

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Morgan Stanley DW Inc.

and

03-04070
Phoenix, Arizona

Name of Respondent

Brandon T. Franklin

Nature of the Dispute: Member vs. Associated Person.

REPRESENTATION OF PARTIES

Morgan Stanley DW Inc. ("**Claimant**") was represented by Diane C. Fischer, Esq. and Robert C. Scremin, Esq., Kane & Fischer, Ltd., Chicago, Illinois.

Brandon T. Franklin ("**Respondent**") appeared *pro se*.

CASE INFORMATION

The Statement of Claim was filed on or about June 5, 2003. Motion to Bar was filed on or about February 12, 2004. Submission Agreement of Claimant Morgan Stanley DW Inc. was signed on May 28, 2003.

CASE SUMMARY

Claimant alleged as follows:

- On or about May 9, 2001, Morgan Stanley loaned the Respondent \$11,500.00. The loan was evidenced by an unambiguous written promissory note signed by the Respondent "Note 1").
- By the terms of Note 1, Respondent agreed to repay \$11,500.00 in 4 annual payments of \$2,875.00 on May 9, 2002, May 9, 2003, May 9, 2004, and May 9, 2005, plus interest at the higher rate of 6% per annum or the applicable federal rate. Note 1 further provides that on each of the four annual anniversary dates of Note 1, Morgan Stanley shall forgive one-fourth (1/4) of the principal balance due and owing under Note 1, plus applicable interest, but only if the Respondent has, at all times from the date of Note 1, remained in the full-time employment of Morgan Stanley, and only if the Respondent pays to Morgan Stanley all

applicable federal, state and local income taxes, as well as FICA, ERIP and all other employment taxes, relating to the amount to be forgiven.

- Note 1 provides, inter alia, that if the Respondent's employment with Morgan Stanley was terminated for any reason, the unpaid balance of Note 1 would become due and payable. Respondent's termination from Morgan Stanley occurred on July 9, 2002.
- On or about December 3, 2001, Morgan Stanley loaned the Respondent \$61,640.00. The loan was evidenced by an unambiguous written promissory note signed by the Respondent ("Note 2"), a copy of which is attached hereto as Exhibit D.
- By the terms of Note 2, Respondent agreed to repay \$61,640.00 in 4 annual payments of \$12,328.00 on December 3, 2002, December 3, 2003, December 3, 2004 and December 3, 2005, plus interest at the higher rate of 5% per annum or the applicable federal rate. Note 2 further provides that on each of the four annual anniversary dates of Note 2, Morgan Stanley shall forgive one-fourth (1/4) of the principal balance due and owing under Note 2, plus applicable interest, but only if the Respondent has, at all times from the date of Note 2, remained in the full-time employment of Morgan Stanley, and only if the Respondent pays to Morgan Stanley all applicable federal, state and local income taxes, as well as FICA, ERIP and all other employment taxes, relating to the amount to be forgiven.
- Note 2 provides, inter alia, that if the Respondent's employment with Morgan Stanley was terminated for any reason, the unpaid balance of Note 2 would become due and payable.

RELIEF REQUESTED

Claimant requested an award as follows:

The principal balance due and owing under Note 1;	\$11,500.00
Interest accrued during the term of Note 1 at the rate of 6% per annum;	\$803.25
Interest at the rate of 6% per annum (\$1.89 per day) on the balance due and owing under Note 1 from the date of default (July 9, 2002) to the date of payment;	(Unknown at this time)
The principal balance due and owing under Note 2;	\$61,640.00
Interest accrued during the term of Note 2 at the rate of 5% per annum;	\$1,839.92
Interest at the rate of 5% per annum (\$8.44 per day) on the balance due and owing under Note 2 from the date of default (July 9, 2002) to the date of payment;	(Unknown at this time)
The costs of collection and of this proceeding including attorneys' fees as agreed to under the terms of Notes 1 and 2 and the Agreement; and	(Unknown at this time)
Any and all further relief that the panel deems just and proper.	(Unknown at this time)

Alternatively, if the Panel finds it appropriate to deem the May 9, 2002 installment of Note 1 forgiven, then Morgan Stanley DW Inc. respectfully requests that the Respondent be ordered to pay the taxes related to that forgiveness (which will be forwarded to the applicable taxing authorities), as well as other amounts due as follows:

\$8,625.00

The principal balance due and owing under Note 1;

