

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Daniel E. Homan, Claimant v, Morgan Stanley DW Inc. and Barry M. Speyer, Respondents

Case Number: 03-04227

Hearing Site: San Diego, California

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

REPRESENTATION OF PARTIES

For Claimant:

Arthur S. Leider
Investors Arbitration Specialists
San Diego, California

For Respondents:

Mukya S. Porter, Esq.
Morgan Stanley DW Inc.
San Francisco, California

CASE INFORMATION

Statement of Claim received: June 10, 2003

Claimant's Uniform Submission Agreements signed: May 20, 2003

Joint Statement of Answer filed by Respondents: August 15, 2003

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: August 15, 2003

Respondent Barry M. Speyer's Uniform Submission Agreement signed: June 24, 2003

CASE SUMMARY

Claimant alleged breach of fiduciary duty, negligent supervision, and constructive fraud. The dispute involved the purchase and/or sale of Proton Energy, an IPO, and Lycos.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$19,296.00, punitive damages in the amount of \$30,000.00, pre-award and post-award interest, and costs, including representation fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety and that the Panel recommend the expungment of Respondent Barry M. Speyer's CRD record.

OTHER ISSUES CONSIDERED AND DECIDED

On July 15, 2003, Claimant and Claimant's representative 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.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

The parties agreed that a handwritten, signed Award may be entered.

AWARD

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

- 1) Respondents are jointly and severally liable to and shall pay Claimant \$18,030.00 in compensatory damages.
- 2) Respondents are jointly and severally liable to and shall pay Claimant interest on the sum of \$18,030.00 at the rate of 7 1/2 % (seven and a half percent) from October 20, 2000 until the Award is paid in full.
- 3) Respondents are jointly and severally liable to and shall pay Claimant \$175.00 as reimbursement for the claim filing fee.
- 4) Claimant's request for punitive damages is denied.
- 5) The parties shall bear their respective costs, including attorney's fees.
- 6) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code of Arbitration Procedure ("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 = \$ 175.00

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 = \$ 875.00

Pre-Hearing Process Fee = \$ 750.00

Hearing Process Fee = \$ 1,000.00

Total Member Fees = \$ 2,625.00

Adjournment Fees

The following adjournment fees are assessed:

June 22, 2004, adjournment requested by the Parties = \$ 450.00

- 1) The Arbitrator assessed \$225.00 of the adjournment fee to Claimant.
- 2) The Arbitrator assessed \$225.00 of the adjournment fee to Respondents jointly and severally.

Forum Fees and Assessments

The Arbitrator 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 Arbitrator. The following fees are assessed:

Two (2) Pre-hearing conference sessions with a single arbitrator @ \$450.00/session = \$ 900.00

Pre-hearing conferences: October 28, 2003 1 session
 April 5, 2004 1 session

Two (2) Hearing sessions @ \$450.000/session = \$ 900.00

Hearing: July 6, 2004 2 sessions

Total Forum Fees = \$ 1,800.00

The Panel assessed \$1,800.00 of the forum fees jointly and severally to Respondents.

Fee Summary

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

Initial Filing Fee	= \$ 175.00
<u>Adjournment Fee</u>	= \$ 225.00
Total Fees	= \$ 400.00
<u>Less payments</u>	= \$(575.00)
Refund Due Claimant	= \$(175.00)

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

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

3. Respondents Morgan Stanley DW Inc. and Barry M. Speyer are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 1,800.00
<u>Adjournment Fees</u>	= \$ 225.00
Total Fees	= \$ 2,025.00
<u>Less payments by Morgan Stanley DW Inc.</u>	= \$(450.00)
Balance Due NASD Dispute Resolution	= \$ 1,575.00

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.

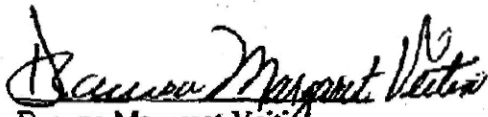
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ARBITRATOR

Deanna Margaret Vestia

Public Arbitrator, Presiding Chair

Arbitrator's Signature


Deanna Margaret Vestia
Chair, Public Arbitrator

7/07/04
Signature Date

July 7, 2004
Date of Service