

**STIPULATED AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Name of Claimant

James R. Kelly

and

03-06002
Kansas City, Missouri

Name of Respondents

Morgan Stanley DW Inc.
Brian R. Tompakov

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

REPRESENTATION OF PARTIES

James R. Kelly ("**Claimant**") was represented by Michael B. Lowe, Esq., Payne & Jones, Chartered, Overland Park, Kansas

Morgan Stanley DW Inc. ("**Respondent MSDW**") and Brian R. Tompakov ("**Respondent Tompakov**") hereinafter referred to as ("**Respondents**") were represented by Lisa B. Dodge, Esq., Morgan Stanley DW Inc., Tampa, Florida

CASE INFORMATION

Statement of Claim filed on or about: August 19, 2003. Claimant JAMES R. KELLY, signed the Uniform Submission Agreement on August 12, 2003.

Statement of Answer Filed by Respondents, MORGAN STANLEY DW INC. AND BRIAN TOMPAKOV on November 3, 2003. Respondent MORGAN STANLEY DW INC. signed the Uniform Submission Agreement on November 3, 2003. Respondent BRIAN TOMPAKOV signed the Uniform Submission Agreement on November 9, 2003.

CASE SUMMARY

Claimant asserted the following causes of action:

Suitability, unauthorized trading, breach of fiduciary duty, breach of contract, fraud, negligent misrepresentation, negligence, and vicarious liability, failure to supervise, violation of NASD and NYSE Rules.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimant was fully advised of and understood the nature of the investments purchased in his Morgan Stanley account, and granted informed consent with respect to each transaction in those accounts. Accordingly, Claimant is not entitled to any relief in this action.
2. Claimant had full knowledge of the subject transactions, and is accordingly precluded from recovery.
3. The decline in the value of the Claimant's investments made through Morgan Stanley was caused in whole or in part by events outside the control of Respondents. Therefore, Claimant is not entitled to any recovery against Respondents.
4. Claimant ordered, approved, authorized, participated in, or ratified the investment transactions in dispute. The Claimant is accordingly barred from any recovery in this action under the doctrines of waiver, estoppel and ratification.
5. Claimant's losses were proximately caused by his own decisions, conduct and/or negligence, not by any action or inaction in the part of Respondents. Claimant's claims are therefore barred in whole or in part in proportion to the percentage of his negligence, which contributed to his losses.
6. Claimant's claims are barred as a result of his failure to exercise due diligence and his failure to disaffirm the transactions and acts complained of in a timely matter despite his knowledge of these actions and transactions.
7. Claimant's supposed causes of action are barred as a result of his failure to minimize or mitigate his damages.
8. Claimant's relationship with Respondents is of a contractual nature and, therefore, any tort claims for economic losses are barred as a matter of law.
9. Claimant is not entitled to recovery in this action because Respondents acted at all times in good faith and exercised reasonable diligence.
10. Claimant's claims are barred in part by the applicable statutes of limitations and/or repose.
11. Claimant voluntarily assumed the risks of the transactions at issue and the investment losses allegedly incurred.
12. Respondents reserve the right to add additional affirmative or special defenses as they become known.

RELIEF REQUESTED

In his Statement of Claim, Claimant requested:

1. Compensatory damages of \$165,072.61 plus interest;
2. Punitive damages;

3. Costs, expenses and attorneys fees
4. Such other and further relief as the Panel deems just and appropriate.

Respondents requested that the claims asserted against them be denied in its entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Prior to the hearing, the Parties fully and finally settled all claims by and between them. Therefore, the Parties submit this Stipulated Award to the Panel for its consideration and request that it be entered.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated 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 the NASD Dispute Resolution (the "NASD").

AWARD

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. This matter is settled pursuant to a confidential settlement agreement.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent BRIAN TOMPAKOV's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent BRIAN TOMPAKOV 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 attorney's 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 = \$300.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Morgan Stanley DW Inc.

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	2,750.00
Total Member Fees	\$	5,200.00

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

1 Pre-hearing session(s) with Panel	x	1,125.00	\$	1,125.00
September 3, 2004	1	session		
Total Forum Fees			\$	1,125.00

The Arbitration Panel has assessed \$562.50 of the forum fees to James R. Kelly.
The Arbitration Panel has assessed \$562.50 of the forum fees jointly and severally to Morgan Stanley DW Inc. and Brian R. Tompakov.

Fee Summary

Claimant, James R. Kelly, is liable for:

Initial Filing Fee	= \$	300.00
Retained hearing session balance	= \$	562.50
<u>Forum Fees</u>	= \$	562.50
Total Fees	= \$	1,425.00
<u>Less payments</u>	= \$	-1,425.00

Balance Due NASD Dispute Resolution = \$ 0.00

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

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

Respondents, Morgan Stanley DW Inc. and Brian R. Tompakov, are jointly and severally liable for:


<u>Forum Fees</u>	= \$	562.50
Total Fees	= \$	562.50
<u>Less payments</u>	= \$	-562.50
Balance Due NASD Dispute Resolution	= \$	0.00

All balances are due to NASD Dispute Resolution


ARBITRATION PANEL

Robert A. Babcock, Esq. - Public Arbitrator, Presiding Chair
John R. Loss, Esq. - Public Arbitrator
Will B. Tschudy - Non-Public Arbitrator

Concurring Arbitrators


Robert A. Babcock, Esq.
Public Arbitrator, Presiding Chair

May 22 '06
Signature Date


John R. Loss, Esq.
Public Arbitrator

5/25/06
Signature Date

Will B. Tschudy
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 03-06002
Stipulated Award Page 5 of 5

Balance Due NASD Dispute Resolution = \$ 0.00

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

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

Respondents, Morgan Stanley DW Inc. and Brian R. Tompakov, are jointly and severally liable for:


Forum Fees	= \$	562.50
Total Fees	= \$	562.50
<u>Less payments</u>	= \$	-562.50
Balance Due NASD Dispute Resolution	= \$	0.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Robert A. Babcock, Esq. - Public Arbitrator, Presiding Chair
John R. Loss, Esq. - Public Arbitrator
Will B. Tschudy - Non-Public Arbitrator

Concurring Arbitrators


Robert A. Babcock, Esq.
Public Arbitrator, Presiding Chair

May 22 '06
Signature Date

John R. Loss, Esq.
Public Arbitrator


Will B. Tschudy
Non-Public Arbitrator

Signature Date

May 24, 06
Signature Date

Date of Service (For NASD office use only)