

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

**Andy Lakey and Chantal LaForce, Claimants v. Morgan Stanley DW Inc. and Gary S. Allen,
Respondents**

Case Number: 03-06024

Hearing Site: San Diego, California

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

REPRESENTATION OF PARTIES

For Claimants:

**William S. Bonnheim, Esq.
William S. Bonnheim, PLC
Palm Desert, California**

For Respondents:

**Jeanine M. Larrea, Esq.
Morgan Stanley DW Inc.
San Francisco, California**

CASE INFORMATION

Statement of Claim filed on or about August 19, 2003

Amended Statement of Claim filed: August 10, 2004

Claimant Andy Lakey's Uniform Submission Agreement signed: June 1, 2003

Joint Statement of Answer to Statement of Claim filed by Respondents: December 22, 2003

**Joint Statement of Answer to the Amended Statement of Claim filed by Respondents:
September 24, 2004**

**Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed:
December 22, 2003 and December 30, 2003**

CASE SUMMARY

In their Amended Statement of Claim, Claimants alleged failure to supervise, breach of fiduciary duty, violation of the State Securities Act, false or misleading statements, and fraudulent business practices against disabled person, involving unspecified securities.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statements of Claim and asserted affirmative defenses.

RELIEF REQUESTED

In their Amended Statement of Claim, Claimants requested general and compensatory damages in the amount of \$188,000.00, all profits generated from Claimants' account, pre-judgment interest at the statutory rate, attorney's fees, and costs.

Respondents requested dismissal of the Statements of Claim in their entirety, costs, and that this matter be expunged from the NASD Central Registration Depository ("CRD") records of Gary S. Allen.

OTHER ISSUES CONSIDERED AND DECIDED

On October 22, 2003, Claimant Andy Lakey 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.

On June 8, 2004, NASD Dispute Resolution received Respondents' counsel's signed Waiver Agreement on Respondents' behalf 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 waiver of the Claimant 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.

Respondent Gary S. Allen did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On June 15, 2004, the Panel granted Claimant leave to file an Amended Statement of Claim. On August 10, 2004, Claimants filed an Amended Statement of Claim, which among other things, added Chantal LaForce as a Claimant.

At the evidentiary hearing, Claimants' counsel informed the Panel that Claimant Chantal LaForce withdrew her claims. Chantal LaForce did not appear at the hearing.

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) Claimant's claims are denied in their entirety.
- 2) The Panel finds that the allegations are false. Therefore, the Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Morgan Stanley DW Inc.'s registration records maintained by CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Morgan Stanley DW Inc. must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3) The Panel finds that the allegations are false. Therefore, the Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Gary S. Allen's registration records maintained by CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Gary S. Allen must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code of Arbitration Procedure ("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	= \$ Waived
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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 party and the following fees are assessed:

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 Panel has assessed forum fees for each session conducted. A 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:

Four (4) Pre-hearing conference sessions with the Panel@ \$1,125.00/session	= \$ 4,500.00
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Pre-hearing conferences:	March 1, 2004	1 session
	June 15, 2004	1 session
	March 18, 2005	1 session
	March 24, 2005	1 session

Six (6) Hearing sessions @ \$1,125.00/session	= \$ 6,750.00
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Hearings:	April 5, 2005	2 sessions
	April 6, 2005	2 sessions
	April 7, 2005	2 sessions

Total Forum Fees	= \$11,250.00
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1. The Panel assessed \$10,125.00 of the forum fees to Claimant Andy Lakey.
2. The Panel waived \$1,125.00 of the forum fees for the March 18, 2005 conference.

Fee Summary

1. Claimant Andy Lakey is charged with the following fees and costs:

Forum Fees	= \$10,125.00
<u>Less payments</u>	= \$(0.00)
Balance Due NASD Dispute Resolution	= \$10,125.00

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


Member Fees	= \$ 5,200.00
<u>Less payments</u>	= \$(7,950.00)
Refund Due Morgan Stanley DW Inc.	= \$(2,750.00)

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

William W. Huss	-	Public Arbitrator, Presiding Chair
Raymond Prazen	-	Public Arbitrator
James H. Fehlberg, CFP	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



William W. Huss
Chair, Public Arbitrator

April 14 2005

Signature Date

Raymond Prazen
Public Arbitrator

Signature Date

James H. Fehlberg, CFP
Non-Public Arbitrator

Signature Date

4/14/05

Date of Service


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Chair, Public Arbitrator

Signature Date



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Public Arbitrator

4/14/05

Signature Date

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