
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Diving Safaris Ltd.

Case Number: 03-02192

Names of the Respondents
Morgan Stanley DW, Inc.
Charles Eugene Bishop, Jr.

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Diving Safaris Ltd., hereinafter referred to as "Claimant": Susan N. Perkins, Esq., Law Office of Susan N. Perkins, Boca Raton, Florida.

For Morgan Stanley DW, Inc. ("MSDW") and Charles Eugene Bishop ("Bishop"), hereinafter collectively referred to as "Respondents": Jon A. Jacobson, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed on or about: March 25, 2003.

Claimant signed the Uniform Submission Agreement: March 19, 2003.

Statement of Answer filed by Respondents on or about: June 27, 2003.

Respondent MSDW signed the Uniform Submission Agreement: June 26, 2003.

Respondent Bishop signed the Uniform Submission Agreement: May 3, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: violations of Section 517.301 and Section 517.211 of the Florida Statutes; common law gross negligence, or at a minimum, ordinary negligence; violations of NYSE Rule 405 and NASD Rules 2310 and 3010; respondeat superior; breach of fiduciary duty; and breach of contract. The causes of action relate to the purchase in Claimant's account of Conseco bonds.

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

RELIEF REQUESTED

Claimant requested the following:

- (a) rescissory damages, exclusive of legal interest, in an amount up to \$50,000.00, such amount to be

- determined based on discovery and the proof of specific damages to be presented before the Panel;
- (b) disgorgement of all mark-ups and fees paid, plus legal interest, such amount to be determined based on discovery and the proof of specific damages presented before the Panel;
 - (c) all of Claimant's costs, expenses and disbursements in pursuing this arbitration proceeding;
 - (d) full reimbursement of all filing and forum fees;
 - (e) Claimant's reasonable attorney's fees, with such amount to be determined by a court of competent jurisdiction in a confirmation proceeding following rendition of the Award by the Panel in this matter, pursuant to Florida Arbitration Code, F.S. Section 682.01 *et seq.*, and as mandated by the decisions of the Supreme Court of Florida and Florida's lower appellate courts; and
 - (f) such other and further relief including, but not limited to, punitive damages, as deemed just and proper by the Panel.

Respondents requested that Claimant's claims be dismissed in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

At the commencement of the evidentiary hearing, Respondents moved to contest NASD Dispute Resolution's jurisdiction of this matter on the grounds that a separate class action against Conesco barred Claimant from proceeding in this forum pursuant to NASD Rule 10301(d)(2). Claimant responded by stating that Claimant waived its class action rights in the Conceso matter. The Panel reasoned that the claims against Conesco are distinct from the claims against Respondents, and, as such, denied Respondents' motion.

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:

Claimant is the prevailing party.

Respondents are jointly and severally liable on the claim for violation of Chapter 517 of the Florida Statutes, and shall pay to Claimant compensatory damages in the amount of \$40,000.00, plus interest at the Florida statutory rate from March 14, 2002 to March 15, 2003.

Respondents are jointly and severally liable and shall reimburse Claimant the sum of \$175.00, representing the claim filing fee paid by Claimant to NASD Dispute Resolution.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 175.00
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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. Accordingly, MSDW is a member firm and a party.

Member Surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	= \$1,000.00
Total Member Fees	= \$2,625.00

Adjournment Fees

No adjournments were requested in this matter.

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.

Injunctive relief fees were not assessed in this matter.

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 the Panel @ \$600.00/session	= \$ 600.00
Pre-hearing conference: September 25, 2003 1 session	
Four (4) Hearing sessions @ \$600.00/session	= \$2,400.00
Hearing Dates: June 15, 2004 2 sessions	
June 16, 2004 2 sessions	
Total Forum Fees	= \$3,000.00

The Panel has assessed the total forum fees of \$3,000.00 to Respondents, jointly and severally.

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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred in this matter.

Fee Summary

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 175.00
<u>Total Fees</u>	= \$ 175.00
<u>Less Payments</u>	= \$ 175.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent MSDW is solely liable for:

<u>Member Fees</u>	= \$2,625.00
<u>Total Fees</u>	= \$2,625.00
<u>Less Payments</u>	= \$2,625.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$3,000.00
<u>Total Fees</u>	= \$3,000.00
<u>Less Payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$3,000.00

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

ARBITRATION PANEL

Donald J. Spero, Esq.	-	Public Arbitrator, Presiding Chairperson
Allen J. Kaplan, Esq.	-	Public Arbitrator
David L. Hodgson	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Donald J. Spero, Esq.
Public Arbitrator, Presiding Chairperson

June 17, 2004
Signature Date

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/s/
Allen J. Kaplan, Esq.
Public Arbitrator

June 18, 2004
Signature Date

/s/
David L. Hodgson
Non-Public Arbitrator

June 18, 2004
Signature Date

June 18, 2004
Date of Service (For NASD Dispute Resolution office use only)

JUN. 17. 2004 5:24PM

NASD REGULATIONS

NO. 738 P. 5/6

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Donald J. Spero, Esq.

Allen J. Kaplan, Esq.

David L. Hodgson

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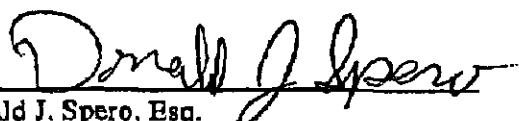
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Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Donald J. Spero, Esq.

Public Arbitrator, Presiding Chairperson



Signature Date

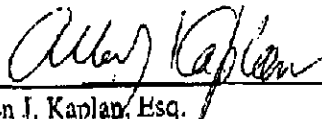
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NASD APPLICATION

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Allen J. Kaplan, Esq.
Public Arbitrator

6/18/04

Signature Date

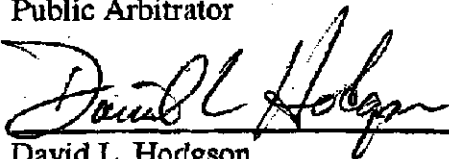
David L. Hodgson
Non-Public Arbitrator

Signature Date

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

NASD Dispute Resolution
Arbitration No. 03-02192
Award Page 5

Allen J. Kaplan, Esq.
Public Arbitrator



David L. Hodgson
Non-Public Arbitrator

Signature Date

6-18-04

Signature Date

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