

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

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In the Matter of the Arbitration Between:

Names of the Claimants

Robert and Alina Quintana JT TEN

Case Number: 03-02562

Name of the Respondent

Morgan Stanley DW Inc.

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Robert and Alina Quintana JT TEN ("Quintanas"), hereinafter referred to as "Claimants": Wayne Schwartz, Esq., Blum, Silver & Schwartz, LLP, Plantation, Florida.

For Morgan Stanley DW Inc. ("MSDW"), hereinafter referred to as "Respondent": Todd A. Zuckerbrod, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: April 4, 2003.

Claimants signed the Uniform Submission Agreement: February 15, 2003.

Statement of Answer filed by Respondent on or about: July 11, 2003.

Respondent signed the Uniform Submission Agreement: July 7, 2003.

Motion for Sanctions filed by Claimants on or about: May 21, 2004.

Response to Motion for Sanctions filed by Respondent on or about: May 24, 2004.

Reply in Support of Motion for Sanctions filed by Claimants on or about: May 25, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) violation of industry rules; 2) violation of Florida Statutes, Section 517; 3) breach of contract; 4) breach of fiduciary duties; 5) common law fraud; 5) negligence; and 6) negligent hiring, supervision and retention of employees. The causes of action relate to the purchase of shares of stock, including purchases made on margin, in Mastec, Inc, Avenue A, Palm Inc., Citrix Systems, Inc., Mattson Tech, Inc., Connecet Systems, Inc., Qual Com, Inc., Sycamore Networks, Inc., Exodus Communications, Inc., Last Minute.Com, Sunrise Technology and other unspecified stock.

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

### **RELIEF REQUESTED**

Claimants requested compensatory damages of \$150,000.00, plus interest at the legal rate of purchase, or reasonable market return, rescission, punitive damages, attorney's fees to be determined by a court of competent jurisdiction, the costs of this proceeding and such other relief as is deemed just and proper.

Respondent requested that all claims against it be dismissed, that forum costs be assessed against Claimants and such other relief as is deemed just and appropriate. In addition, Respondent notified Claimants of its intention to seek their prevailing party attorney's fees from a court of competent jurisdiction pursuant to Florida Statutes, Section 517.211(6).

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

Claimants made a Motion for Sanctions for Respondent's failure to deliver Compliance Manuals in a timely fashion. The Motion for Sanctions was considered by the undersigned arbitrators (the "Panel") at the commencement of the evidentiary hearing and was granted. The parties have agreed that the Award in this matter may be executed in counterpart copies.

### **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:

1. Respondent is liable and shall pay to Claimant sanctions in the sum of \$400.00, representing attorney's fees and costs, for Respondent's failure to deliver Compliance Manuals in a timely fashion.
2. Claimants' claims are dismissed in their entirety.
3. Any and all claims for relief not specifically addressed herein, including Claimants' claims for relief pursuant to Section 517, Florida Statutes, Claimants' requests for punitive damages, and requests for attorneys' fees, 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 = \$ 300.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the

member firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, MSDW is a member firm and is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

#### **Adjournment Fees**

No adjournments were granted during these proceedings for which fees were assessed.

#### **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.

No injunctive relief fees were incurred during these proceedings.

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: April 26, 2004	1 session
One (1) Pre-hearing session with the Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: November 18, 2003	1 session
Nine (9) Hearing sessions @ \$1,125.00	= \$10,125.00
Hearing Dates: June 1, 2004	2 sessions
June 2, 2004	2 sessions
June 3, 2004	3 sessions
June 4, 2004	2 sessions
Total Forum Fees	= \$11,700.00

The Panel has assessed the total forum fees of \$11,700.00 to Respondent.

#### **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.

No administrative fees were incurred during these proceedings.

### Fee Summary

**Claimants are jointly and severally liable for:**

<b>Initial Filing Fee</b>	<b>= \$ 300.00</b>
<b>Total Fees</b>	<b>= \$ 300.00</b>
<b>Less payments</b>	<b>= \$ 300.00</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

**Respondent is solely liable for:**

Member Fees	= \$ 5,200.00
Forum Fees	= \$11,700.00
<b>Total Fees</b>	<b>= \$16,900.00</b>
<u>Less payments</u>	<u>= \$ 5,200.00</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$11,700.00</b>

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

**ARBITRATION PANEL**

*Charles Hoffman, Esq.* - *Public Arbitrator, Presiding Chairperson*  
*Camille Besold* - *Public Arbitrator*  
*Raymond W. Snow* - *Non-Public Arbitrator*

### Concurring Arbitrators' Signatures

/s/  
Charles Hoffman, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

/s/  
Camille Besold  
Public Arbitrator

Signature Date

/s/  
Raymond W. Snow  
Non-Public Arbitrator

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

June 10, 2004  
Date of Service (For NASD Dispute Resolution office use only)

No administrative fees were incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

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<i>Camille Besold</i>	-	<i>Public Arbitrator</i>
<i>Raymond W. Snow</i>	-	<i>Non-Public Arbitrator</i>

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Public Arbitrator, Presiding Chairperson

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<i>Camille Besold</i>	-	<i>Public Arbitrator</i>
<i>Raymond W. Snow</i>	-	<i>Non-Public Arbitrator</i>


Concurring Arbitrators' Signatures

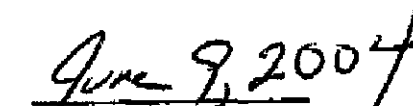
Charles Hoffman, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

*Camille Besold*  
Camille Besold  
Public Arbitrator

*6/9/04*  
Signature Date

  
Raymond W. Snow  
Non-Public Arbitrator

  
Signature Date

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