

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
David Heartsfield

Case Number: 03-04300

Names of the Respondents
Morgan Stanley DW Inc.
Danny Michael Murphy

Hearing Site: Tampa, Florida

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

REPRESENTATION OF PARTIES

For David Heartsfield, hereinafter referred to as "Claimant": W. Scott Newbern, III, Esq., Andrews Moye LLC, Tallahassee, Florida.

For Morgan Stanley DW Inc. ("MSDW") and Danny Michael Murphy ("Murphy"), hereinafter referred to as "Respondents": Colleen M. Fitzgerald, Esq., Gray Robinson, Tampa, Florida.

CASE INFORMATION

Statement of Claim filed on or about: June 11, 2003.

Claimant signed the Uniform Submission Agreement: June 7, 2003.

Statement of Answer filed by Respondents on or about: September 5, 2003.

Respondent MSDW signed the Uniform Submission Agreement: July 21, 2003.

Respondent Murphy signed the Uniform Submission Agreement: October 24, 2003.

Claimant's Motion to Amend Statement of Claim filed on or about: March 10, 2005.

Claimant's Notice of Fling in Support of Motion to File Claimant's First Amended Statement of Claim filed on or about: March 10, 2005.

First Amended Statement of Claim filed on or about: March 10, 2005.

Respondents' Response in Opposition to Claimant's Motion to File Claimant's First Amended Statement of Claim filed on or about: March 11, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: wrongful conduct; breach of fiduciary duty; violation of Section 517.301 Florida Statutes; violations of Section 2310 Conduct Rules of the NASD; violations of Section 2110 Conduct Rules of the NASD; violation of Section 2120 Conduct Rules of the NASD; violations of Section 3010 Conduct Rules of the NASD; breach of contract; negligence; and, negligent supervision. The causes of action relate to Claimant's investments in Dean Witter Select Ten, Dean Witter Select Five, Dean Witter Value Added Class B, Dean Witter Dividend Growth Class B, MSDW Competitive Edge Fund B, MSDW Competitive Edge Class B and Dean Witter Dividend Growth Class B.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested an award against Respondents, jointly and severally, in an amount that includes the following: actual damages in an amount to be determined by the arbitration panel, but not less than \$147,162.83; disgorgement of all margin interest, commissions and fees according to proof but not less than \$47,039.00; full reimbursement of all filing and forum fees; all of Claimant's costs, expenses, and disbursements in pursuing this arbitration proceeding, including reasonable attorneys' fees, pursuant to the Florida Arbitration Code, F.S. Section 682.01; punitive damages as the arbitration panel deemed just and proper; and pre-judgment interest.

Respondents requested a dismissal of Claimant's claims, with prejudice, after which MSDW, in accordance with applicable law, will proceed to a court of competent jurisdiction to recover its attorneys' fees from Claimant. Additionally, Respondents requested that the arbitration panel order the expungement of this matter from Respondent Murphy's securities industry record.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies.

On or about March 28, 2005, in response to the parties' submissions regarding Claimant's Motion to Amend Statement of Claim, the arbitration panel issued an order which denied Claimant's Motion to Amend Statement of Claim and stated Claimant need not specify a particular cause of action in the Statement of Claim. The order further stated that while Claimant's Statement of Claim does not need to set forth a count for breach of Florida Statutes Chapter 415, the arbitration panel will consider all of the facts and defenses presented by the evidence at the final hearing and determine which, if any, theory of recovery posited by Claimant is sustainable.

In addition, on or about October 11, 2005, the arbitration panel issued an order which reiterated that there had been no dismissal of any claims posited by Claimant pursuant to the arbitration panel's ruling of March 28, 2005 or any other ruling. Further, the order stated that, as a matter of procedure, it is not necessary to articulate individualized theories of recovery in an arbitration proceeding and Claimant is permitted to present any and all relevant evidence.

At the evidentiary hearing, Claimant presented a theory of recovery under Florida Statutes Chapter 415.102 which was deemed an amendment to Claimant's Statement of Claim and which was considered by the arbitration panel. All theories of recovery presented by Claimant were considered by the arbitration panel.

