
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Michael McMahon

Case Number: 04-04752

Names of the Respondents
Morgan Stanley DW, Inc.
Michael J. Bock

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Michael McMahon, hereinafter referred to as "Claimant": Randell Place, Esq., Blum and Silver, LLP, Coral Springs, Florida.

For Morgan Stanley DW, Inc. ("MSDW") and Michael J. Bock ("Bock"), hereinafter collectively referred to as "Respondents": Peter Homer, Esq. and Christopher King, Esq., Homer & Bonner, P.A., Miami, Florida.

CASE INFORMATION

Statement of Claim filed on or about: July 2, 2004.

Claimant signed the Uniform Submission Agreement: June 16, 2004.

Answer, Defenses and Affirmative Defenses filed by Respondents on or about: August 27, 2004.

Respondent MSDW signed the Uniform Submission Agreement: July 19, 2004.

Respondent Bock did not submit an executed Uniform Submission Agreement.

Stipulated Dismissal, Without Prejudice, of Respondent Bock filed on or about: March 18, 2005.

Motion to add Respondent Bock as an Individual Respondent and Motion for Sanctions filed by Claimant on or about: September 14, 2005.

Opposition to Claimant's Motion to add Respondent Bock as an Individual Respondent and Motion for Sanctions filed by Respondent MSDW on or about: September 15, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: 1) violation of NYSE Rule 405, "Know Your Customer"; 2) violation of NASD Rule 2310; 3) breach of contract; 4) breach of fiduciary duty; 5) common law fraud; 6) negligence; and 7) negligent hiring, retention and supervision. The causes of action relate to Claimant's investments in, including but not limited to, Oracle Corp., Nortel, Nvidia Corp., Homestore.com and EMC Corp.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested: 1) compensatory damages in the amount of \$2,000,000.00; 2) interest at the legal rate from the date of purchase or reasonable market return; 3) rescission; 4) punitive damages; 5) costs; and 6) such other relief as the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents requested: 1) that all claims asserted by Claimant be denied in their entirety; 2) that sanctions be imposed on Claimant and his counsel; 3) attorneys' fees; and 4) costs.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Bock did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and having answered the claim is bound by the determination of the Panel on all issues submitted.

On or about March 3, 2005, Claimant notified NASD Dispute Resolution of his intent to dismiss Respondent Bock from this arbitration proceeding. On or about July 19, 2005, the Panel dismissed Respondent Bock from this arbitration proceeding, without prejudice.

On or about September 20, 2005, the Panel denied Claimant's Motion to add Respondent Bock as an Individual Respondent

On or about September 23, 2005 the Panel denied Claimant's and Respondents' Motion for Sanctions.

At the evidentiary hearing, Respondent MSDW made an ore tenus Motion for a Directed Verdict and the Panel denied the Motion.

At the evidentiary hearing, Respondents made an ore tenus Motion for the expungement of the NASD Central Registration Depository ("CRD") record of Respondent Bock. The Panel denied the Motion.

The parties agreed that the Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims against Respondent MSDW are hereby denied in their entirety, with prejudice.
2. Any and all claims for relief not specifically addressed herein are denied, including attorneys' fees and punitive damages, with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 500.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent MSDW is a party and a member firm.

Member surcharge = \$2,800.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$5,000.00

Total Member Fees = \$8,550.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during these proceedings.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session = \$ 450.00
Pre-hearing conference August 24, 2005 1 session

Three (3) Pre-hearing sessions with the Panel @ \$1,200.00/session = \$3,600.00
Pre-hearing conferences: November 12, 2004 1 session
September 16, 2005 1 session
September 19, 2005 1 session

Eight (8) Hearing sessions with the Panel @ \$1,200.00/session = \$9,600.00

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|----------------|--------------------|------------|
| Hearing Dates: | September 20, 2005 | 2 sessions |
| | September 21, 2005 | 2 sessions |
| | September 22, 2005 | 2 sessions |
| | September 23, 2005 | 2 sessions |

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|------------------|---------------|
| Total Forum Fees | = \$13,650.00 |
|------------------|---------------|

The Panel has assessed 80% of the forum fees in the amount of \$10,920.00 solely to Claimant.

The Panel has assessed 20% of the forum fees in the amount of \$2,730.00 solely to Respondent MSDW.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

| | |
|-------------------------------------|---------------|
| Forum Fees | = \$10,920.00 |
| <u>Initial Filing Fee</u> | = \$ 500.00 |
| Total Fees | = \$11,420.00 |
| <u>Less payments</u> | = \$ 1,700.00 |
| Balance Due NASD Dispute Resolution | = \$ 9,720.00 |

Respondent MSDW is solely liable for:

| | |
|-------------------------------------|---------------|
| Forum Fees | = \$ 2,730.00 |
| <u>Member Fees</u> | = \$ 8,550.00 |
| Total Fees | = \$11,280.00 |
| <u>Less payments</u> | = \$ 8,550.00 |
| Balance Due NASD Dispute Resolution | = \$ 2,730.00 |

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

ARBITRATION PANEL

| | | |
|-------------------------------|---|--|
| Larry A. Feldman | - | Public Arbitrator, Presiding Chairperson |
| Harvey Alan Blicksilver, Esq. | - | Public Arbitrator |
| Arnold Levine, Esq. | - | Non- Public Arbitrator |

Concurring Arbitrators' Signatures

_____/s/_____
Larry A. Feldman
Public Arbitrator, Presiding Chairperson

9/27/05
Signature Date

_____/s/_____
Harvey Alan Blicksilver, Esq.
Public Arbitrator

9/28/05
Signature Date

_____/s/_____
Arnold Levine, Esq.
Non-Public Arbitrator

9/28/05
Signature Date

9/28/05
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

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Concurring Arbitrators' Signatures



Larry A. Feldman

Public Arbitrator, Presiding Chairperson

9-27-2005

Signature Date

Harvey Alan Blicksilver, Esq.

Public Arbitrator

Signature Date

Arnold Levine, Esq.

Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

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Award Price:

Company Arbitrators' Statement

Larry A. Feldman
Public Arbitrator, Presiding Chairperson

Harry Blackman
 Harry Allen Blackman, Esq.
 Public Arbitrator

Arnold Levine, Esq.
Mass-Public Auditor

Date of Service (Not NASD Dispute Resolution office use only)

Signature Date:

9-28-05
Signature Date

Signature Date

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NASD Dispute Resolution

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Concurring Arbitrators' Signatures

Larry A. Feldman

Public Arbitrator, Presiding Chairperson

Signature Date

Harvey Alan Blicksilver, Esq.

Public Arbitrator

Signature Date

Arnold Levine, Esq.

Non-Public Arbitrator

9/28/05
Signature Date

Date of Service (For NASD Dispute Resolution office use only)