

**Revised Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of Claimant:

Morgan Stanley DW, Inc.

vs.

Case Number: 03-02427

Hearing Site: Houston, Texas

Name of Respondent:

Michael L. Johnson

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**NATURE OF DISPUTE**

Member Firm v. Associated Person

**REPRESENTATION OF PARTIES**

Morgan Stanley DW, Inc. ("Claimant") was represented by Diane C. Fischer, Esq. and Thomas A. Volz, Esq., Kane & Fischer, Ltd., Chicago, Illinois.

Michael L. Johnson ("Johnson") was represented by Leonard J. Meyer, Esq., Zimmerman, Axelrad, Meyer, Stern & Wise, Houston, Texas.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 2, 2003. Claimant's Uniform Submission Agreement was filed on or about April 2, 2003.

The Statement of Answer was filed by Respondent, Michael L. Johnson, on or about May 30, 2003. The Uniform Submission Agreement of Michael L. Johnson was filed on or about May 15, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: failure to pay the balance due on an employment promissory note. Claimant alleged that Johnson is liable for damages in accordance with the terms of a Promissory Note ("the Note") executed by Johnson on or about June 7, 2000.

Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's claim for damages is not supported by the facts of the case; Claimant's claim is barred by the statute of frauds; laches; waiver; estoppel; ratification; and Claimant had assumed the risk associated with the transactions at issue.

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### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

Actual/Compensatory Damages:	\$379,000.00
Punitive/Exemplary Damages	\$ 43,581.16
Interest	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondant requested that the claims asserted be denied and dismissed in their entirety and that he be awarded his costs.

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

The parties agree 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 originals remain on file with NASD Dispute Resolution.

### **AWARD**

After considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators orders as follows:

1. Michael L. Johnson shall pay to Morgan Stanley DW, Inc. the total sum of \$345,130.50 (principal balance due under the Note in the amount of \$284,250.00 plus accrued interest through August 31, 2004 in the amount of \$60,880.50;
2. Michael L. Johnson is liable for and shall pay to Claimant, Morgan Stanley DW, Inc., the sum of \$35,301.50 in attorneys fees;
3. Michael L. Johnson is liable for and shall pay to Claimant, Morgan Stanley DW, Inc., the sum of \$5,843.83 in costs, plus additional interest at the rate of 6.62% per annum (\$51.55 per day) from and including August 31, 2004, until the date this stipulated award is paid in full; and
4. Any and all relief not specifically addressed herein, is denied and all claims are dismissed with prejudice.

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### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

Initial claim filing fee = \$ 1,000.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that are employed the associated person at the time of the event giving rise to the dispute. Morgan Stanley DW, Inc.

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,750.00

#### **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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Forum fees associated with these proceedings are:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,125.00	= \$ 2,250.00
Pre-hearing conferences: September 16, 2003 1 session	
February 3, 2004 1 session	
<b>Total Forum Fees</b>	<b>= \$ 2,250.00</b>

The panel has assessed \$1,125.00 of the forum fees to Claimant, Morgan Stanley DW, Inc.

The panel has assessed \$1,125.00 of the forum fees to Respondent, Michael L. Johnson.

### **FEE SUMMARY**

Claimant, Morgan Stanley DW Inc., is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 1,125.00
<b>Total Fees</b>	<b>= \$ 7,325.00</b>
<b>Less Payments</b>	<b>= \$ 4,575.00</b>
<b>Balance Due to NASD Dispute Resolution</b>	<b>= \$ 2,750.00</b>

Respondent, Michael L. Johnson, is solely liable for:

Adjournment Fees	= \$ 1,125.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 2,250.00
Less Payments	= \$ 1,125.00
Balance Due to NASD Dispute Resolution	= \$ 1,125.00

**ARBITRATION PANEL**

Dale A. Hearn – Non-Public Arbitrator, Presiding Chairperson  
Nick Sacaris – Non-Public Arbitrator  
Morris Rubin – Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Dale A. Hearn \_\_\_\_\_  
Dale A. Hearn  
Non-Public Arbitrator, Presiding Chairperson

October 9, 2004 \_\_\_\_\_  
Signature Date

/s/ Nick Sacaris \_\_\_\_\_  
Nick Sacaris  
Non-Public Arbitrator

October 13, 2004 \_\_\_\_\_  
Signature Date

/s/ Morris Rubin \_\_\_\_\_  
Morris Rubin  
Non-Public Arbitrator

October 8, 2004 \_\_\_\_\_  
Signature Date

October 13, 2004 \_\_\_\_\_  
Date of Service (For NASD office use only)

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Respondent, Michael L. Johnson, is solely liable for:

Adjournment Fees	= \$ 1,125.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 2,250.00
Less Payments	= \$ 1,125.00
Balance Due to NASD Dispute Resolution	= \$ 1,125.00

**ARBITRATION PANEL**

Dale A. Hearn – Non-Public Arbitrator, Presiding Chairperson  
Nick Sacaris – Non-Public Arbitrator  
Morris Rubin – Non-Public Arbitrator

Concurring Arbitrators' Signatures

Dale A. Hearn  
Dale A. Hearn  
Non-Public Arbitrator, Presiding Chairperson

6/9/07  
Signature Date

Nick Sacaris  
Nick Sacaris  
Non-Public Arbitrator

Signature Date

Morris Rubin  
Morris Rubin  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

Respondent, Michael L. Johnson, is solely liable for:

Adjournment Fees	= \$ 1,125.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 2,250.00
Less Payments	= \$ 1,125.00
Balance Due to NASD Dispute Resolution	= \$ 1,125.00

**ARBITRATION PANEL**

Dale A. Hearn – Non-Public Arbitrator, Presiding Chairperson  
Nick Sacaris – Non-Public Arbitrator  
Morris Rubin – Non-Public Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Dale A. Hearn  
Non-Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
Nick Sacaris  
Non-Public Arbitrator

10-13-04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Morris Rubin  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD office use only)

Respondent, Michael L. Johnson, is solely liable for:

Adjournment Fees	=\$ 1,125.00
Forum Fees	=\$ 1,125.00
Total Fees	=\$ 2,250.00
Less Payments	=\$ 1,125.00
Balance Due to NASD Dispute Resolution	=\$ 1,125.00

**ARBITRATION PANEL**

Dale A. Hearn -- Non-Public Arbitrator, Presiding Chairperson

Nick Sacaris -- Non-Public Arbitrator

Morris Rubin -- Non-Public Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Dale A. Hearn  
Non-Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Nick Sacaris  
Non-Public Arbitrator

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

\_\_\_\_\_  
Morris Rubin  
Non-Public Arbitrator

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

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Date of Service (For NASD office use only)