

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Donald E. Armstrong, individually and as Trustee of the Donald E. Armstrong Family Trust dtd 9/2/83, Claimant v. Morgan Stanley & Co., Incorporated, Morgan Stanley DW Inc., Theodore T. Rutter, Brian C. Goodwin and Richard A. Russian, Respondents

Case Number: 03-03923

Hearing Site: Salt Lake City, Utah

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

REPRESENTATION OF PARTIES

For Claimant:

Justin D. Heideman, Esq.
Ascione, Heideman & McKay LLC
Provo, Utah

For Respondents Morgan Stanley DW Inc.
Morgan Stanley & Co., Incorporated
Theodore T. Rutter and Brian C. Goodwin:

Christine A. Phams, Esq.
Morgan Stanley DW Inc.
Los Angeles, California

For Respondent Richard A. Russian:

Richard A. Russian
In Pro Se
Reno, Nevada

CASE INFORMATION

Statement of Claim filed: May 30, 2003

Claimant's Uniform Submission Agreement signed: May 27, 2003

Joint Statement of Answer filed by Respondents Morgan Stanley & Co., Incorporated, Morgan Stanley DW Inc. (hereinafter "Morgan Stanley") and Theodore T. Rutter: December 19, 2003

Notice of Appearance and Joinder in Morgan Stanley's Statement of Answer filed by Respondent Brian C. Goodwin: May 27, 2004

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: November 11, 2003

Respondent Morgan Stanley & Co., Incorporated's Uniform Submission Agreement signed:
December 29, 2003

Respondent Theodore T. Rutter's Uniform Submission Agreement: None Submitted

Respondent Brian C. Goodwin's Uniform Submission Agreement: None Submitted

Respondent Richard A. Russian's Uniform Submission Agreement: None Submitted

CASE SUMMARY

In his statement of Claim, Claimant alleged misrepresentation, churning, breach of fiduciary duty, failure to supervise, fraud, malice, unsuitability, unauthorized trading, misrepresentation and violation of SEC Rule 10b-5 and NASD Rules 3010, 2310 and 2110. Claimant's allegations involved the purchase and sale of call options in his accounts.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested actual damages in the sum of \$510,736.00, punitive damages in the sum of \$1,021,472.00, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, expungement of all references to the above captioned arbitration from Respondents Theodore T. Rutter and Brian C. Goodwin's registration records maintained by the NASD Central Registration Depository ("CRD"), and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Theodore T. Rutter, Brian C. Goodwin and Richard A. Russian did not file with NASD Dispute Resolution, properly executed submission agreements; however, all said Respondents are required to submit to arbitration. Respondents Theodore Rutter and Brian C. Goodwin answered the claim. All said Respondents are bound by the determination of the Panel on all issues submitted.

On December 19, 2003, in their Statement of Answer, Respondents Morgan Stanley and Theodore T. Rutter moved the Panel to Dismiss the Statement of Claim. On May 27, 2004, Respondent Brian C. Goodwin filed a Motion to Dismiss all Claims. On July 15, 2004, Claimant

filed a Motion for Excess Costs, Expenses and Attorney's Fees Pursuant to 28 U.S.C.A. §1927, as well as, a Motion to Strike New Arguments Raised in Respondents' Reply Memorandum of Law in Opposition to Claimant's Response.

On August 13, 2004, a telephonic pre-hearing conference was held, attended by all the Parties and the Panel. After due deliberation in an executive session, the Panel granted Respondents' Motion to Dismiss and dismissed Claimant's Claims without prejudice. The Panel denied Claimant's Motion For Excess Costs, Expenses and Attorney's Fees pursuant to 28 U.S.C.A. § 1927. On that date, the Panel also denied Claimant's Motion to Strike New Arguments Raised in Respondents' Reply Memorandum of Law in Opposition to Claimant's Response.

On August 24, 2004, Claimant filed a Motion to Amend the Statement of Claim. On September 2, 2004, the Panel denied Claimant's Motion to Amend the Statement of Claim pursuant to Rule 10328(c) of the Code of Arbitration Procedure.

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

- 1) Claimant's claims are dismissed without prejudice.
- 2) The parties shall bear their respective costs, including Attorney's fees.
- 3) All other relief requested and not expressly granted is denied.
- 4) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Theodore Rutter's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Theodore Rutter must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 5) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Brian C. Goodwin's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Brian C. Goodwin must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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	Waived
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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	= \$2,800.00
<u>Pre-Hearing Process Fee</u>	<u>= \$ 750.00</u>
Total Member Fees	= \$3,550.00

The member firm Morgan Stanley & Co., Incorporated is a party and the following fees are assessed:

Member Surcharge	= \$2,800.00
<u>Pre-Hearing Process Fee</u>	<u>= \$ 750.00</u>
Total Member Fees	= \$3,550.00

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:

(3) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$3,600.00
Pre-hearing conferences: February 27, 2004	1 session
July 26, 2004	1 session
August 13, 2004	1 session

Total Forum Fees	= \$3,600.00
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1. The Panel assessed \$1,200.00 of the forum fees to Claimant.
2. The Panel assessed \$1,200.00 of the forum fees jointly and severally to Respondents.
3. The Panel waived the forum fee for the pre-hearing conference held on July 26, 2004.

Fee Summary

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

<u>Forum Fees</u>	= \$1,200.00
Balance Due NASD Dispute Resolution	= \$1,200.00

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

Member Fees	= \$ 3,550.00
<u>Less payments</u>	<u>= \$(3,550.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondent Morgan Stanley & Co., Incorporated is charged with the following fees and costs:

Member Fees	= \$ 3,550.00
<u>Less payments</u>	<u>= \$(3,550.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondents are charged jointly and severally with the following fees and costs:

<u>Forum Fees</u>	= \$1,200.00
Balance Due NASD Dispute Resolution	= \$1,200.00

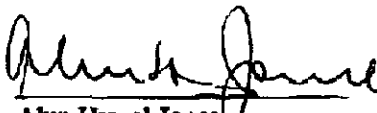
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

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ARBITRATION PANEL

Alun Hywel Jones	-	Public Arbitrator, Presiding Chair
Richard J. Lawrence, Esq.	-	Public Arbitrator
Jonathan H. Larson, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Alun Hywel Jones
Chair, Public Arbitrator

11/15/04
Signature Date

Richard J. Lawrence, Esq.
Public Arbitrator

Signature Date

Jonathan H. Larson, Esq.
Non-Public Arbitrator

Signature Date

11/16/04
Date of Service

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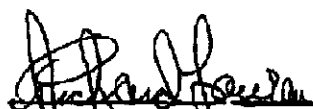
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Richard J. Lawrence, Esq.	-	Public Arbitrator
Jonathan H. Larson, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Alan Hywel Jones
Chair, Public Arbitrator

Signature Date


Richard J. Lawrence, Esq.
Public Arbitrator

11-15-04
Signature Date

- dissenting -
Case was
settled without any
hearing

Jonathan H. Larson, Esq.
Non-Public Arbitrator

Signature Date

11/16/04
Date of Service

NASD Dispute Resolution
Arbitration No. 03-03923
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ARBITRATION PANEL

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Richard J. Lawrence, Esq.	-	Public Arbitrator
Jonathan H. Larson, Esq.	-	Non-Public Arbitrator


Concurring Arbitrators' Signatures

Alun Hywel Jones
Chair, Public Arbitrator

Signature Date

Richard J. Lawrence, Esq.
Public Arbitrator

Signature Date


Jonathan H. Larson, Esq.
Non-Public Arbitrator

11/15/2004
Signature Date

11/16/04
Date of Service