

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Elizabeth Lenes (Claimant) v. Morgan Stanley DW, Inc. (Respondent) v. Jonathan Lenes (Third-Party Respondent)

Case Number: 04-06423

Hearing Site: Boston, Massachusetts

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

REPRESENTATION OF PARTIES

Claimant Elizabeth Lenes hereinafter referred to as "Claimant": Richard C. Bardi, Esq., Law Office of Richard Bardi, Boston, MA.

Respondent Morgan Stanley DW, Inc. hereinafter referred to as "Respondent": Timothy P. Burke, Esq., Bingham McCutchen, Boston, MA.

Third-Party Respondent Jonathan Lenes hereinafter referred to as "Third-Party Respondent": Michael Roitman, Esq., Engel Schultz P.C., Boston, MA.

CASE INFORMATION

Statement of Claim filed on or about: September 8, 2004.

Response to Respondent's Motion to Dismiss filed on or about: January 10, 2005.

Claimant signed the Uniform Submission Agreement: September 3, 2004.

Statement of Answer and Motion to Dismiss filed by Respondent on or about: February 23, 2004.

Third Party Claim filed on or about: October 7, 2005.

Respondent signed the Uniform Submission Agreement: January 31, 2005.

Statement of Answer filed by Third-Party Respondent on or about: April 12, 2006.

Third-Party Respondent signed the Uniform Submission Agreement: January 29, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, breach of fiduciary duty, negligence, and unauthorized and ineffective transfers.

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

In its Third-Party Claim, Respondent asserted the following causes of action: contribution, indemnity, fraud, and misrepresentations.

Unless specifically admitted in his Answer, Third-Party Respondents denied the allegations made in the Third Party Claim.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$1,528,588.51 plus interest, punitive damages, costs, and attorneys' fees.

In its Statement of Answer, Respondent requested dismissal of the Statement of Claim in its entirety.

In its Third Party Claim, Respondent requested contribution in the amount of \$1,528,588.51 plus interest, costs, and attorneys' fees.

Third Party Respondent requested dismissal of the Third Party Claim and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be executed.

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 are dismissed in their entirety with prejudice.
2. Respondent's Third Party claims are dismissed in their entirety with prejudice.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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
Third Party claim filing fee	= \$ 2,000.00

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 persons at the time of the events giving rise to the dispute. Accordingly, Morgan Stanley DW, Inc. is a party.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

October 11-14, 2005, adjournment by Respondent = \$ 1,200.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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:

Five (5) Decisions on discovery-related motions on the papers
with (1) one arbitrator @ \$200.00 = \$ 1,000.00

Claimant submitted four (4) discovery-related motions
Respondent submitted one (1) discovery-related motion

Two (2) Pre-hearing sessions with Panel @ \$1,200.00 per session = \$ 2,400.00
Pre-hearing conference: April 26, 2005 1 session
May 16, 2005 1 session

Eight (8) Hearing sessions @ \$1,200.00 per session = \$ 9,600.00
Hearing Dates: March 6, 2006 2 sessions
March 7, 2006 2 sessions
April 3, 2006 2 sessions
April 4, 2006 2 sessions

Total Forum Fees = \$ 13,000.00

1. The Panel has assessed \$13,000.00 of the forum fees against Respondent.

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.

- | | |
|--|-------------|
| 1. Respondent, requested hearing tapes | = \$ 255.00 |
| 2. Claimant, requested hearing tapes | = \$ 15.00 |

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
<u>Administrative Costs</u>	<u>= \$ 15.00</u>

Total Fees	= \$	515.00
<u>Less payments</u>	= \$	<u>1,715.00</u>
Refund Due Claimant	= \$	1,200.00

2. Respondent is solely liable for:

Filing Fee	= \$	2,000.00
Member Fees	= \$	9,050.00
Forum Fees	= \$	13,000.00
Adjournment Fee	= \$	1,200.00
<u>Administrative Costs</u>	= \$	<u>240.00</u>
Total Fees	= \$	25,490.00
<u>Less payments</u>	= \$	<u>13,450.00</u>
Balance Due NASD Dispute Resolution	= \$	12,040.00

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

ARBITRATION PANEL

Joseph J. Nicholson, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Douglas R. Savidge	-	Public Arbitrator
Maurice J. Skoler	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Joseph J. Nicholson, Jr., Esq.
Public Arbitrator, Presiding Chairperson

5/11/08

Signature Date

Douglas R. Savidge
Public Arbitrator

Signature Date

Maurice J. Skoler
Non-Public Arbitrator

Signature Date

May 11, 2006

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Joseph J. Nicholson, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Douglas R. Savidge	-	Public Arbitrator
Maurice J. Skoler	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Joseph J. Nicholson, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


Douglas R. Savidge
Public Arbitrator

MAY 11, 2006
Signature Date

Maurice J. Skoler
Non-Public Arbitrator

Signature Date

May 11, 2006

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Joseph J. Nicholson, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Douglas R. Savidge	-	Public Arbitrator
Maurice J. Skoler	-	Non-Public Arbitrator


Concurring Arbitrators' Signatures

Joseph J. Nicholson, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Douglas R. Savidge
Public Arbitrator

Signature Date



Maurice J. Skoler
Non-Public Arbitrator

5/10/06

Signature Date

May 11, 2006
Date of Service (For NASD Dispute Resolution use only)