

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

W. James Clees and Elsie L. Clees

Case Number: 03-05555

Names of the Respondents

Morgan Stanley DW, Inc.,
Kevin S. Baltimore, and Karl H. Ruppert

Hearing Site: Charlotte, North Carolina

Nature of the Dispute: Customers vs. Member and Associated Persons.

REPRESENTATION OF PARTIES

Claimants W. James Clees and Elsie L. Clees, hereinafter collectively referred to as "Claimants," were represented by Andrew D. Gowdown, Esq. and Beth Palmer, Esq., Rosen, Rosen, & Hagood, Charleston, South Carolina.

Respondents Morgan Stanley DW, Inc. ("Morgan Stanley"), Kevin S. Baltimore ("Baltimore"), and Karl H. Ruppert ("Ruppert"), hereinafter collectively referred to as "Respondents," were represented by Victor Olds, Esq., Morgan Stanley Law Division, Purchase, New York, and Zahara Markoe, Esq. and Steven G. Kobre, Esq., Kobre & Kim LLP, New York, New York.

CASE INFORMATION

Statement of Claim was filed on July 23, 2003.

Claimants signed the Uniform Submission Agreement on July 23, 2004.

Statement of Answer was filed by Respondents on September 24, 2003.

Respondents did not file Uniform Submission Agreements with NASD Dispute Resolution.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitability, failure to supervise, breach of fiduciary duty, negligence, breach of contract, and misrepresentation. The causes of action relate to the management of the Claimants' accounts and the purchase and sale of various securities including technology stocks and mutual funds.

Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim; fulfillment of duties; recommendation of suitable investments; authorization; lack of negligence; lack of misrepresentation; lack of causation; ratification; failure to mitigate damages; and punitive damages are unavailable.

RELIEF REQUESTED

Claimants requested the following damages:

Compensatory Damages	\$487,000
Punitive Damages	\$250,000
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents requested that the Panel dismiss the Statement of Claim, award Respondents the costs and expenses of this arbitration, and grant Respondents such other relief as the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing on the merits, the parties fully and finally settled all claims by and between them. Claimants, after consultation with their attorneys, represent that certain evidence was discovered over the course of this arbitration that led them to believe that Respondents Baltimore and Ruppert were not responsible for the losses sustained in their accounts. Therefore, the parties submit a Stipulated Award to the Panel, requesting that Respondent Baltimore's and Ruppert's registration records maintained by the NASD Central Registration Depository ("CRD") be expunged and all claims be dismissed with prejudice. The Panel heard oral argument on the issue of expungement on January 24, 2006.

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

AWARD

Pursuant to the above, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Pursuant to the confidential settlement agreement reached between the parties, all claims against Respondents Morgan Stanley, Baltimore, and Ruppert are dismissed with prejudice;
2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Baltimore's and Respondent Ruppert's CRD records, with the understanding that, pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Baltimore and Respondent Ruppert must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are

specifically addressed below; and

4. Any and all relief not specifically addressed herein, including punitive damages, 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 = \$ 375.00

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 person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Morgan Stanley is a party.

Member surcharge = \$2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$4,000.00

Total Member Fees = \$7,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

November 2-4, 2004, adjournment by parties = \$1,200.00

1. The Panel has assessed \$1,200.00 of the adjournment fees to Respondent Morgan Stanley.

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:

April 4, 2005 settlement of hearing set for April 6-8, 2005 by parties = \$ 300.00

1. The Panel has assessed \$300.00 of the three-day cancellation fees to Respondent Morgan Stanley.

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:

Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$2,400.00
Pre-hearing conferences: February 9, 2004 1 session	
January 24, 2006 1 session	
<hr/> Total Forum Fees	<hr/> = \$2,400.00

1. The Panel has assessed \$600.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$1,800.00 of the forum fees to Respondents, jointly and severally.

FEE SUMMARY

1. Claimants are jointly and severally assessed and shall pay the following fees:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 600.00
<u>Retained Hearing Session Deposit</u>	<u>= \$ 600.00</u>
Total Fees	= \$1,575.00
<u>Less payments</u>	<u>= \$1,575.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent Morgan Stanley is assessed and shall pay the following fees:

Member Fees	= \$7,000.00
Adjournment Fee	= \$1,200.00
<u>Three-Day Cancellation Fee</u>	<u>= \$ 300.00</u>
Total Fees	= \$8,500.00
<u>Less payments</u>	<u>= \$8,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 300.00

3. Respondents are jointly and severally assessed and shall pay the following fees:

<u>Forum Fees</u>	<u>= \$1,800.00</u>
Total Fees	= \$1,800.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$1,800.00


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

ARBITRATION PANEL

Zeb E. Barnhardt, Esq.
Kenneth Hoffner, M.S.
Victor F. Alvarez

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator, Panelist
- Industry Arbitrator, Panelist

Concurring Arbitrators' Signatures


Zeb E. Barnhardt, Esq.
Public Arbitrator, Presiding Chairperson

Jan. 31, 2006
Signature Date

Kenneth Hoffner, M.S.
Public Arbitrator, Panelist

Signature Date

Victor F. Alvarez
Non-Public Arbitrator, Panelist

Signature Date

February 1, 2006
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Zeb E. Barnhardt, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Kenneth W. Hoffner
Kenneth Hoffner, M.S.
Public Arbitrator, Panelist

30 Jan '06
Signature Date

Victor F. Alvarez
Non-Public Arbitrator, Panelist

Signature Date

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Non-Public Arbitrator, Panelist

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