

Award
NASD Dispute Resolution

COPY

In the Matter of the Arbitration Between:

Calanthia A. Barrociere, Claimant v. Morgan Stanley & Co., Inc. and Morgan Stanley DW Inc.,
Respondents

Case Number: 04-02873

Hearing Site: San Francisco, California

Nature of the Dispute: Customer vs. Members

REPRESENTATION OF PARTIES

For Claimant:

Thomas D. Mauriello, Esq.
Law Offices of Thomas D. Mauriello
San Francisco, California

For Respondent Morgan Stanley DW Inc.:

David R. Maurer, Esq.
Morgan Stanley DW Inc.
San Francisco, California

CASE INFORMATION

Statement of Claim filed: April 16, 2004

Claimant's Post-Hearing Brief on Statute of Limitations Issues raised in Respondent's Motion to Dismiss filed: May 23, 2005

Claimant's Uniform Submission Agreement signed: April 10, 2004

Statement of Answer filed by Respondent Morgan Stanley DW Inc. ("Morgan Stanley"): June 10, 2004

Respondent Morgan Stanley's Motion to Dismiss Statement of Claim filed: May 3, 2005

Respondent Morgan Stanley's Uniform Submission Agreement signed: June 10, 2004

CASE SUMMARY

Claimant alleged the following claims with respect to investments in various securities, including but not limited to investments in MSDW Mid-Cap Equity Trust B Shares, Putnam Health Science Trust B Shares, Unit Van Kampen Focus Portfolio Telecommunications & Bandwidth Series 7, Unit MSDW Select Equity Trust High Tech 35 Index Series 99-4, Unit Van Kampen Focus Portfolio Telecommunications & Bandwidth Series 8, Unit MSDW Select Equity Trust High Tech 35 Index 00-1, Unit Equity Investor Fund Internet Portfolio Series 00A, America Online Corp. and Aradigm Corp.: 1) Unsuitable Recommendations; 2) Failure to Disclose Material Facts; 3) Negligence; 4) Breach of Contract; 5) Breach of Fiduciary Duty; and 6) Negligent Supervision.

Respondent denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondent asserted various defenses.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages in the amount of \$135,804.76;
2. Additional compensatory damages in the form of lost opportunity costs and/or lost interest;
3. An award of prejudgment interest at the statutory rate, running from the date Ms. Barrocieri's monies were diverted until the date of the award;
4. Exemplary or punitive damages;
5. Costs of suit, including reasonable attorneys' fees, in an amount to be proved at hearing; and
6. Such other relief as the Panel may find appropriate under the circumstances.

Respondent requested:

1. That Claimant's Statement of Claim be dismissed with prejudice;
2. That the Panel enter an award in favor of Respondent;
3. Attorney's fees and costs; and
4. Such further relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On May 8, 2004 and May 27, 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 or about June 4, 2004, Claimant dismissed Morgan Stanley & Co., Inc. as a party in this matter.

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, including the post-hearing submission, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) All claims by Claimant, including the claims for exemplary and punitive damages, are dismissed. The Panel concluded that the various arguments regarding the issue of statute of limitations were not the driving factor in their decision.
- 2) Each party shall bear its own costs, including attorney's fees.
- 3) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR 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, Morgan Stanley & Co., Inc. and Morgan Stanley DW Inc. are parties and the following fees are assessed:

<u>Morgan Stanley & Co., Inc.</u>	
<u>Member Surcharge</u>	= \$1,700.00
Total Member Fees	= \$1,700.00

<u>Morgan Stanley DW Inc.</u>	
Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$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/Panel. The following fees are assessed:

(6) Hearing sessions @ \$1,125.00/session		= \$6,750.00
Hearings:		
	May 17, 2005	2 sessions
	May 18, 2005	2 sessions
	May 19, 2005	2 sessions

Total Forum Fees	= \$6,750.00
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The Panel assessed \$3,375.00 of the forum fees to Claimant.

The Panel assessed \$3,375.00 of the forum fees to Respondent Morgan Stanley DW Inc.

Fee Summary

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

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 3,375.00
Total Fees	= \$ 3,675.00
<u>Less Payments</u>	= \$(1,475.00)
Balance Due NASD-DR	= 2,200.00

2. Respondent Morgan Stanley & Co., Inc. is charged with the following fees and costs:

Member Fees	= \$ 1,700.00
<u>Less Payments</u>	= \$(1,700.00)
Balance Due NASD-DR	= \$ 0.00

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

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 3,375.00
Total Fees	= \$ 8,575.00
<u>Less Payments</u>	= \$(7,950.00)
Balance Due NASD-DR	= \$ 625.00

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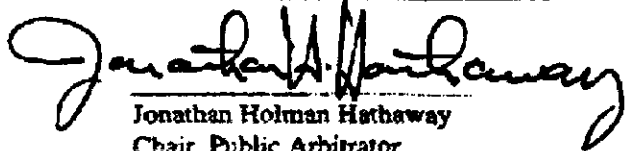
All balances are payable to NASD Dispute Resolution and are payable upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Jonathan Holman Hathaway
Charles B. Stark, Jr.
Thomas Richard Delaney, II

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures


Jonathan Holman Hathaway
Chair, Public Arbitrator

5.31.2005
Signature Date

Charles B. Stark, Jr.
Public Arbitrator

Signature Date

Thomas Richard Delaney, II
Non-Public Arbitrator

Signature Date

5/31/05
Date of Service

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Arbitration No. 04-02873
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Charles B. Stark, Jr.	-	Public Arbitrator
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Public Arbitrator

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