

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

John A. Spalding, Claimant v. Morgan Stanley DW Inc., Respondent

Case Number: 04-02699

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer v. Member

REPRESENTATION OF PARTIES

For Claimant:

David Bortman, Esq.
Law Offices of David Bortman
Beverly Hills, California

For Respondent:

Kevin K. Fitzgerald, Esq.
Jones, Bell, Abbott, Fleming
& Fitzgerald
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: April 7, 2004

Claimant's Uniform Submission Agreement signed: April 2, 2004

Statement of Answer: June 21, 2004

Respondent's Uniform Submission Agreement signed: June 21, 2004

CASE SUMMARY

Claimant alleged breach of contract, breach of fiduciary duty, unsuitability, misrepresentation and omission of facts, violation of federal and state securities laws, violation of NASD rules, and failure to supervise. Claimant's allegations involved Respondent's alleged failure to diversify Claimant's retirement account, resulting in the over-concentration of the account in "high risk, 'high tech' securities and 'high yield' or 'junk' bonds." Claimant also alleged that Respondent managed the account without regard for preservation of principal; that losing positions were allowed to languish without any strategy to limit losses; and, that Respondent failed to inform

Claimant of the risks involved in the investments recommended, including but not limited to investments in EMC and Sun Microsystems.

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

RELIEF REQUESTED

Claimant requested \$616,000.00 in compensatory damages, interest, and costs, including attorney's fees.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety and costs. Respondent also requested expungement of all reference to the above-captioned arbitration from Paul Adams' registration records maintained by the NASD Central Registration Depository.

OTHER ISSUES CONSIDERED AND DECIDED

On April 2, 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) Claimant's claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) 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 = \$ 375.00

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	= \$2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$4,000.00</u>
Total Member Fees	= \$7,000.00

Adjournment Fees

The following adjournment fees are assessed:

June 7-9, 2005 adjournment requested by the parties = \$1,200.00

Pursuant to Rule 10403(b) of the Code, the adjournment fee is waived.

Forum Fees and Assessments

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

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference: November 15, 2004 1 session	
Four (4) Hearing sessions @ \$1,200.00/session	= \$4,800.00
Hearings: April 18, 2006 2 sessions	
April 19, 2006 2 sessions	
Total Forum Fees	= \$6,000.00

The Panel assessed the entire balance of the forum fees, in the amount of \$6,000.00, to Respondent Morgan Stanley DW Inc.

Fee Summary

1. Claimant John A. Spalding is charged with the following fees and costs:

Initial Filing Fee	= \$ 375.00
<u>Less payments</u>	<u>= \$ (1,575.00)</u>
Refund Due from NASD Dispute Resolution	= \$ (1,200.00)

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

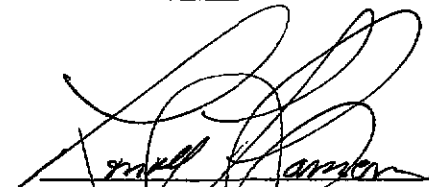
Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	<u>= \$ 6,000.00</u>
Total Fees	= \$13,000.00
<u>Less payments</u>	<u>= \$ (7,000.00)</u>
Balance Due NASD Dispute Resolution	= \$ 6,000.00

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

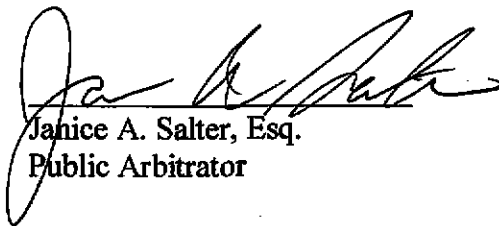
Ronald L. Cameron	-	Public Arbitrator, Presiding Chair
Janice A. Salter, Esq.	-	Public Arbitrator
Luther Delano Prater	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures




Ronald L. Cameron
Chair, Public Arbitrator

4/19/06
Signature Date



Janice A. Salter, Esq.
Public Arbitrator

4/19/06
Signature Date



Luther Delano Prater
Non-Public Arbitrator

4/19/06
Signature Date

April 19, 2006
Date of Service