

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Jeff McEachern, Claimant v. Morgan Stanley DW, Inc., Kevin R. Montoya, Wendy L. Eckardt
and Terry Nilsen, Respondents

Case Number: 03-02746

Hearing Site: San Francisco, California

Nature of the Dispute: Customer v. Member and Associated Persons

REPRESENTATION OF PARTIES

For Claimant:

Robert L. Gonser, Esq.
Resolution Law Group, P.C.
Lafayette, California

For Respondents:

Eric G. Wallis
Reed Smith LLP
Oakland, California

CASE INFORMATION

Statement of Claim filed: April 11, 2003

Claimant's Uniform Submission Agreement signed: April 8, 2003

Joint Statement of Answer filed by Respondents: June 30, 2003

Respondent Morgan Stanley DW, Inc.'s Uniform Submission Agreement received: July 7, 2003

Respondent Kevin R. Montoya's Uniform Submission Agreement received: July 2, 2003

Respondent Wendy L. Eckardt's Uniform Submission Agreement received: July 2, 2003

Respondent Terry Nilsen's Uniform Submission Agreement signed: June 23, 2003

CASE SUMMARY

Claimant alleged misrepresentations, omissions, failure to supervise, unsuitability, breach of fiduciary duty, and breach of contract. Claimant's allegations involved various unspecified securities.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested in excess of \$800,000.00 in compensatory damages, unspecified punitive damages, disgorgement, interest and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety and costs.

OTHER ISSUES CONSIDERED AND DECIDED

On May 1, 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.

On June 27, 2003, Respondents' counsel signed a Waiver Agreement on Respondents' behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On December 2, 2004, the parties submitted a stipulated dismissal of this matter with prejudice and a stipulated request for expungement of all references to this arbitration matter from Respondents Kevin R. Montoya's, Wendy L. Eckardt's and Terry Nilsen's registration records maintained by the NASD Central Registration Depository ("CRD"). On December 8, 2004, the panel, in a deliberation teleconference, decided to requested further factual support from the parties before deciding the stipulated request for expungement. On January 21, 2005, the panel held a telephonic conference with the Respondents. The panel decided, in executive session, to grant the stipulated request for expungement.

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 the parties' stipulation, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims are dismissed with prejudice.
- 2) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Kevin R. Montoya's, Wendy L. Eckardt's and Terry Nilsen's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondents Kevin R. Montoya, Wendy L. Eckardt and Terry Nilsen must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) 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	= \$ 375.00
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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, the member firm Morgan Stanley DW, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 4,000.00</u>
Total Member Fees	= \$ 7,000.00

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

(1) Pre-hearing conference session with a single arbitrator @ \$ 450.00/session	= \$ 450.00
Pre-hearing conference: May 20, 2004 1 session	

(3) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$3,600.00
Pre-hearing conferences: September 22, 2003 1 session	
May 25, 2004 1 session	
January 21, 2005 1 session	

Total Forum Fees	= \$4,050.00
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1. The Panel assessed \$1,425.00 of the forum fees to Claimant.
2. The Panel assessed \$2,625.00 of the forum fees jointly and severally to Respondents. The entire forum fee for the January 21, 2005 pre-hearing conference call on expungement was assessed to Respondents.

Fee Summary

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

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 1,425.00
Total Fees	= \$ 1,800.00
<u>Less payments</u>	= \$(1,575.00)
Balance Due NASD Dispute Resolution	= \$ 225.00

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

Member Fees	= \$ 7,000.00
<u>Less payments</u>	= \$(7,000.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Morgan Stanley DW, Inc., Kevin R. Montoya, Wendy L. Eckardt and Terry Nilsen are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 2,625.00
<u>Less payments</u>	= \$ (0.00)
Balance Due NASD Dispute Resolution	= \$ 2,625.00

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

Isidoro Berkman, Esq.	-	Public Arbitrator, Presiding Chair
John J. Flynn	-	Public Arbitrator
Gary A. Hooker	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Isidoro Berkman, Esq.
Chair, Public Arbitrator

Signature Date

John J. Flynn
Public Arbitrator

Signature Date

Gary A. Hooker
Non-Public Arbitrator


Signature Date

Date of Service

ARBITRATION PANEL

Isidoro Berkman, Esq.	-	Public Arbitrator, Presiding Chair
John J. Flynn	-	Public Arbitrator
Gary A. Hooker	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Isidoro Berkman, Esq.
Chair, Public Arbitrator

1-26-05

Signature Date

John J. Flynn
Public Arbitrator

Signature Date

Gary A. Hooker
Non-Public Arbitrator

Signature Date

2/1/05

Date of Service

ARBITRATION PANEL

Isidoro Berkman, Esq.	-	Public Arbitrator, Presiding Chair
John J. Flynn	-	Public Arbitrator
Gary A. Hooker	-	Non-Public Arbitrator

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Isidoro Berkman, Esq.
Chair, Public Arbitrator

Signature Date



John J. Flynn
Public Arbitrator

1/26/05

Signature Date

Gary A. Hooker
Non-Public Arbitrator

Signature Date

2/1/05

Date of Service

ARBITRATION PANEL

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John J. Flynn	-	Public Arbitrator
Gary A. Hooker	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Isidoro Berkman, Esq.
Chair, Public Arbitrator

Signature Date

John J. Flynn
Public Arbitrator

Signature Date



Gary A. Hooker
Non-Public Arbitrator

1/27/2005
Signature Date

2/1/05
Date of Service