

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Sylvia Saucedo

and

Case Number: 03-04604
Hearing Site: Houston, Texas

Names of Respondents

Morgan Stanley & Co. d/b/a Morgan Stanley Dean Witter,
Morgan Stanley DW, Inc. d/b/a Morgan Stanley Dean Witter, and
Alfonso Asencio

NATURE OF DISPUTE

Customer v. Member Firms and Associated Person

REPRESENTATION OF PARTIES

Sylvia Saucedo ("**Claimant**") was represented by Jeffrey L. Jackson, Esq., Jeffrey L. Jackson, P.C., Harlingen, Texas and William F. Kimball, Esq., Law Offices of William F. Kimball, Harlingen, Texas.

Morgan Stanley & Co. d/b/a Morgan Stanley Dean Witter ("**Morgan Stanley & Co.**"), Morgan Stanley DW, Inc. d/b/a Morgan Stanley Dean Witter ("**MSDW**") and Alfonso Asencio ("**Asencio**"), hereinafter collectively referred to as "Respondents," were represented by Michael Stanley, Esq., Stanley Phillips, LLP, Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about June 25, 2003. The Submission Agreement of Claimant Sylvia Saucedo was signed on or about August 1, 2003. The First Amended Statement of Claim was filed on or about July 23, 2003.

The Joint Statement of Answer was filed by Respondents, Morgan Stanley & Co., Morgan Stanley DW, Inc. and Alfonso Asencio, on or about November 4, 2003. Respondent, Morgan Stanley & Co., did not sign a Submission Agreement. The Submission Agreement of Respondent, Morgan Stanley DW, Inc., was signed on or about October 31, 2003. The Submission Agreement of Respondent, Alfonso Asencio, was signed on or about October 30, 2003.

Claimant filed a Motion for Leave to File Amended Statement of Claim on or about September 13, 2004. Respondents filed their Response to this Motion to Amend and filed a Motion to Disqualify Claimant's counsel on or about September 17, 2004. On or about September 20, 2004, Jeffrey Jackson, Esq., filed a Notice of Entry of Appearance as Lead Counsel for Claimant. Claimant filed her response to the Motion to Disqualify Counsel on or about September 22, 2004. Respondents' Reply to the Motion to Disqualify Counsel was filed on or about September 27, 2004.

On or about September 27, 2004, the Panel granted Claimant's Motion to Amend the Statement of Claim. In addition, the Panel denied Respondents' Motion to Disqualify Counsel.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty, negligence, failure to supervise, and unsuitability. The causes of action relate to the alleged unauthorized purchase of risky unspecified securities. Claimant received a personal injury settlement and wanted to conservatively invest in highly rated insurance annuities or other similar investments. Claimant was blind as a result of the accident and had signed documents without the ability to read them. Claimant trusted Asencio as her fiduciary and alleged that instead of Asencio investing her money in insurance annuities, Asencio invested Claimant's monies into risky investments that later had considerable losses to the principal.

Unless specifically admitted in their Answer, Respondents, Morgan Stanley & Co., Morgan Stanley DW, Inc. and Alfonso Asencio, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant's claims are barred in whole or in part by the doctrine of comparative responsibility; Claimant is estopped from complaining about the transactions at issue; Claimant, by her conduct, has waived any claims that might have had against Respondents, which may be alleged in the Statement of Claim; Claimant ratified, approved, accepted, and confirmed in all respects the acts complained in the Statement of Claim; Claimant assumed the risks of the investments that she made through her decisions regarding when to purchase and whether to hold such securities; and Claimant failed to mitigate her damages.

RELIEF REQUESTED

Claimant requested an award in the amount of:

| | |
|-----------------------------|-------------|
| Actual/Compensatory Damages | Unspecified |
| Punitive/Exemplary Damages | Unspecified |
| Interest | Unspecified |
| Attorneys' Fees | Unspecified |

Other Costs
Other Monetary Relief

Unspecified
Unspecified

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 & DECIDED

Respondent Morgan Stanley & Co. did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 NASD Dispute Resolution ("NASD").

AWARD

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

- 1.) Respondents, Morgan Stanley DW, Inc. and Morgan Stanley & Co., are jointly and severally liable for and shall pay to Claimant, Sylvia Saucedo, the sum of \$216,000.00 in compensatory damages;
- 2.) Respondent, Alfonso Asencio, is liable for and shall pay to Claimant, Sylvia Saucedo, the sum of \$18,000.00 in compensatory damages;
- 3.) Respondents, Morgan Stanley DW, Inc. and Morgan Stanley & Co., are jointly and severally liable for and shall pay to Claimant, Sylvia Saucedo, the sum of \$50,000.00 in punitive damages;
- 4.) Respondent, Alfonso Asencio, is liable for and shall pay to Claimant, Sylvia Saucedo, the sum of \$15,000.00 in punitive damages;
- 5.) Respondents, Morgan Stanley DW, Inc., Morgan Stanley & Co. and Alfonso Asencio, are jointly and severally liable for and shall pay to Claimant, Sylvia Saucedo, interest at the rate of 6% from and including 30 days from the date of this Award through and including when the

Award is paid in full pursuant to Texas statute;

- 6.) Respondents, Morgan Stanley DW, Inc. and Morgan Stanley & Co., are jointly and severally liable for and shall pay to Claimant, Sylvia Saucedo, the sum of \$25,000.00 in attorneys fees;
- 7.) Respondents, Morgan Stanley DW, Inc. and Morgan Stanley & Co, are jointly and severally liable for and shall pay to Claimant, Sylvia Saucedo, the sum of \$6,000.00 for expert witness fees;
- 8.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 9.) That any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

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 = \$250.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firms are Morgan Stanley & Co. and Morgan Stanley DW, Inc.

