

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

The Bruce Houman, MD APC Profit Sharing Plan n/k/a The Urology Center of So. California Retirement Plan, Claimant v. Morgan Stanley DW Inc. and Joshua Wilson, Respondents

Case Number: 04-02095

Hearing Site: Los Angeles, California

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

REPRESENTATION OF PARTIES

For Claimant:

Elizabeth Lowery, Esq.
Fields, Fehn & Sherwin
Los Angeles, California

For Respondents:

Kevin Fitzgerald, Esq.
Catherine L. Dellecker, Esq.
Jones, Bell, Abbott, Fleming
& Fitzgerald
Los Angeles, California

CASE INFORMATION

Initial Statement of Claim filed: March 25, 2004

Amended Statement of Claim filed: May 6, 2004

Claimant's Uniform Submission Agreement signed: April 20, 2004

Respondent Morgan Stanley DW Inc.'s Statement of Answer filed: July 1, 2004

Respondent Joshua Wilson's Joinder in Morgan Stanley DW Inc.'s Statement of Answer filed:
August 20, 2004

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: July 1, 2004

Respondent Joshua Wilson's Uniform Submission Agreement signed: August 1, 2004

CASE SUMMARY

Claimant's Initial Statement of Claim named Morgan Stanley DW Inc. as the sole Respondent. On May 6, 2004, Claimant amended its Statement of Claim pursuant to the Code of Arbitration Procedure Rule 10328(a), adding Respondent Joshua Wilson.

Both Claimant's Initial and Amended Statements of Claim alleged breach of fiduciary duty and negligence. Claimant's allegations involved the purchase on margin of shares in the Morgan Stanley Technology Fund. Claimant's allegations also involved the purchase of other unspecified securities described as "high risk technical securities."

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statements of Claim.

RELIEF REQUESTED

Claimant requested \$1,052,061.00 in compensatory damages, pre- and post-judgment interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety and costs.

OTHER ISSUES CONSIDERED AND DECIDED

On April 20, 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.

FINDINGS

The Panel finds that Claimant's funds were unsuitably invested in the Morgan Stanley Technology Fund. Respondent Joshua Wilson, however, was not Claimant's broker at the time of this investment and was not involved in the conduct that gave rise to Claimant's allegations.

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 \$125,400.00 in compensatory damages.
- 2) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Joshua Wilson's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Joshua Wilson must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3) Respondent Morgan Stanley DW Inc. is liable to and shall reimburse Claimant one-half of its filing fees in the sum of \$250.00.
- 4) With the exception of paragraph 3, 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, 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
<u>Hearing Process Fee</u>	= \$5,000.00
Total Member Fees	= \$8,550.00

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 the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: August 30, 2004 1 session	

Nine (9) Hearing sessions @ \$1,200.00/session	= \$10,800.00
Hearings: April 18, 2005 2 sessions	
April 19, 2005 2 sessions	
April 20, 2005 2 sessions	
April 21, 2005 2 sessions	
April 22, 2005 1 session	

Total Forum Fees	= \$12,000.00
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1. The Panel assessed \$6,000.00 of the forum fees to Claimant The Bruce Houman, MD APC Profit Sharing Plan n/k/a The Urology Center of S Calif Retirement Plan.
2. The Panel assessed \$6,000.00 of the forum fees to Respondent Morgan Stanley DW Inc.

Fee Summary

1. Claimant The Bruce Houman, MD APC Profit Sharing Plan n/k/a The Urology Center of S Calif Retirement Plan is charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	<u>= \$ 6,000.00</u>
Total Fees	= \$ 6,500.00
<u>Less payments</u>	<u>= \$(1,700.00)</u>
Balance Due NASD Dispute Resolution	= \$ 4,800.00

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

Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	<u>= \$ 6,000.00</u>
Total Fees	= \$14,550.00
<u>Less payments</u>	<u>= \$ (8,550.00)</u>
Balance Due NASD Dispute Resolution	= \$ 6,000.00

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

James P. Murphy
John P. Endicott
Basil Lewis

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

James P. Murphy
Chair, Public Arbitrator

Signature Date

John P. Endicott
Public Arbitrator

Signature Date



Basil Lewis
Non-Public Arbitrator

4/26/05

Signature Date

April 26, 2005

Date of Service

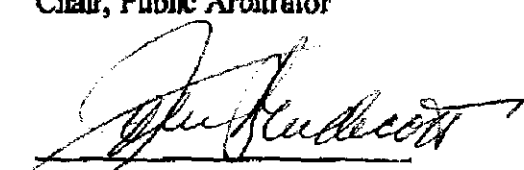
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John P. Endicott	-	Public Arbitrator
Basil Lewis	-	Non-Public Arbitrator

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- *Public Arbitrator*
- *Non-Public Arbitrator*

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Chair, Public Arbitrator

4/25/05
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Public Arbitrator

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Basil Lewis
Non-Public Arbitrator

Signature Date

April 26, 2005
Date of Service