

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants
Karl M. and Janet Buretz

Case Number: 04-02094

Name of the Respondents
Morgan Stanley DW Inc. and
James H. McNeill

Hearing Site: Dallas, Texas

NATURE OF THE DISPUTE

Customers vs. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Claimants Karl M. and Janet Buretz, hereinafter collectively referred to as "Claimants)": Alan D. Sweetbaum, Esq. and Wade Warthen, Esq., of the firm of Fisher, Sweetbaum & Levin, P.C., located in Denver, Colorado.

Respondents Morgan Stanley DW Inc. ("Morgan Stanley") and James H. McNeill ("McNeill"), hereinafter collectively referred to as "Respondents": Michael J. Stanley, Esq., of the firm of Stanley Phillips, L.L.P., located in Houston, Texas.

CASE INFORMATION

Statement of Claim filed: March 29, 2004.

Claimants signed the Uniform Submission Agreement: March 22, 2004.

Statement of Answer filed by Respondents on: June 16, 2004

Respondent Morgan Stanley signed the Uniform Submission Agreement: October 1, 2004.

Respondent McNeill signed the Uniform Submission Agreement: October 1, 2004

CASE SUMMARY

Claimants asserted the following causes of action: unsuitability; breach of fiduciary duty; violation of industry standards; failure to supervise and *respondeat superior liability*. These causes of action allegedly related from Respondents recommendations and investments in high tech and telecom stocks.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the

Statement of Claim and asserted the following defenses:

1. Claimants' claims are barred in whole or in part by the doctrine of comparative responsibility;
2. Claimants are estopped from complaining about the transactions at issue;
3. Claimants, by their own conduct, have waived any claims they might have had against Respondents which may be alleged in the Statement of Claim;
4. Claimants, acting with full knowledge and notice of the facts, ratified, approved, accepted, acquiesced; and confirmed in all respects the acts complained of in the Statement of Claim;
5. The Claimants' causes of action are barred by the applicable state of federal statutes of limitations;
6. Respondents are not liable to Claimants in any amount because, at all relevant times, they acted properly, in good faith and in a commercially reasonable manner with respect to Claimants' accounts;
7. Claimants assumed the risks of the investments that they made and through their decisions regarding when to purchase and whether to hold such securities;
8. All transactions upon which Claimants base their alleged claims were conducted in accordance with all applicable Exchange rules and regulations; and,
9. Claimants have failed to mitigate their damages, if any.

RELIEF REQUESTED

Claimants Karl M. and Janet Buretz requested:

Compensatory Damages	In excess of \$500,000.00
Lost Opportunity Damages	In excess of \$280,000.00
Interest	Prejudgment interest at the statutory rate
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary/Non-Monetary Relief if any:	As permitted by the NASD Code, the Texas Deceptive Trade Practices Act or any other applicable law or equitable principles.

Respondents Morgan Stanley DW Inc. and James H. McNeill requested that the claims be dismissed with prejudice and that the Panel award Respondents any further relief to which Respondents may show themselves entitled.

OTHER ISSUES CONSIDERED AND DECIDED

On or about February 19, 2006, the Claimants' counsel contacted NASD Dispute Resolution and advised that the parties had settled the arbitration, but that Respondents would present evidence at hearing to seek the expungement of McNeill's CRD record. The Claimants' acknowledged that they had no objection and would appear telephonically if required.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Pursuant to the parties' settlement, the claims in this matter are dismissed;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent James H. McNeill's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent James H. McNeill must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents. Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact: The claim, allegation, or information is false;
3. The Parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated in this decision;
4. Any and all relief not specifically addressed herein is denied.

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	= \$ 375.00
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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. Accordingly, Morgan Stanley DW Inc. is a party and the following member fees are assessed:

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

January 31-February 3, 2006 adjournment by Respondents	= \$ 1,200.00
October 25-28, 2006 adjournment jointly requested	= \$ 1,200.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 2,400.00
Pre-hearing conferences: September 9, 2004 1 session	
April 28, 2005 1 session	
One (1) Hearing sessions @ \$1,200.00	= \$ 1,200.00
Hearing Date: February 20, 2006 1 session	
Total Forum Fees	= \$ 3,600.00

The Panel has assessed \$1,200.00 of the forum fees, jointly and severally, to Claimants Karl M. and Janet Buretz. The remaining \$2,400.00 of the forum fees the Panel has assessed to Respondent Morgan Stanley DW Inc.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

February 20-22, 2006 settlement	= \$ 300.00
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FEE SUMMARY

Claimants Karl M. and Janet Buretz are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$ 1,200.00
<u>Three-Day Cancellation Fee</u>	<u>= \$ 150.00</u>
Total Fees	= \$ 2,925.00
<u>Less payments</u>	<u>= \$ 1,575.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,350.00

Respondent Morgan Stanley DW Inc. is solely liable for:

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 2,400.00
<u>Three-Day Cancellation Fee</u>	<u>= \$ 150.00</u>
Total Fees	= \$ 9,550.00
<u>Less payments</u>	<u>= \$ 7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,550.00

Respondents Morgan Stanley DW Inc. and James H. McNeill are jointly and severally liable for:

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Adjournment Fee	= \$ 1,200.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,200.00

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

ARBITRATION PANEL

Melinda G. Jayson, P.C. - Public Arbitrator, Presiding Chairperson
Maxel E. Silverberg, Esq. - Public Arbitrator
Donald Vincent Enright - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Melinda Jayson
Melinda G. Jayson, P.C.
Public Arbitrator, Presiding Chairperson

March 3, 2006
Signature Date

Maxel E. Silverberg, Esq.
Public Arbitrator

Signature Date

Donald Vincent Enright
Non-Public Arbitrator

Signature Date

3/7/06 Max
Date of Service (For NASD Dispute Resolution office use only)

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Adjournment Fee	= \$ 1,200.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,200.00

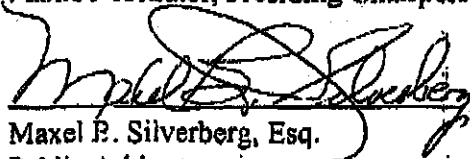
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3/3/06
 Signature Date

Donald Vincent Enright
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Signature Date

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Arbitration No. 04-02094
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Concurring Arbitrators' Signatures

Melinda G. Jayson, P.C.
Public Arbitrator, Presiding Chairperson

Signature Date

Maxel B. Silverberg, Esq.
Public Arbitrator

Signature Date


Donald Vincent Enright
Non-Public Arbitrator

March 7, 2006
Signature Date

3/7/06 MM
Date of Service (For NASD Dispute Resolution office use only)