

Award
NASD Dispute Resolution

COPY

In the Matter of the Arbitration Between:

Kelsey Phipps Living Trust Dated June 7, 2000, Claimant v. Morgan Stanley DW Inc.,
Respondent

Case Number: 04-03137

Hearing Site: San Francisco, California

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

For Claimant:

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

For Respondent:

Kevin H. Lewis, Esq.
Howard, Rice, Nemerovski, Canady
Falk & Rabkin
San Francisco, California

CASE INFORMATION

Statement of Claim filed: April 28, 2004

Claimant's Arbitration Brief filed: December 7, 2005

Claimant's Uniform Submission Agreement signed: April 22, 2004

Statement of Answer and Affirmative Defenses of Respondent Morgan Stanley DW Inc.
("Morgan Stanley") filed: August 13, 2004

Respondent's Pre-Hearing Brief filed: December 6, 2005

Respondent's Uniform Submission Agreement signed: July 12, 2004

CASE SUMMARY

Claimant alleged the following claims with respect to investments in Pumatech, Inc. stock: 1) Negligence; 2) Breach of Contract; 3) Breach of Fiduciary Duty; and 4) Negligent Supervision.

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

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages of \$277,989.84, consisting of the decline in the price of Pumatech stock between March 1, 2001 and April 30, 2001, multiplied by 215,496 shares;
2. Commissions and transactions fees, if any, in amounts to be proven at the hearing;
3. An award of prejudgment interest at the statutory rate, running from the date(s) of the loss until the date of the arbitration award;
4. Costs of suit, including reasonable attorneys' fees, in an amount to be proved at the arbitration hearing; and
5. Such other relief as the arbitrators may find appropriate under the circumstances.

Respondent requested:

1. That Claimant take nothing by reason of the Statement of Claim; and
2. Such other and further relief as the Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

On September 16, 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. All claims by Claimant are dismissed.
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 Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$300.00
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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, Morgan Stanley is a party and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

Adjournment Fees

The following adjournment fees are assessed:

During the pre-hearing conference held June 23, 2005, Chairperson Keely D. Parr, Esq. ordered that the hearing dates of July 13-15, 2005, be postponed in the interest of full and fair document exchange and disclosure. The Panel determined that the parties shall split the \$1,125.00 postponement fee.

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:

(2) Pre-hearing conference sessions with a single arbitrator @ \$450.00/session = \$900.00

Pre-hearing conferences:	May 3, 2005	1 session
	June 23, 2005	1 session

(2) Pre-hearing conference sessions with the Panel @ \$1,125.00/session = \$2,250.00

Pre-hearing conferences:	December 10, 2004	1 session
	July 13, 2005	1 session

(6) Hearing sessions @ \$1,125.00/session = \$6,750.00

Hearings:	December 12, 2005	2 sessions
	December 13, 2005	2 sessions
	December 14, 2005	2 sessions

Total Forum Fees = \$9,900.00

The Panel assessed \$4,950.00 in forum fees to Claimant.

The Panel assessed \$4,950.00 in forum fees to Respondent.

Fee Summary

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

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 562.50
<u>Forum Fees</u>	<u>= \$ 4,950.00</u>
Total Fees	= \$ 5,812.50
<u>Less Payments</u>	<u>= \$(1,700.00)</u>
Balance Due NASD Dispute Resolution	= \$ 4,112.50

2. Respondent is charged with the following fees and costs:

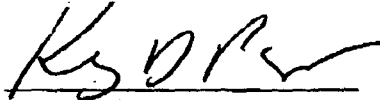
Member Fees	= \$ 5,200.00
Adjournment Fee	= \$ 562.50
<u>Forum Fees</u>	<u>= \$ 4,950.00</u>
Total Fees	= \$ 10,712.50
<u>Less Payments</u>	<u>= \$(5,762.50)</u>
Balance Due NASD Dispute Resolution	= \$ 4,950.00

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.

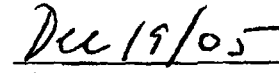
ARBITRATION PANEL

Keely D. Parr, Esq.	-	Public Arbitrator, Presiding Chair
John T. Collentine	-	Public Arbitrator
Stanford G. Hirata	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Keely D. Parr, Esq.
Chair, Public Arbitrator



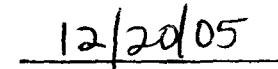
Signature Date

John T. Collentine
Public Arbitrator

Signature Date

Stanford G. Hirata
Non-Public Arbitrator

Signature Date



12/20/05

Date of Service

ARBITRATION PANEL

Keely D. Parr, Esq.	-	Public Arbitrator, Presiding Chair
John T. Collentine	-	Public Arbitrator
Stanford G. Hirata	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Keely D. Parr, Esq.
Chair, Public Arbitrator

Signature Date


John T. Collentine
Public Arbitrator

12-20-05
Signature Date

Stanford G. Hirata
Non-Public Arbitrator

Signature Date

12/20/05
Date of Service

NASD Dispute Resolution
Arbitration No. 04-09137
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ARBITRATION PANEL

Keely D. Parr, Esq.
John T. Collentine
Stanford G. Hirata

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Keely D. Parr, Esq.
Chair, Public Arbitrator

Signature Date

John T. Collentine
Public Arbitrator

Signature Date


Stanford G. Hirata
Non-Public Arbitrator

12/19/05
Signature Date

12/20/05
Date of Service