At the final hearing, Claimant withdrew his cause of action for negligent supervision.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the undersigned arbitrators (the "Panel") have decided in full

and final resolution of the issues submitted for determination as follows:

Claimant's claims are denied in their entirety.

Each party shall bear their own attorneys' fees.

Any and all claims for relief not specifically addressed herein, including Claimant's claims for relief pursuant to Florida Statutes Chapters 415.102 and 517.301 and Claimant's request for punitive damages, are denied.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Murphy'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 Murphy must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$300.00
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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 is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$750.00
Hearing process fee	= \$2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees incurred in this matter.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees incurred in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

Four (4) Pre-hearing sessions with the Panel @ \$1,125.00 = \$4,500.00

Pre-hearing conferences:	December 18, 2003	1 session
	August 10, 2004	1 session
	September 2, 2004	1 session
	October 6, 2005	1 session

Eleven (11) Hearing sessions @ \$1,125.00 = \$12,375.00

Hearing Dates:	October 11, 2005	2 sessions
	October 12, 2005	2 sessions
	October 13, 2005	3 sessions
	October 14, 2005	2 sessions
	October 15, 2005	2 sessions

Total Forum Fees = \$16,875.00

The Panel has waived the forum fees for the pre-hearing conference of August 10, 2004.

The Panel has assessed \$7,875.00 of the forum fees to Claimant.

The Panel has assessed \$7,875.00 of the forum fees to Respondent MSDW.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

FEE SUMMARY

Claimant is solely liable for:

Initial Filing Fee	= \$300.00
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Forum Fees = \$7,875.00

Total Fees = \$8,175.00

Less payments = \$1,425.00

Balance Due NASD Dispute Resolution = \$6,750.00

Respondent MSDW is solely liable for:

Member Fees = \$5,200.00

Forum Fees = \$7,875.00

Total Fees = \$13,075.00

Less payments = \$5,200.00

Balance Due NASD Dispute Resolution = \$7,875.00

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

ARBITRATION PANEL

Diane A. Weiner, Esq.	-	Public Arbitrator, Presiding Chair
Donald R. Ormrod	-	Public Arbitrator
Harris E. Bunkin	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

_____/S/_____
Diane A. Weiner, Esq.
Public Arbitrator, Presiding Chair

October 20, 2005
Signature Date

_____/S/_____
Donald R. Ormrod, Sr.
Public Arbitrator

October 20, 2005
Signature Date

_____/S/_____
Harris E. Bunkin
Non-Public Arbitrator

October 20, 2005
Signature Date

October 31, 2005
Date of Service (For NASD Dispute Resolution office use only)

NASD DISPUTE RESOLUTION

NASD Dispute Resolution
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Diane A. Weiner, Esq.

Public Arbitrator, Presiding Chair

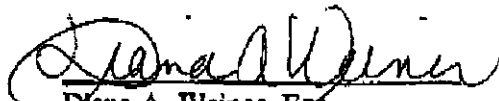
Donald R. Ornrod

Public Arbitrator

Harris E. Bunkin

Non-Public Arbitrator

Concurring Arbitrators' Signatures



Diane A. Weiner, Esq.
Public Arbitrator, Presiding Chair

10-20-2005
Signature Date

Donald R. Ornrod, Sr.
Public Arbitrator

Signature Date

Harris E. Bunkin
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution
Arbitration No. 03-04300
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Donald R. Ormrod
Harris E. Bunkin


Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Diane A. Weiner, Esq.
Public Arbitrator, Presiding Chair

Signature Date


Donald R. Ormrod, Sr.
Public Arbitrator


Signature Date

Harris E. Bunkin
Non-Public Arbitrator

Signature Date

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Donald R. Ormrod	-	Public Arbitrator
Harris E. Bunkin	-	Non-Public Arbitrator

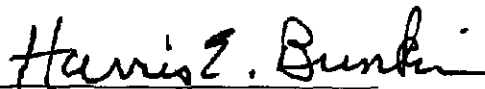
Concurring Arbitrators' Signatures

Diane A. Weiner, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Donald R. Ormrod, Sr.
Public Arbitrator

Signature Date


Harris E. Bunkin
Non-Public Arbitrator

10/20/05
Signature Date

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