

**Stipulated Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Mueid Dee Elias, Claimant v. Morgan Stanley DW Inc. and Wayne Guzman, Respondents

Case Number: 04-03240

Hearing Site: Los Angeles, California

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

**REPRESENTATION OF PARTIES**

For Claimant:

Timothy D. McGonigle, Esq.  
Attorney at Law  
Santa Monica, California

For Respondent Morgan Stanley DW Inc.:

Paul J. Schumacher, Esq.  
Bingham McCutchen LLP  
Los Angeles, California

For Respondent Wayne Guzman:

Rene J. Kern, Jr., Esq.  
Kern & Gonzalez  
Los Angeles, California

**CASE INFORMATION**

Initial Statement of Claim filed: May 1, 2004

First Amended Statement of Claim filed: May 13, 2005

Claimant's Uniform Submission Agreement signed: April 24, 2004

Joint Statement of Answer to Initial Statement of Claim filed by Respondents: July 8, 2004

Statement of Answer to Claimant's First Amended Statement of Claim filed by Respondent Morgan Stanley DW Inc.: June 7, 2005

Statement of Answer to Claimant's First Amended Statement of Claim filed by Respondent Wayne Guzman: May 27, 2005

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: June 18, 2004

Respondent Wayne Guzman's Uniform Submission Agreement signed: August 27, 2004

### **CASE SUMMARY**

Claimant alleged breach of fiduciary duty, securities fraud, negligent misrepresentation, and conversion. Claimant's allegations involved transactions in unspecified stocks and bonds.

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

### **RELIEF REQUESTED**

In his Initial Statement of Claim and First Amended Statement of Claim, Claimant requested \$1,500,000.00 in compensatory damages, \$500,000.00 in punitive damages, interest and costs, including attorney's fees.

In their Initial and Amended Statements of Answer, Respondents requested dismissal of Claimant's Statements of Claim in their entirety and costs, including attorney's fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On April 24, 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.

On June 18, 2004, Respondents' counsel signed a Waiver Agreement on Respondents' behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On May 13, 2005, Claimant filed a First Amended Statement of Claim pursuant to Rule 10328(c) of the *NASD Code of Arbitration Procedure* (Code).

On November 16, 2005, Respondent Morgan Stanley DW Inc. filed a Motion to Dismiss. On November 28, 2005, Claimant filed an opposition to the motion. Prior to the commencement of the evidentiary hearing, the Panel heard oral argument on the motion. On November 28, 2005, after due deliberation, the Panel denied the motion.

On November 30, 2005, the parties advised the Panel and NASD Dispute Resolution that a full settlement of the matter had been reached.

### **STIPULATION**

The parties have entered into a Stipulation wherein they agreed: to dismiss, with prejudice, all claims asserted against Respondents; that Claimant does not oppose Respondents' request for an order expunging any reference of this matter from the public and non-public NASD and Central Registration Depository records of Respondent Wayne Guzman; and that each party shall bear its own costs, forum fees and attorneys' fees. The NASD shall retain any fees already paid by the parties, subject to either party's right, under the Code, to obtain complete or partial refund of fees paid.

The parties agree that the arbitrators issue an order expunging any reference of this matter from Respondent Wayne Guzman's Form U-5 on file with the Central Registration Depository on the ground that a sufficient showing has been made to establish that the allegations regarding fraud and unsuitability are clearly erroneous.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award with the original(s) remain on file with NASD Dispute Resolution.

### **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 against Respondent Morgan Stanley DW Inc. and Wayne Guzman are dismissed, with prejudice, in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Wayne Guzman's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Wayne Guzman must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact: The claim, allegation, or information is factually impossible or clearly erroneous

3. The parties shall bear their respective costs, including attorney's fees.
4. All other relief requested and not expressly granted, including Claimant's request for punitive damages, 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

#### **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
<b>Total Member Fees</b>	<b>= \$ 8,550.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

July 11 – 15; 18-19, 2005, adjournment requested by parties = \$ waived

#### **Three-Day Cancellation Fees**

Three-day cancellation fees apply when a hearing on the merits is postponed or settled within three business days before the start of the first scheduled hearing session. The following three-day cancellation fees are assessed:

Cancellation of December 2, 2005 hearing date: = \$ 300.00

1. The Panel assessed \$150.00 of the Three-Day Cancellation fees to Claimant Mueid Dee Elias.
2. The Panel assessed \$150.00 of the Three-Day Cancellation fees to Respondent Morgan Stanley DW Inc.

#### **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:

Four (4) Pre-hearing conference sessions with a single arbitrator @ \$450.00/session = \$ 1,800.00

Pre-hearing conferences:	October 19, 2005	1 session
	November 2, 2005	1 session

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November 10, 2005 1 session  
November 14, 2005 1 session

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session = \$ 1,200.00  
Pre-hearing conference: October 19, 2004 1 session

Seven (7) Hearing sessions @ \$1,200.00/session = \$ 8,400.00

Hearings: November 28, 2005 2 sessions  
November 29, 2005 2 sessions  
November 30, 2005 2 sessions  
December 1, 2005 1 session

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**Total Forum Fees = \$ 11,400.00**

1. The Panel assessed \$5,700.00 of the forum fees to Claimant Mueid Dee Elias.
2. The Panel assessed \$5,700.00 of the forum fees to Respondent Morgan Stanley DW Inc.

**Fee Summary**

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

Initial Filing Fee	= \$ 500.00
Three-Day Cancellation Fee	= \$ 150.00
<u>Forum Fees</u>	<u>= \$ 5,700.00</u>
Total Fees	= \$ 6,350.00
<u>Less payments</u>	<u>= \$ (1,700.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 4,650.00</b>

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

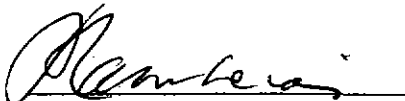
Member Fees	= \$ 8,550.00
Three-Day Cancellation Fee	= \$ 150.00
<u>Forum Fees</u>	<u>= \$ 5,700.00</u>
Total Fees	= \$ 14,400.00
<u>Less payments</u>	<u>= \$ (9,750.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 4,650.00</b>

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**

<b>Richard S. Mannheimer</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>Charles L. Repp, Jr.</b>	-	<b>Public Arbitrator</b>
<b>Ronald E. Ogden</b>	-	<b>Non-Public Arbitrator</b>

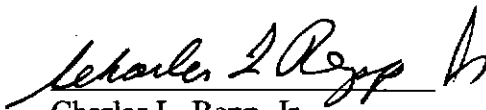
**Concurring Arbitrators' Signatures**



Richard S. Mannheimer  
Chair, Public Arbitrator

12/1/05

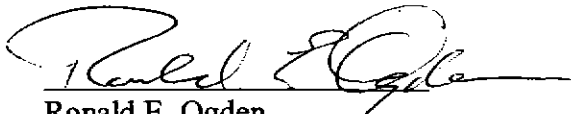
Signature Date



Charles L. Repp, Jr.  
Public Arbitrator

12/1/05

Signature Date



Ronald E. Ogden  
Non-Public Arbitrator

12/1/05

Signature Date

12/01/05

Date of Service