

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Dennis Higginbotton and Barbara Higginbottom, Claimants v. Morgan Stanley DW Inc.,
Respondent

Case Number: 03-03659

Hearing Site: Los Angeles, California

Nature of the Dispute: Customers v. Member

REPRESENTATION OF PARTIES

For Claimants:

Philip M. Aidikoff, Esq.
Orousha Brocious, Esq.
Aidikoff & Uhl
Beverly Hills, California

For Respondent:

Gilbert R. Serota, Esq.
Howard Rice Nemerovski
Canady Falk & Rabin
San Francisco, California

CASE INFORMATION

Statement of Claim filed: May 19, 2003

Claimants' Joint Uniform Submission Agreement signed: May 14, 2003

Statement of Answer filed by Respondent: August 14, 2003

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: July 2, 2003

CASE SUMMARY

Claimants alleged breach of fiduciary duty, unsuitability, constructive fraud, violations of federal and state laws and NASD Rules, and failure to supervise. Claimants' allegations involved several discretionary "wrap" accounts managed by various investment advisers recommended by a broker at Morgan Stanley DW Inc. The transactions at issue did not reference any specific security other than "they were unsuitable to the Claimants' risk tolerance."

Respondent denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages of \$655,000.00, consequential damages, disgorgement and restitution of earnings and profits received by Respondent, reimbursement of payments made to Respondent, lost opportunity costs, unspecified punitive damages, pre- and post-judgment interest, and costs, including attorney's fees.

Respondent requested dismissal of the Claimants' Statement of Claim in its entirety, and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On May 14, 2003 Claimants and Claimants' 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 30, 2003 Respondent's counsel signed a Waiver Agreement on Respondent's behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On March 25, 2004, Respondent Morgan Stanley DW Inc. filed a Motion to Dismiss the Statement of Claim. On April 12, 2004, Claimants filed an Opposition to Respondent's Motion to Dismiss. On April 15, 2004 Respondent filed a reply in support of the Motion to Dismiss. On April 20, 2004, a telephonic pre-hearing conference was held, attended by the parties and the Panel. After due deliberation in an executive session, the Panel denied the Respondent's 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent is liable to and shall pay Claimant the sum of \$507,968.00 in compensatory damages.
- 2) The Parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code of Arbitration Procedure (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: January 22, 2004 1 session	

Two (2) Pre-hearing conference sessions with the Panel @ \$ 1,200.00/session	= \$ 2,400.00
Pre-hearing conferences: November 12, 2003	1 session
April 20, 2004	1 session
Six (6) Hearing sessions @ \$1,200.00/session	= \$ 7,200.00
Hearings: August 9, 2004	2 sessions
August 10, 2004	2 sessions
August 11, 2004	2 sessions
Total Forum Fees	= \$10,050.00

1. The Panel assessed \$5,025.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$5,025.00 of the forum fees to Respondent.

Fee Summary

1. Claimants are charged with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 5,025.00
Total Fees	= \$ 5,400.00
Less payments	= \$(1,575.00)
Balance Due NASD Dispute Resolution	= \$ 3,825.00
2. Respondent Morgan Stanley DW Inc. is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 5,025.00
Total Fees	= \$12,025.00
Less payments	= \$ (7,000.00)
Balance Due NASD Dispute Resolution	= \$ 5,025.00

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

Alan Stamm, Esq.

Newton Ira Waldman, Esq.

David D. Holt

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Public Arbitrator, Presiding Chair

Public Arbitrator

Non-Public Arbitrator

Alan Stamm

Alan Stamm, Esq.

Chair, Public Arbitrator

August 16, 2004

Signature Date

Newton Ira Waldman, Esq.

Public Arbitrator

Signature Date

David D. Holt

Non-Public Arbitrator

Signature Date

August 16, 2004

Date of Service

ARBITRATION PANEL

Alan Stamm, Esq.
Newton Ira Waldman, Esq.
David D. Holt

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Alan Stamm, Esq.
Chair, Public Arbitrator

Signature Date

Newton Ira Waldman
Newton Ira Waldman, Esq.
Public Arbitrator

8/15/04
Signature Date

David D. Holt
Non-Public Arbitrator

Signature Date

August 16, 2004
Date of Service

ARBITRATION PANEL


<i>Alan Stamm, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Newton Ira Waldman, Esq.</i>	-	<i>Public Arbitrator</i>
<i>David D. Holt</i>	-	<i>Non-Public Arbitrator</i>

Alan Stamm, Esq.
Chair, Public Arbitrator

Signature Date

Newton Ira Waldman, Esq.
Public Arbitrator

Signature Date


David D. Holt
Non-Public Arbitrator

8-13-04
Signature Date

August 16, 2004
Date of Service