

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Rene Garcia, Claimant vs. Morgan Stanley DW Inc. and Joseph Feinberg, Respondents

Case Number: 04-00661

Hearing Site: Los Angeles, California

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

REPRESENTATION OF PARTIES

For Claimant:

Steve A. Buchwalter, Esq.
Law Offices of Steve A. Buchwalter, P.C.
Encino, California

For Respondents:

Ronald E. Wood, Esq.
The Wood Group
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: January 26, 2004

Amended Statement of Claim filed: August 13, 2004

Claimant's Uniform Submission Agreement signed: July 17, 2004

Statement of Answer filed by Respondents: April 15, 2004

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: March 5, 2004

Respondent Joseph Feinberg's Uniform Submission Agreement signed: November 11, 2004

CASE SUMMARY

Claimant alleged breach of fiduciary duty, unsuitability, unauthorized trading, fraud, deceit, misrepresentation and omission of material fact, negligence, churning, failure to supervise, and violation of California Corporations Code Section 25401 and Puerto Rico Blue Sky Laws. Claimant's allegations involved transactions in shares of AOL, Ariba Inc., Brandmakers, Meditech, California Oaks Bank, Morgan Stanley, Koo Koo Roo, Martha Stewart Living, Sycamore Networks, and Triton PCS stock.

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

RELIEF REQUESTED

Claimant requested \$2,081,299.00 in compensatory damages, unspecified punitive damages, interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statements of Claim in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On February 15, 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.

On June 23, 2004, Claimant filed a request to amend the Statement of Claim, pursuant to Rule 10328(c) of the *NASD Code of Arbitration Procedure* (Code). On July 27, 2004, Respondents filed an opposition to the request. On August 2, 2004, the Panel granted Claimant's request. On August 13, 2004, Claimant filed an Amended Statement of Claim to increase his damages from \$2,000,000.00 to \$2,081,299.00 and to add allegations of suitability and unauthorized trading.

At the hearing, on January 4, 2006, Claimant moved for discovery sanctions. On January 5, 2006, Respondent opposed the motion. The Panel took the motion under submission. On January 11, 2006, after due deliberation, the Panel denied Claimant's motion for sanctions.

At the conclusion of Claimant's case on January 11, 2006, Respondents moved for a directed award. Claimant opposed the motion. On January 11, 2006, after due deliberation, the Panel granted Respondents' motion for a directed award.

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 dismissed with prejudice.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted, including Claimant's request for punitive damages, is denied.

FEES

Pursuant to the 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	= \$ 500.00
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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	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 5,000.00
Total Member Fees	= \$ 8,550.00

Adjournment Fees

The following adjournment fees are assessed:

February 19-22, 2005 adjournment requested by Claimant	= \$ 1,200.00
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The Panel assessed \$1,200.00 of adjournment fees to Claimant.

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:

Four (4) Pre-hearing conference sessions with a single arbitrator @ \$450.00/session = \$ 1,800.00

Pre-hearing conferences: October 20, 2004 1 session
 January 12, 2005 1 session
 February 14, 2005 1 session
 February 25, 2005 1 session

Four (4) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 4,800.00

Pre-hearing conferences: July 6, 2004 1 session
 July 1, 2005 1 session
 October 11, 2005 1 session
 November 29, 2005 1 session

Twelve (12) Hearing sessions @ \$1,200.00/session = \$ 14,400.00

Hearings: January 4, 2006 2 sessions
 January 5, 2006 2 sessions
 January 6, 2006 2 sessions
 January 9, 2006 2 sessions
 January 10, 2006 2 sessions
 January 11, 2006 2 sessions

Total Forum Fees = \$ 21,000.00

1. The Panel assessed \$10,500.00 of the forum fees to Claimant.
2. The Panel assessed \$10,500.00 of the forum fees jointly and severally to Respondents.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimant requested photocopy service of 133 pages @ \$.50 per page = \$ 66.50

Respondents requested photocopy service of 34 pages @ \$.50 per page = \$ 17.00

Fee Summary

1. Claimant Rene Garcia is charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$10,500.00
Administrative Costs	= \$ 66.50
Total Fees	= \$12,266.50
Less payments	= \$ (1,700.00)
Balance Due NASD Dispute Resolution	= \$10,566.50

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

Member Fees	= \$ 8,550.00
Less payments	= \$ (8,550.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Morgan Stanley DW Inc. and Joseph Feinberg are charged jointly and severally with the following fees and costs:


Forum Fees	= \$10,500.00
Administrative Costs	= \$ 17.00
Total Fees	= \$10,517.00
Less payments by Respondent Morgan Stanley DW Inc.	= \$ (600.00)
Balance Due NASD Dispute Resolution	= \$ 9,917.00

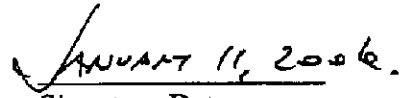
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.


ARBITRATION PANEL

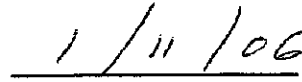
R. Carlton Seaver	-	Public Arbitrator, Presiding Chair
Robert D. Sussin	-	Public Arbitrator
Daniel R. Brush	-	Non-Public Arbitrator


Concurring Arbitrators' Signatures


R. Carlton Seaver
Chair, Public Arbitrator


Signature Date


Robert D. Sussin
Public Arbitrator


Signature Date


Daniel R. Brush
Non-Public Arbitrator


Signature Date


Date of Service