

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Michael L. Merry, Claimant v. Morgan Stanley DW Inc., Paul C. Loo, and Edward L. McGowan, Respondents

Case Number: 04-02931

Hearing Site: Honolulu, Hawaii

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

REPRESENTATION OF PARTIES

For Claimant:

Michael L. Merry
In Pro Se
Waialua, Hawaii

For Respondents:

Christine A. Kendrick, Esq.
Morgan Stanley DW Inc.
San Francisco, California

CASE INFORMATION

Statement of Claim filed: April 20, 2004

Claimant's Uniform Submission Agreement signed: April 16, 2004

Joint Statement of Answer and Motion to Dismiss Respondent Paul C. Loo filed by Respondents:
June 21, 2004

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: June 21, 2004

Respondent Paul C. Loo's Uniform Submission Agreement signed: April 27, 2004

Respondent Edward L. McGowan's Uniform Submission Agreement signed: June 18, 2004

CASE SUMMARY

Claimant alleged negligence, failure to supervise, failure to execute, misrepresentations, non-disclosures, omission of facts, manipulations, and suitability. Claimant's allegations involved transactions in shares of Cisco Systems, Exodus Communications, Aribi, Avici, Enron, and unspecified mutual funds.

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

RELIEF REQUESTED

Claimant requested \$75,000.00 in compensatory damages, \$20,000.00 in punitive damages, and costs.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, expungement of the matter from the records of Respondents Paul C. Loo and Edward L. McGowan, and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On June 17, 2004, NASD Dispute Resolution received notice from Claimant dismissing Respondent Paul C. Loo without prejudice.

On August 23, 2004, the Panel granted Respondent Paul C. Loo's Motion to Dismiss with prejudice.

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 of Arbitration Procedure ("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	= \$ 225.00
--------------------------	-------------

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	= \$ 1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 1,700.00</u>
Total Member Fees	= \$ 3,550.00

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 @ \$750.00/session = \$ 750.00
Pre-hearing conference: August 20, 2004 1 session

Two (2) Hearing sessions @ \$750.00/session = \$ 1,500.00
Hearings: November 3, 2004 2 sessions

Total Forum Fees = \$ 2,250.00

1. The Panel assessed \$1,125.00 of the forum fees to Claimant Michael L. Merry.
2. The Panel assessed \$1,125.00 of the forum fees jointly and severally to Respondents Morgan Stanley DW Inc. and Edward L. McGowan.

Fee Summary

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

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= \$ 1,125.00
Total Fees	= \$ 1,350.00
<u>Less payments</u>	= \$ (975.00)
Balance Due NASD Dispute Resolution	= \$ 375.00

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

Member Fees	= \$ 3,550.00
<u>Less payments</u>	= \$ (3,550.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Morgan Stanley DW Inc. and Edward L. McGowan are charged jointly and severally with the following fees and costs:


<u>Forum Fees</u>	= \$ 1,125.00
Balance Due NASD Dispute Resolution	= \$ 1,125.00

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

E. Laurence Gay, Esq.	-	Public Arbitrator, Presiding Chair
Harriette L. Holt, Esq.	-	Public Arbitrator
John D. Ellis	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures:


E. Laurence Gay, Esq.
Chair, Public Arbitrator

Nov. 12, 2004
Signature Date

Harriette L. Holt, Esq.
Public Arbitrator

Signature Date

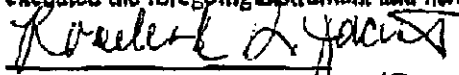
John D. Ellis
Non-Public Arbitrator

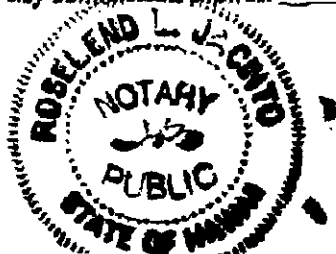
Signature Date

State of Hawaii ss:

City and County of Honolulu

On this 12 day of November 20 04 before me personally appeared
E. Laurence Gay to me known and known before me to be the individual described in and who
executed the foregoing instrument and he/she duly acknowledged that he/she executed the same.


Notary Public, State of Hawaii (Roselend L. Jacinto)
My commission expires: November 17, 2006



November 15, 2004
Date of Service

ARBITRATION PANEL

E. Laurence Gay, Esq.	-	Public Arbitrator, Presiding Chair
Harriette L. Holt, Esq.	-	Public Arbitrator
John D. Ellis	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures:

E. Laurence Gay, Esq.
Chair, Public Arbitrator

Signature Date

Harriette L. Holt, Esq.
Public Arbitrator

Signature Date

John D. Ellis
Non-Public Arbitrator

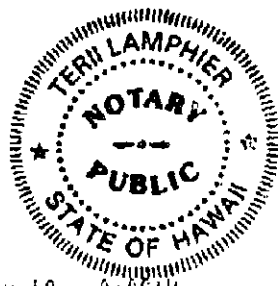
11/15/04
Signature Date

State of Hawaii ss:

City and County of Honolulu

On this 15th day of November 2004, before me personally appeared _____ to me known and known before me to be the individual described in and who executed the foregoing instrument and he/she duly acknowledged that he/she executed the same.

Teri Lamphier
Notary Public, State of Hawaii
My commission expires: 3-17-06



November 15, 2004
Date of Service