

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:
Douglas Norman and Annabelle Norman, Claimants v. Morgan Stanley DW Inc. and David C.
Mielke, Respondents

Case Number: 03-04279

Hearing Site: San Diego, California

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

REPRESENTATION OF PARTIES

For Claimants:

Douglas Norman and Annabelle Norman
In Pro Per
Murrieta, California

For Respondents:

Tait Graves, Esq.
Wilson, Sonsini, Goodrich & Rosati
San Francisco, California

William M. Turner, Esq.
Jones, Bell, Abbot, Fleming & Fitzgerald, L.L.P.
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: June 3, 2003

Claimants' Joint Uniform Submission Agreement signed: May 30, 2003

Joint Statement of Answer filed by Respondents: August 22, 2003

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed:
August 22, 2003

Respondent David C. Mielke's Uniform Submission Agreement signed: December 18, 2003

CASE SUMMARY

Claimants alleged negligence, unsuitability, unauthorized trading, securities fraud under state and federal law, common law fraud, breach of fiduciary duty, breach of contract, misrepresentation, and failure to supervise. The dispute involved various securities.

Respondents denied each of the allegations set forth in the Statement of Claim.

RELIEF REQUESTED

Claimants requested an award of actual damages in the amount of \$60,802.00, unspecified punitive damages, interest, costs, and fees, including attorneys' fees.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

On December 4, 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.

Pursuant to the Code of Arbitration Procedure IM-10100, the waivers of the Claimants 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.

On September 29, 2004, Claimants' counsel withdrew from their representation of Claimants.

Thereafter, during a telephone conversation between Claimant Douglas Norman and Respondents' counsel Tait Graves, Claimant Douglas Norman threatened physical violence against Respondent David Mielke.

On September 29, 2004, Respondents, through their counsel, immediately reported this incident to the NASD and the local police and Sheriff offices. (See exhibit 1 attached hereto)

On September 30, 2004, during a pre-hearing conference call involving Claimant Douglas Norman, Respondents' counsel Tait Graves, Panel Chair Mandel Himelstein, Esq., Claimant Douglas Norman again threatened to commit acts of physical violence against Respondent David Mielke and members of his family, as well as against Morgan Stanley.

As a result of Claimant's conduct, the NASD indefinitely postponed the arbitration hearing for the parties' dispute and advised Claimant to contact the NASD once they had secured new counsel.

On October 4, 2004, Respondents Morgan Stanley and David Mielke filed a petition for a temporary restraining order in the Superior Court, County of Riverside, State of California, against Claimants, and the Court issued a temporary restraining order and order to show cause that day, requiring Claimants to refrain from contact with Respondent David Mielke and his family and to surrender their firearms. (See exhibit 2 attached hereto)

On October 18, 2004, during a hearing on the Court's Order to Show Cause, the Court entered a permanent injunction against Claimants for a period of two years and barred Claimants from possessing firearms. Claimant Douglas Norman was present and did not object to the entry of this Order. (See exhibit 3 attached hereto)

Subsequently, the parties have entered into a Settlement and Release Agreement wherein they agreed:

- That Claimants would request the dismissal with prejudice of all claims asserted against Morgan Stanley DW Inc. and individual Respondent David Mielke;
- That Respondents would petition, with Claimants agreement and consent, the Arbitration Panel to issue an order recommending that any reference of this matter be expunged from Respondent David Mielke's Form U-4 on file with the Central Registration Depository. As a result of Claimant Douglas Norman's conduct, Mr. Mielke was effectively prevented from defending himself against Claimants' allegations;
- Each party shall bear its own costs and attorney's fees. The NASD shall retain any fees already paid by the parties, subject to either party's right, under the Code, to obtain complete or partial refund of fees paid.

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").

STIPULATION

The parties have agreed to the following stipulation and order:

- 1) Claimants dismiss, with prejudice, all claims asserted against Morgan Stanley DW Inc. and individual Respondent David Mielke; and
- 2) The undersigned arbitrators hereby issue an order recommending expungement of any reference of this matter from Respondent David Mielke's Form U-4 on file with the Central Registration Depository.

AWARD

After considering the pleadings and the Parties' request for Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims asserted against Morgan Stanley DW Inc. and David C. Mielke are dismissed with prejudice.
- 2) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent David C. Mielke's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent David C. Mielke 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 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	= \$ 225.00
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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	= \$ 1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 1,700.00</u>
Total Member Fees	= \$ 3,550.00

Adjournment Fees

The following adjournment fees are assessed:

Hearing Dates, August 24 – 27, 2004	
adjournment requested by Respondents	= \$ 750.00

The Panel assessed \$750.00 of the adjournment fees jointly and severally to Respondents.

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:

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

Pre-hearing conferences:	June 29, 2004	1 session
	September 30, 2004	1 session

Two (2) Pre-hearing conference sessions with the Panel @ \$750.00/session = \$ 1,500.00

Pre-hearing conferences:	February 6, 2004	1 session
	August 3, 2004	1 session

Total Forum Fees	= \$ 2,400.00
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1. The Panel assessed \$600.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$1,350.00 of the forum fees jointly and severally to Respondents.
3. The Panel waived the \$450.00 forum fees for the September 30, 2004 telephonic pre-hearing conference.

Fee Summary

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

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 825.00
Less payments	= \$(975.00)
Refund Due Claimants	= \$(150.00)

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

Adjournment Fee	= \$ 750.00
Forum Fees	= \$ 1,350.00
Total Fees	= \$ 2,100.00
Less payments by Morgan Stanley DW Inc.	= \$(1,500.00)
Balance Due NASD Dispute Resolution	= \$ 600.00

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

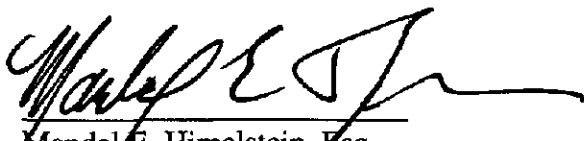
Member Fees	= \$ 3,550.00
Less Payments	= \$(3,550.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

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

Mandel E. Himelstein, Esq.	-	Public Arbitrator, Presiding Chair
Thomas L. Flattery, Esq.	-	Public Arbitrator
Stanley M. Lenkowicz, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Mandel E. Himelstein, Esq.
Chair/Public Arbitrator

1/12/05

Signature Date

Thomas L. Flattery, Esq.
Public Arbitrator

Signature Date

Stanley M. Lenkowicz, Esq.
Non-Public Arbitrator

Signature Date

January 20, 2005

Date of Service

ARBITRATION PANEL

Mandel E. Himmelstein, Esq.	-	Public Arbitrator, Presiding Chair
Thomas L. Flattery, Esq.	-	Public Arbitrator
Stanley M. Lenkowicz, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Mandel E. Himmelstein, Esq.
Chair, Public Arbitrator

Signature Date

Thomas L. Flattery
Thomas L. Flattery, Esq.
Public Arbitrator

1/6/05
Signature Date

Stanley M. Lenkowicz, Esq.
Non-Public Arbitrator

Signature Date

January 20, 2005
Date of Service

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Thomas L. Flattery, Esq.	-	Public Arbitrator
Stanley M. Lenkowicz, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Mandel E. Himmelstein, Esq.
Chair, Public Arbitrator

Signature Date

Thomas L. Flattery, Esq.
Public Arbitrator

Signature Date

Stanley M. Lenkowicz
Stanley M. Lenkowicz, Esq.
Non-Public Arbitrator

1/7/05
Signature Date

January 20, 2005
Date of Service