

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Morgan Stanley DW, Inc. (formerly Dean Witter Reynolds, Inc.)(Claimant) v. Fred Moscone
(Respondent)

Case Number: 03-04440

Hearing Site: Boston, Massachusetts

Nature of the Dispute: Member vs. Associated Person.

REPRESENTATION OF PARTIES

Claimant Morgan Stanley DW, Inc. ("MSDW") hereinafter referred to as "Claimant": Robert C. Scremin, Esq., Kane & Fischer, Ltd., Chicago, IL.

Respondent Fred Moscone ("Moscone") hereinafter referred to as "Respondent" appeared *pro se*.

CASE INFORMATION

Statement of Claim filed on or about: June 17, 2003.

Motion to Bar Defenses and Hold Telephonic Hearings on the Merits filed by Claimant on or about: August 4, 2004.

Claimant signed the Uniform Submission Agreement: May 22, 2003.

Respondent did not file a Statement of Answer or sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: breach of Promissory Note dated January 2, 2001 and failure to repay commission deficit.

RELIEF REQUESTED

Claimant requested the principal balance due and owing under Note 1 in the amount of \$80,494.00; interest accrued during the term of the Note at the rate of 7% per annum, or \$7,565.60; interest at the rate of 7% per annum from the date of default to the date of payment; repayment of commission overdraw in the amount of \$1,115.00; interest from the date of default to the date of payment; costs, including attorneys' fees as agreed to under the terms of the Note; and any and all further relief that the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

Claimant filed a Motion to Bar Respondent from Presenting Any Facts or Defenses. The Motion was approved prior to the hearing.

The hearings in this matter were held telephonically.

Respondent participated in the introductory stages of the initial hearing. He stated he wanted to retain counsel and terminated his participation. The hearing was then adjourned for thirty (30) days to allow Respondent to retain representation. He did not appear at the next scheduled hearing.

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.

AWARD

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

1. Respondent is liable for and shall pay to Claimant the principal balance of the Note in the amount of \$60,371.00.
2. Respondent is liable for and shall pay to Claimant interest in the amount of \$11,591.58.
3. Respondent is liable for and shall pay to Claimant the commission overdraw in the amount of \$1,115.00.
4. Respondent is liable for and shall pay to Claimant attorneys' fees in the amount of \$7,819.50 in accordance with the terms of the Note.
5. Any and all relief not specifically addressed herein is denied.

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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Morgan Stanley DW, Inc. is a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel @ \$750.00	= \$1,500.00
Pre-hearing conferences: June 8, 2004 1 session	
October 26, 2004 1 session	
One (1) Hearing session @ \$750.00	= \$ 750.00
Hearing Date: September 29, 2004 1 session	
Total Forum Fees	= \$2,250.00

1. The Panel has assessed \$2,250.00 of the forum fees against Respondent.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$1,000.00
<u>Member Fees</u>	= \$3,550.00
Total Fees	= \$4,550.00
<u>Less payments</u>	= \$5,300.00
Refund Due Claimant	= \$ 750.00

2. Respondent is solely liable for:

<u>Forum Fees</u>	= \$2,250.00
Total Fees	= \$2,250.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$2,250.00

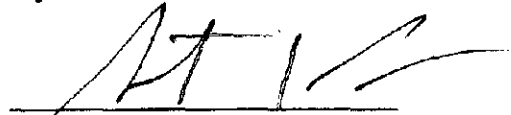
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Stephen Z. Frank, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Alan A. Ioffredo	-	Non-Public Arbitrator
William J. Driscoll	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Stephen Z. Frank, Esq.
Non-Public Arbitrator, Presiding Chairperson

11/2/04
Signature Date

Alan A. Ioffredo
Non-Public Arbitrator

Signature Date

William J. Driscoll
Non-Public Arbitrator

Signature Date

November 10, 2004
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

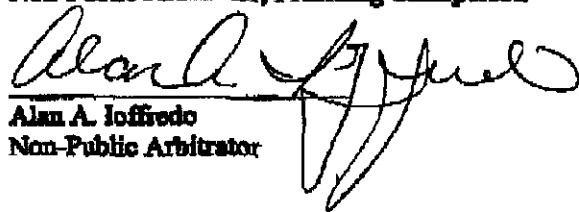
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Signature Date

Alan A. Ioffredo
Non-Public Arbitrator

Signature Date



William J. Driscoll
Non-Public Arbitrator

10/28/04

Signature Date

November 10, 2004
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