Interest accrued during the term of Note 1 at the rate of 6% per annum; \$85.20

Federal and state income and employment taxes due on the May 9, 2002 forgiveness under Note 1 (to be forwarded to the appropriate

taxing authorities);

Interest at the rate of 6% per annum (\$1.42 per day) on the balance due (Unknown at this and owing under Note 1 from the date of default (July 9, 2002) to the time) date of payment;

The principal balance due and owing under Note 2; \$61,640.00

Interest accrued during the term of Note 2 at the rate of 5% per annum; \$1,839

Interest at the rate of 5% per annum (\$8.44 per day) on the balance due (Unknown at this and owing under Note 2 from the date of default (July 9, 2002) to the time) date of payment;

The costs of collection and of this proceeding including attorneys' fees (Unknown at this as agreed to under the terms of Notes 1 and 2 and the Agreement; and time)

Any and all further relief that the panel deems just and proper. (Unknown at this time)

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Brandon T. Franklin has been properly served with the Statement of Claim pursuant to Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Brandon T. Franklin has received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondent Brandon T. Franklin did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the Code and having appeared for the hearing is bound by the determination of the arbitration panel on all issues submitted.

After hearing argument from the parties on the Motion to Bar filed by Claimant, the Arbitration Panel granted the Motion.

The parties have agreed 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 original(s) remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Brandon T. Franklin shall be and hereby is liable for and shall pay to the Claimant Morgan Stanley DW Inc. the sum of \$82,146.45 (**Eighty Two Thousand One Hundred Forty Six Dollars and Forty Five Cents**) as principal and interest.
2. Respondent Brandon T. Franklin shall be and hereby is liable for and shall pay to the Claimant Morgan Stanley DW Inc. the sum of \$6,050.00 (**Six Thousand Fifty Dollars and No Cents**) as costs.
3. Respondent Brandon T. Franklin shall be and hereby is liable for and shall pay to the Claimant Morgan Stanley DW Inc. the sum of \$6,571.00 (**Six Thousand Five Hundred Seventy One Dollars and No Cents**) as attorneys' fees. Attorneys' fees are awarded pursuant to the terms of the promissory notes at issue in this matter.
4. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
5. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

FEES

Pursuant to 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 = \$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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Morgan Stanley DW Inc.

Member surcharge	\$	1,100.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	1,700.00
Total Member Fees	\$	3,550.00

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

1 Pre-hearing session(s) with Panel	x	750.00	\$	750.00
February 4, 2004	1 session			
1 Hearing sessions	x	750.00	\$	750.00
March 16, 2004	1 session			
Total Forum Fees			\$	1,500.00

The Arbitration Panel has assessed \$1,500.00 of the forum fees to Morgan Stanley DW Inc.

Fee Summary

Claimant, Morgan Stanley DW Inc., shall be and hereby is liable for:

Initial Filing Fee	= \$	1,000.00
Member Fees	= \$	3,550.00
<u>Forum Fees</u>	= \$	1,500.00
Total Fees	= \$	6,050.00
<u>Less payments</u>	= \$	-3,600.00
Balance Due NASD Dispute Resolution	= \$	2,450.00

All balances are due to NASD Dispute Resolution

NASD Dispute Resolution

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ARBITRATION PANEL

Richard B. Bequette - Non-Public Arbitrator, Presiding Chair

Irving Mindes - Non-Public Arbitrator

Janet Weinstein Lord, Esq. - Non-Public Arbitrator

Concurring Arbitrators:


Richard B. Bequette
Public Arbitrator, Presiding Chair3/16/04
Signature Date

Irving Mindes
Public Arbitrator

Signature Date

Janet Weinstein Lord, Esq.
Non-Public Arbitrator

Signature Date

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 Irving Mindes -- Non-Public Arbitrator
 Janet Weinstein Lord, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Richard B. Bequette
 Public Arbitrator, Presiding Chair

Signature Date


 Irving Mindes
 Public Arbitrator

3-16-04
 Signature Date

Janet Weinstein Lord, Esq.
 Non-Public Arbitrator

Signature Date

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Irving Mindes - Non-Public Arbitrator
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Richard B. Bequette
Public Arbitrator, Presiding Chair

Signature Date

Irving Mindes
Public Arbitrator

Signature Date

Janet Weinstein Lord, Esq.
Non-Public Arbitrator

Signature Date

3/15/04