

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Joacy P. Silva, Claimant v. Morgan Stanley DW Inc., Respondent

Case Number: 04-00468

Hearing Site: Los Angeles, California

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Nature of the Dispute: Customer v. Member

**REPRESENTATION OF PARTIES**

For Claimant:

Ryan B. Bakhtiari, Esq.  
Keith D. Fraser, Esq.  
Aidikoff & Uhl  
Beverly Hills, California

For Respondent:

Ronald E. Wood, Esq.  
Christine A. Pham, Esq.  
Morgan Stanley DW Inc.  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: January 25, 2004

Claimant's Uniform Submission Agreement signed: January 23, 2004

Statement of Answer filed by Respondent: April 1, 2004

Respondent's Uniform Submission Agreement signed: April 1, 2004

**CASE SUMMARY**

Claimant alleged fraud, deceit, breach of fiduciary duty, failure to supervise, and violation of California Corporate Securities Acts, federal and state securities laws, California statutory and common law, NASD Rules of Fair Practice, and NYSE rules. Claimant's allegations involved transactions in Excite@Home, Conexant, and Terayon stocks.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested \$322,000.00 in compensatory damages, unspecified punitive damages, unspecified consequential damages, unspecified disgorgement, restitution, and rescission, pre- and post-judgment interest, and costs, including attorney's fees.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On January 23, 2004, Claimant and Claimant's counsel 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.

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.

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) Respondent Morgan Stanley DW Inc. is liable to and shall pay Claimant the sum of \$322,882.43 in compensatory damages.
- 2) Respondent Morgan Stanley DW Inc. is liable to and shall pay Claimant the sum of \$129,152.97 in attorney's fees, pursuant to contract.
- 3) 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 = \$ 300.00

#### **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 assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session = \$ 450.00

Pre-hearing conferences: September 2, 2004 1 session

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session = \$ 1,125.00

Pre-hearing conference: June 8, 2004 1 session

Nine (9) Hearing sessions @ \$1,125.00/session = \$ 10,125.00

Hearings: November 8, 2004 2 sessions

November 9, 2004 2 sessions

November 10, 2004 2 sessions

November 11, 2004 2 sessions

November 12, 2004 1 session

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**Total Forum Fees = \$ 11,700.00**

The Panel assessed \$11,700.00 of the forum fees to Respondent Morgan Stanley DW Inc.

**Fee Summary**

1. Claimant Joacy P. Silva is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Less payments</u>	= \$ (1,425.00)
<b>Refund Due Claimant Joacy P. Silva</b>	<b>= \$ (1,125.00)</b>

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

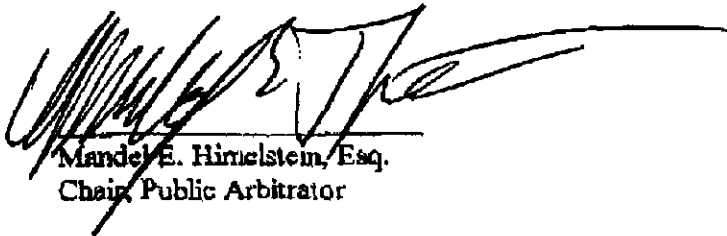
Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$11,700.00
Total Fees	= \$16,900.00
<u>Less payments</u>	= \$ (5,200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 11,700.00</b>

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

Mandel E. Hirschstein, Esq.	-	Public Arbitrator, Presiding Chair
Theodore E. Danciar	-	Public Arbitrator
Richard M. Leigh	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
Mandel E. Hirschstein, Esq.  
Chair, Public Arbitrator

11/13/04  
Signature Date

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Theodore E. Danciar  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Richard M. Leigh  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

11/15/04  
Date of Service

**ARBITRATION PANEL**

Mandel E. Himmelstein, Esq.	-	Public Arbitrator, Presiding Chair
Theodore E. Danciart	-	Public Arbitrator
Richard M. Leigh	-	Non-Public Arbitrator

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Mandel E. Himmelstein, Esq.  
Chair, Public Arbitrator

\_\_\_\_\_  
Signature Date



Theodore E. Danciart  
Public Arbitrator

11/14/04  
Signature Date

\_\_\_\_\_  
Richard M. Leigh  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

11/15/04  
Date of Service

ARBITRATION PANEL

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