

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Elias Abouharb and Nazira Abouharb, Claimants v. Morgan Stanley DW Inc. and James Clinton Hill, Jr., Respondents

Case Number: 03-04523

Hearing Site: Los Angeles, California

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

REPRESENTATION OF PARTIES

For Claimants:

Lee T. Dicker, Esq.
Leonard, Dicker & Schreiber, LLP
Beverly Hills, California

For Respondents:

Ronald E. Wood, Esq.
Morgan Stanley DW Inc.
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: June 18, 2003

Claimants' Joint Uniform Submission Agreement signed: May 6, 2003

Joint Statement of Answer filed by Respondents: August 14, 2003

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: August 14, 2003

Respondent James Clinton Hill, Jr.'s Uniform Submission Agreement signed: August 15, 2003

CASE SUMMARY

Claimants alleged unsuitability, selling away, misrepresentation, and failure to supervise. Claimants' allegations involved their purchase of a Convertible Subordinated Promissory Note for Series B Preferred Stock in Centricity, Inc., a privately held Oregon corporation.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

RELIEF REQUESTED

Claimants requested \$250,000.00 in compensatory damages.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On November 18, 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 March 26, 2004, Respondents moved the Panel to dismiss the Statement of Claim. On April 15, 2004 Claimants' filed an Opposition to Respondents' Motion to Dismiss. On April 29, 2004, a telephonic pre-hearing conference was held, attended by Lee T. Dicker, Esq. for the Claimants, Ron E. Wood, Esq. for the Respondents, and the Panel. After due deliberation, the Panel denied the motion without prejudice.

On August 31, 2004, after Claimants rested their case, Respondents moved the Panel to dismiss the Statement of Claim on the grounds that Claimants had not offered evidence sufficient to sustain the allegations. After due deliberation in an executive session of the evidence, the Panel granted the motion.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the 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	= \$ 300.00
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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 and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

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:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: April 16, 2004 1 session	
Two (2) Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$2,250.00
Pre-hearing conferences: January 26, 2004 1 session	
April 29, 2004 1 session	
Four (4) Hearing sessions @ \$1,125.00/session	= \$4,500.00
Hearings: August 30, 2004 2 sessions	
August 31, 2004 2 sessions	
Total Forum Fees	= \$7,200.00

1. The Panel assessed \$3,600.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$3,600.00 of the forum fees jointly and severally to Respondents.

Fee Summary

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

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 3,600.00
Total Fees	= \$ 3,900.00
<u>Less payments</u>	= \$(1,425.00)
Balance Due NASD Dispute Resolution	= \$ 2,475.00

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

Member Fees	= \$ 5,200.00
<u>Less payments</u>	= \$(5,200.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Morgan Stanley DW Inc. and James Clinton Hill, Jr. are charged jointly and severally with the following fees and costs:

<u>Forum Fees</u>	= \$ 3,600.00
Balance Due NASD Dispute Resolution	= \$ 3,600.00

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

Barbara M. Zak, Esq.	-	Public Arbitrator, Presiding Chair
Michael D. Harrison, Esq.	-	Public Arbitrator
Paul H. White	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Barbara M. Zak
Barbara M. Zak, Esq.
Chair, Public Arbitrator

8-31-04
Signature Date

Michael D. Harrison
Michael D. Harrison, Esq.
Public Arbitrator

8/31/04
Signature Date

Paul H. White
Paul H. White
Non-Public Arbitrator

8/31/04
Signature Date

8/31/04
Date of Service