

**Stipulated Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Estate of John Carl,
Richard D. Carl, Executor, Claimant

Case Number: - 03-09177

v.

Morgan Stanley DW, Inc. and
Cory A. Fraraccio,
Respondents

Hearing Site: Indianapolis, Indiana

NATURE OF THE DISPUTE

Customer vs. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Claimant, Richard D. Carl, Executor for the Estate of John Carl ("Carl"), hereinafter referred to as "Claimant": Joseph E. Conley, Jr., Esq. of the law firm Buechel & Conley, located in Crestview Hills, Kentucky.

Respondents, Morgan Stanley DW Inc. ("Morgan Stanley") and Cory A. Fraraccio ("Fraraccio"), hereinafter collectively referred to as "Respondents": David R. Maurer, Esq. of Morgan Stanley DW, Inc. located in San Francisco, California.

CASE INFORMATION

Statement of Claim filed on or about December 30, 2003. Claimant Carl signed the Uniform Submission Agreement on December 29, 2003.

Joint Statement of Answer and Motion to Dismiss filed by Respondents Morgan Stanley and Fraraccio on March 3, 2004. Respondent Morgan Stanley signed the Uniform Submission Agreement on March 3, 2003. Respondent Fraraccio signed an undated Uniform Submission Agreement.

Claimant did not submit a Response to Respondents' Motion to Dismiss.

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract, breach of fiduciary duty and churning.

Unless specifically admitted in their Answer, Respondents Morgan Stanley and Fraraccio denied the allegations made in the Statement of Claim and asserted the following defenses: waiver; ratification; lack of evidence; failure to mitigate; comparable fault; laches; estoppel; non-economic losses barred; New York law applies; failure to state a claim; and consent.

RELIEF REQUESTED

Claimants requested \$100,000.00 in compensatory damages, attorney's fee, cost and other relief the Panel deems appropriate.

Respondents Morgan Stanley and Fraraccio requested that Claimant's Statement of Claim be dismissed with prejudice, expunge this matter from Respondent Fraraccio's CRD record, attorney's fees and cost, and other relief the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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.

The parties stipulate to the entry of a Stipulated Award whereby Claimant and Respondents agree that:

1. Claimant and Respondents shall each bear their own fees and costs for this proceeding, and agree to waive any claims for fees and costs each might have against the other;
2. There is insufficient evidence to proceed with the arbitration of this matter, and therefore, Respondent Fraraccio should not have been named as a Respondent, and Respondents' Motion to Dismiss is granted with prejudice.
3. Respondents request that the Panel issue an Order directing NASD Central Registration Depository ("CRD") to expunge all reference to the above-captioned matter from Respondent Cory Fraraccio's CRD records and Forms U-4. Claimant does not oppose this request.

AWARD

After considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

- 1.) This matter is dismissed with prejudice.
- 2.) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Cory Fraraccio's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Fraraccio must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive
- 3.) Each party shall bear their own costs and fees in this matter.
- 4.) That any relief not specifically enumerated 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 = \$ 225.00

Member Fees

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

Member surcharge = \$1,100.00

Pre-hearing process fee = \$ 750.00

Forum Fees and Assessments

The 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 arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

No forum fees were assessed in this matter.

FEE SUMMARY

1. Claimant Carl is hereby are solely liable for:

Initial Filing Fee	= \$ 225.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Refund Due from NASD Dispute Resolution	= \$1,200.00

2. Respondent, Morgan Stanley, is hereby solely liable for:

Member Fees	= \$1,850.00
<u>Less payments</u>	<u>= \$4,050.00</u>
Refund Due from NASD Dispute Resolution	= \$2,200.00

ARBITRATION PANEL

Joseph L. Claypool, Esq.	-	Public Arbitrator, Presiding Chairperson
Steve C. Bach, Esq.	-	Public Arbitrator
Richard E. Neal	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Joseph L. Claypool, Esq.
Public Arbitrator, Presiding Chair

10/20/04
Signature Date

Steve C. Bach, Esq.
Public Arbitrator

10/20/04
Signature Date

Richard E. Neal
Non-Public Arbitrator

10/20/04
Signature Date

10/21/04
Date of Service (For NASD office use only)

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 Richard E. Neal

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 - Public Arbitrator
 - Non-Public Arbitrator

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Steve C. Bach

Steve C. Bach, Esq.
Public Arbitrator

10/20/04

Signature Date

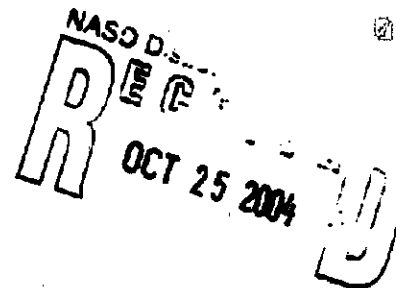
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