

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

James H. Sutton

and

Case Number: 04-05545
Hearing Site: Omaha, Nebraska

Names of Respondents

Morgan Stanley DW, Inc., and
Mark J. Braunger

NATURE OF DISPUTE

Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

James H. Sutton ("Sutton" or "Claimant") was represented by Brenton D. Soderstrum, Esq., Brown, Winick, Graves, Gross, Baskerville and Schoenebaum, P.L.C., Des Moines, Iowa.

Morgan Stanley DW, Inc. ("Morgan Stanley") and Mark J. Braunger ("Braunger"), hereinafter collectively referred to as "Respondents", were represented by Reggie C. Griffin, Esq., Reggie C. Griffin, P.C., Kansas City, Missouri.

CASE INFORMATION

The Statement of Claim was filed on or about August 5, 2004. The Submission Agreement of Claimant Sutton was signed on or about July 22, 2004.

Statement of Answer was filed jointly by Respondents Morgan Stanley and Braunger on or about September 30, 2004. The Submission Agreement of Respondent Morgan Stanley was signed on or about September 7, 2004 by Judith Rosenberg. The Submission Agreement of Respondent Braunger was signed on or about February 8, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: suitability; failure to supervise; fraudulent misrepresentation; and breach of fiduciary duty. The causes of action are related to the recommendation and purchase of Northwestern, Inc. and Alliant Energy stocks. Claimant

alleged that Respondents failed to disclose the risks he faced in having his retirement account concentrated so highly in one stock and in one sector, which led to substantial losses in his account.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: there is no private right of action for an alleged violation of NASD rules; the transactions were not unsuitable; there is no private right of action for an alleged violation of the supervision rule; there has been no failure to supervise; in a non-discretionary account there is no heightened fiduciary duty; and there is no on-going duty to monitor and advise about securities in a customer's account.

RELIEF REQUESTED

Claimant requested an award in the amount of \$453,000.00 in compensatory damages, \$453,000.00 in punitive damages, plus interest, costs, and attorneys' fees and other damages the panel deemed appropriate.

Respondents requested that the claims asserted against them be denied in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing, Claimant orally moved for sanctions against Respondent Morgan Stanley for not producing relevant and requested documents. The panel granted the motion and did not allow those documents to be used by Respondent's counsel. The panel further requested a written letter of apology and affirmation that the type of conduct would not continue.

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

AWARD

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

- 1) Respondent, Morgan Stanley DW, Inc., is liable for and shall pay to Claimant, James H. Sutton, the sum of \$102,567.50 in compensatory damages;

- 2) Respondent, Mark J. Braunger, is liable for and shall pay to Claimant, James H. Sutton, the sum of \$25,000.00 in compensatory damages;
- 3) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 4) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee = \$375.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is Morgan Stanley DW, Inc.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 Panel x \$1,200.00	= \$ 1,200.00
Pre-hearing conference: December 20, 2004	1 session

Nine (9) Hearing sessions x \$1,200.00	= \$10,800.00
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Hearing Dates:	June 27, 2005	2 sessions
	June 28, 2005	2 sessions
	June 29, 2005	2 sessions
	June 30, 2005	2 sessions
	July 1, 2005	1 session

Total Forum Fees	= \$12,000.00
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The Arbitration Panel has assessed \$3,000.00 of the forum fees to Sutton.

The Arbitration Panel has assessed \$9,000.00 of the forum fees jointly and severally to Morgan Stanley and Braunger.

Fee Summary

Claimant, James H. Sutton, is liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$3,000.00
Total Fees	= \$3,375.00
Less payments	= \$1,575.00
Balance Due NASD Dispute Resolution	= \$1,800.00

Respondent, Morgan Stanley DW, Inc., is liable for:

Member Fees	= \$7,000.00
Total Fees	= \$7,000.00
Less payments	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Morgan Stanley DW, Inc. and Mark J. Braunger, are jointly and severally liable for:

Forum Fees	= \$9,000.00
Total Fees	= \$9,000.00
Less payments	= \$1,750.00
Balance Due NASD Dispute Resolution	= \$7,250.00

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

ARBITRATION PANEL

Thomas C. Lauritsen, J.D. - Public Arbitrator, Presiding Chair
James B. Vessey, Esq. - Public Arbitrator
Donald J. Wagner - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Thomas C. Lauritsen, J.D.
Thomas C. Lauritsen, J.D.
Public Arbitrator, Presiding Chair

07/06/05
Signature Date

/s/ James B. Vessey, Esq.
James B. Vessey, Esq.
Public Arbitrator

07/07/05
Signature Date

/s/ Donald J. Wagner
Donald J. Wagner
Non-Public Arbitrator

07/07/05
Signature Date

07/08/05
Date of Service (For NASD office use only)

ARBITRATION PANEL

Thomas C. Lauritsen, J.D. - Public Arbitrator, Presiding Chair
James B. Vessey, Esq. - Public Arbitrator
Donald J. Wagner - Non-Public Arbitrator

Concurring Arbitrators:



Thomas C. Lauritsen, J.D.
Public Arbitrator, Presiding Chair

7-6-05
Signature Date:


James B. Vessey, Esq.
Public Arbitrator


Signature Date:


Donald J. Wagner
Non-Public Arbitrator


Signature Date:

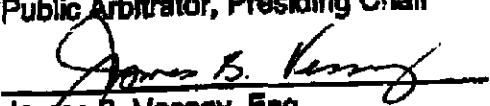

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Public Arbitrator, Presiding Chair



James B. Vessey, Esq.
Public Arbitrator

Donald J. Wagner
Non-Public Arbitrator

Signature Date:



Signature Date: July 7, 2015

Signature Date

Date of Service (For NASD office use only)

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Signature Date:

07-07-05

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