

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Nicholas Moss

Case Number: 03-04984

Names of the Respondents
Morgan Stanley DW Inc.
Mark D. Fendrick

Hearing Site: Philadelphia, Pennsylvania

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

REPRESENTATION OF PARTIES

Claimant Nicholas Moss, hereinafter referred to as "Claimant", was represented by Michael Willner and Michael S. Tarringer, Esq., Miller Faucher and Cafferty, LLP, Philadelphia, Pennsylvania.

Respondents Morgan Stanley DW Inc. ("Morgan Stanley") and Mark D. Fendrick ("Fendrick"), hereinafter collectively referred to as "Respondents", were represented by David C. Franceski, Jr., Esq., Stradley, Ronon, Stevens & Young, LLP, Philadelphia, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on July 7, 2003.

Claimant signed the Uniform Submission Agreement on June 30, 2003.

Statement of Answer filed by Respondents on December 1, 2003.

Howard M. Sendrovitz, Vice President and Senior Attorney, executed the Uniform Submission Agreement on behalf of Respondent Morgan Stanley on November 10, 2003.

Respondent Fendrick submitted an undated signed Uniform Submission Agreement.

Amended Statement of Answer filed by Respondents on April 12, 2004.

Claimant filed a Reply to the Amended Statement of Answer on April 27, 2004.

Claimant filed a Motion to Compel Documents on November 4, 2004.

Respondent filed a Response to the Motion to Compel Documents and a Request for Confidentiality on November 12, 2004.

CASE SUMMARY

Claimant, in his Statement of Claim and Reply to the Amended Statement of Answer, asserted the following causes of action, among others: negligence, failure to supervise, breach of fiduciary duty, misrepresentations/non-disclosures, unauthorized trading, and suitability. The causes of action relate to the purchase and sale of unspecified securities.

Unless specifically admitted in their Statement of Answer and Amended Statement of Answer,

Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; waiver; estoppel; ratification; failure to mitigate damages; Claimant's claims are barred by the doctrines of comparative and contributory negligence; and Claimant's claims are barred by the applicable statutes of limitations and the doctrine of laches.

RELIEF REQUESTED

Claimant in his Statement of Claim requested compensatory damages in excess of five-hundred thousand dollars (\$ 500,000.00); interest, including prejudgment interest at the legal rate; treble damages; punitive damages; costs; and attorneys' fees.

Respondents in their Statement of Answer and Amended Statement of Answer requested that the Arbitration Panel (the "Panel") dismiss the Statement of Claim in its entirety, award Respondents the costs and expenses of this arbitration, and issue an order recommending the expungement of this matter from Respondent Fendrick's records maintained at the Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED AND DECIDED

At the Initial Pre-Hearing Conference call, Respondent requested the Panel's permission to file an Amended Statement of Answer. This request was granted on the conference call, and Claimant was granted permission to file a response thereto.

On November 19, 2004, the Panel issued an Order directing Respondents to surrender certain documents requested by Claimant. Claimant was ordered to use these documents solely for the preparation and planning of this arbitration. The Panel's Order indicated that a formal ruling as to the ultimate disposition of the confidentiality of these documents would be made at the hearing on the merits.

Following the hearing on the merits, the Panel hereby Orders that Respondents' request that the documents produced to Claimant remain confidential is denied.

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, 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. Claimant's claims are denied in their entirety;
2. Claimant's claims for punitive and treble damages are denied in their entirety;

3. Respondent Fendrick's request that the Panel order his records maintained at CRD be expunged is denied;
4. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,
5. Any and all relief not specifically addressed herein is denied in its entirety.

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	= \$ 500.00
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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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Morgan Stanley is a party.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 5,000.00</u>
Total Member Fees	= \$ 8,550.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

August 18 – 20, 2004, adjournment by Respondents	= waived
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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:

One (1) Pre-hearing session with a single arbitrator @ \$ 450	= \$ 450.00
Pre-hearing conference: June 29, 2004 1 session	

One (1) Pre-hearing session with Panel @ \$ 1,125	= \$ 1,200.00
Pre-hearing conference: March 30, 2004 1 session	

Ten (10) Hearing sessions @ \$ 1,125	= \$ 12,000.00
Hearing Dates: December 7, 2004 2 sessions	
December 8, 2004 2 sessions	
December 9, 2004 2 sessions	

February 2, 2005 2 sessions

February 3, 2005 2 sessions

Total Forum Fees = \$ 13,650.00

1. The Panel has assessed \$ 6,825.00 of the forum fees to Claimant.
2. The Panel has assessed \$ 6,825.00 of the forum fees jointly and severally to Respondents.

FEE SUMMARY

Claimant is assessed and shall pay:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 6,825.00
Total Fees	= \$ 7,325.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 5,750.00

Respondent, Morgan Stanley, is assessed and shall pay:

Member Fees	= \$ 8,550.00
Total Fees	= \$ 8,550.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 3,350.00

Respondents, Morgan Stanley and Fendrick, are jointly and severally assessed and shall pay:

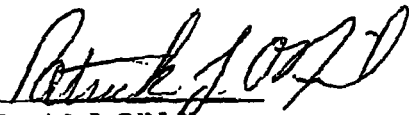
Forum Fees	= \$ 6,825.00
Total Fees	= \$ 6,825.00
Less payments	= \$ 00.00
Balance Due NASD Dispute Resolution	= \$ 6,825.00

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

ARBITRATION PANEL

Patrick J. O'Neil	-	Public Arbitrator, Presiding Chairperson
Kathleen Kovach Murphy, Esq.	-	Public Arbitrator, Panelist
Glenn J. Hansen, CFP	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures


Patrick J. O'Neil
Public Arbitrator, Presiding Chairperson

02/15/05
Signature Date

Kathleen Kovach Murphy, Esq.
Public Arbitrator, Panelist

Signature Date

Glenn J. Hansen, CFP
Non-Public Arbitrator, Panelist

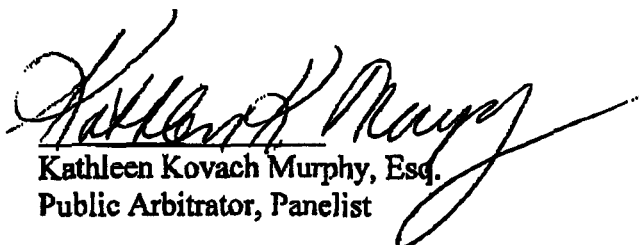
Signature Date

February 17, 2005
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Patrick J. O'Neil
Public Arbitrator, Presiding Chairperson

Signature Date


Kathleen Kovach Murphy, Esq.
Public Arbitrator, Panelist

Feb. 16, 2005
Signature Date

Glenn J. Hansen, CFP
Non-Public Arbitrator, Panelist

Signature Date

February 17, 2005
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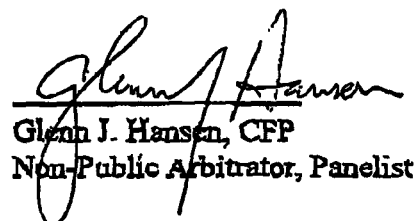
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Non-Public Arbitrator, Panelist


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