Member surcharge = \$1500.00
Pre-hearing process fee = \$750.00
Hearing process fee = \$2200.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

One (1) Pre-hearing session with a single arbitrator x \$450.00 = \$ 450.00
Pre-hearing conference: May 14, 2004 1 session

One (1) Pre-hearing session with Panel x \$1000.00 = \$1,000.00
Pre-hearing conference: March 2, 2004 1 session

Six (6) Hearing sessions x \$1000.00 = \$ 6,000.00

Hearing Dates: October 12, 2004 2 sessions
October 13, 2004 2 sessions
October 14, 2004 2 sessions

Total Forum Fees = \$ 7,450.00

The Arbitration Panel has assessed \$7,450 of the forum fees, jointly and severally to Morgan Stanley DW, Inc. and Morgan Stanley & Co.

FEE SUMMARY

Claimant, Sylvia Saucedo, is liable for:

| | |
|--|---------------|
| <u>Initial Filing Fee</u> | = \$ 250.00 |
| <u>Total Fees</u> | = \$ 250.00 |
| <u>Less payments</u> | = \$ 1,250.00 |
| <u>Refund Due from NASD Dispute Resolution</u> | = \$ 1,000.00 |

Respondent, Morgan Stanley & Co., is liable for:

| | |
|--|---------------|
| <u>Member Fees</u> | = \$ 4,450.00 |
| <u>Total Fees</u> | = \$ 4,450.00 |
| <u>Less payments</u> | = \$ 4,450.00 |
| <u>Balance Due NASD Dispute Resolution</u> | = \$ 0.00 |

Respondent, Morgan Stanley DW, Inc., is liable for:

| | |
|--|---------------|
| <u>Member Fees</u> | = \$ 4,450.00 |
| <u>Total Fees</u> | = \$ 4,450.00 |
| <u>Less payments</u> | = \$ 4,450.00 |
| <u>Balance Due NASD Dispute Resolution</u> | = \$ 0.00 |

Respondents, Morgan Stanley DW, Inc. and Morgan Stanley & Co., are jointly and severally liable for:

| | |
|--|---------------|
| <u>Forum Fees</u> | = \$ 7,450.00 |
| <u>Total Fees</u> | = \$ 7,450.00 |
| <u>Less payments</u> | = \$ 0.00 |
| <u>Balance Due NASD Dispute Resolution</u> | = \$ 7,450.00 |

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

ARBITRATION PANEL

Sherry R. Wetsch, Esq. - Public/Non-Public Arbitrator, Presiding Chair
Richard R. Nelson, Jr. - Public/Non-Public Arbitrator
Nick Sacaris - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Sherry R. Wetsch, Esq.
Sherry R. Wetsch, Esq.
Public Arbitrator, Presiding Chair

October 17, 2004
Signature Date

/s/ Richard R. Nelson, Jr.
Richard R. Nelson, Jr.
Public Arbitrator

October 18, 2004
Signature Date

/s/ Nick Sacaris
Nick Sacaris
Non-Public Arbitrator


October 18, 2004
Signature Date

October 18, 2004
Date of Service (For NASD office use only)

ARBITRATION PANEL

Sherry R. Wetsch, Esq. - Public/Non-Public Arbitrator, Presiding Chair
Richard R. Nelson, Jr. - Public/Non-Public Arbitrator
Nick Sacaris - Non-Public Arbitrator

Concurring Arbitrators:



Sherry R. Wetsch, Esq.
Public Arbitrator, Presiding Chair

10-17-04

Signature Date

Richard R. Nelson, Jr.
Public Arbitrator

Signature Date

Nick Sacaris
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)


ARBITRATION PANEL

Sherry R. Wetsch, Esq. - Public/Non-Public Arbitrator, Presiding Chair
Richard R. Nelson, Jr. - Public/Non-Public Arbitrator
Nick Sacaris - Non-Public Arbitrator

Concurring Arbitrators:

Sherry R. Wetsch, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Richard R. Nelson, Jr.
Public Arbitrator

OCTOBER 18, 2004

Signature Date

Nick Sacaris
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

ARBITRATION PANEL

Sherry R. Wetsch, Esq. - Public/Non-Public Arbitrator, Presiding Chair
Richard R. Nelson, Jr. - Public/Non-Public Arbitrator
Nick Sacaris - Non-Public Arbitrator

Concurring Arbitrators:

Sherry R. Wetsch, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Richard R. Nelson, Jr.
Public Arbitrator

Signature Date



Nick Sacaris
Non-Public Arbitrator

10-18-04
Signature Date

Date of Service (For NASD office use only)