolyn E. Murray is liable to and shall pay Claimant Morgan Stanley DW Inc. interest in the amount of \$2.28 per day on \$9,888.40 from January 31, 2005 until payment of this Award is made in full.

C. Edwin W. Trively, III:

- 6) Claimant/Counter-Respondent Morgan Stanley DW Inc.'s claims with respect to Edwin W. Trively, III are denied in their entirety.

Counterclaim:

- 7) Respondents/Counter-Claimants' claims are denied in their entirety. The statutory employment discrimination claims that were alleged by Respondents/Counter-Claimants pursuant to the federal Age Discrimination and Employment Act ("ADEA"), Title VII of the Civil Rights Act of 1964, and the Montana Human Rights Act were dismissed by the Panel in its December 30, 2003 Order because Respondents/Counter-Claimants failed to timely file these claims in accordance with applicable statutes of limitations. The Panel also held that "there are no factual allegations supporting the alleged sexual or age discrimination claims contained in the Respondents' Answer, Affirmative Defenses, and Counterclaim, nor in the Respondents' responses to Claimants' Motion to Dismiss. General allegations of wrongdoing do not survive a motion to dismiss as a matter of law."
- 8) Respondent/Counter-Claimant Paul V. Anderson is liable to and shall pay Claimant/Counter-Respondent Morgan Stanley DW Inc. the sum of \$4,000.00 as reimbursement for costs

incurred in connection with the Counterclaim.

- 9) With the exceptions of paragraphs 2 and 8, the parties shall bear their respective costs, including attorney's fees.
- 10) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 1,000.00
Respondents/Counter-Claimants' Counterclaim	= \$ 250.00

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, the member firm Morgan Stanley DW Inc. 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

Adjournment Fees

The following adjournment fees are assessed:

March 22-26, 2004, adjournment requested by Claimants/ Counter-Respondents	= \$ 1,125.00
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The Panel assessed the adjournment fee to Claimant/Counter-Respondent Morgan Stanley DW Inc.

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 or the parties and the Panel. The following fees are assessed:

One (1) pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: September 25, 2003	1 session

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Sixteen (16) hearing sessions @ \$1,125.00/session		= \$18,000.00
Hearings:		
January 31, 2005	2 sessions	
February 1, 2005	2 sessions	
February 2, 2005	2 sessions	
February 3, 2005	2 sessions	
February 4, 2005	2 sessions	
February 5, 2005	2 sessions	
February 9, 2005	2 sessions	
February 11, 2005	2 sessions	
Total Forum Fees		= \$ 19,125.00

1. The Panel assessed \$9,562.50 of the forum fees jointly and severally to Paul V. Anderson, Carolyn E. Murray, and Edwin W. Trively, III.
2. The Panel assessed \$2,390.62 of the forum fees to Paul V. Anderson.
3. The Panel assessed \$7,171.88 of the forum fees to Morgan Stanley DW Inc.

Fee Summary

1. Claimant/Counter-Respondent Morgan Stanley DW Inc. is charged with the following fees and costs:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Adjournment Fee	= \$ 1,125.00
<u>Forum Fees</u>	<u>= \$ 7,171.88</u>
Total Fees	= \$14,496.88
<u>Less payments</u>	<u>= \$ (6,950.00)</u>
Balance Due NASD Dispute Resolution	= \$ 7,546.88
2. Respondents/Counter-Claimants Paul V. Anderson, Carolyn E. Murray and Edwin W. Trively, III are charged jointly and severally with the following fees and costs:

Filing Fee	= \$ 250.00
<u>Forum Fees</u>	<u>= \$ 9,562.50</u>
Total Fees	= \$ 9,812.50
<u>Less payments</u>	<u>= \$ (1,250.00)</u>
Balance Due NASD Dispute Resolution	= \$ 8,562.50
3. Respondent/Counter-Claimant Paul V. Anderson is charged with the following fees and costs:

Forum Fees	= \$ 2,390.62
<u>Less Payments</u>	<u>= \$ (0.00)</u>
Balance Due NASD Dispute Resolution	= \$ 2,390.62

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

ARBITRATION PANEL

<i>Paul D. Hansen, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Richard D. Brady, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Kay A. Johnson</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures



Paul D. Hansen, Esq.
Chair, Public Arbitrator

February 25, 2005

Signature Date

Richard D. Brady, Esq.
Public Arbitrator

Signature Date

Kay A. Johnson
Non-Public Arbitrator

Signature Date

3/2/05

Date of Service

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ARBITRATION PANEL

Paul D. Hansen, Esq.
Richard D. Brady, Esq.
Kay A. Johnson

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Paul D. Hansen, Esq.
Chair, Public Arbitrator

Signature Date



Richard D. Brady, Esq.
Public Arbitrator

2/28/05

Signature Date

Kay A. Johnson
Non-Public Arbitrator

Signature Date

3/2/05

Date of Service

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ARBITRATION PANEL

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<i>Richard D. Brady, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Kay A. Johnson</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Paul D. Hansen, Esq.
Chair, Public Arbitrator

Signature Date

Richard D. Brady, Esq.
Public Arbitrator

Signature Date



Kay A. Johnson
Non-Public Arbitrator

3/1/05

Signature Date

3/2/05

Date of Service