

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

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In the Matter of the Arbitration Between:

Steven Mattes, Claimant v. Morgan Stanley Dean Witter n/k/a Morgan Stanley DW Inc. and Alan Mann, Respondents

Case Number: 04-06771

Hearing Site: Los Angeles, California

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

**REPRESENTATION OF PARTIES**

For Claimant:

William F. Davis, Esq.  
James A. Sigler  
Attorneys at Law  
Los Angeles, California

For Respondents:

Todd E. Gordinier, Esq.  
Edward S. Kim, Esq.  
Stradling Yocca Carlson & Rauth  
Newport Beach, California

**CASE INFORMATION**

Statement of Claim filed: September 22, 2004

Claimant's Uniform Submission Agreement signed: September 20, 2004

Joint Statement of Answer filed by Respondents: December 8, 2004

Respondent Morgan Stanley Dean Witter n/k/a Morgan Stanley DW Inc.'s (hereinafter referred to as Respondent Morgan Stanley DW Inc.) Uniform Submission Agreement signed: December 7, 2004

Respondent Alan Mann's Uniform Submission Agreement signed: December 7, 2004

**CASE SUMMARY**

Claimant alleged breach of contract, negligence, unsuitability, excessive commissions, breach of fiduciary duty, lack of supervision, and fraud, involving transactions in shares of Station Casinos stock.

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

**RELIEF REQUESTED**

Claimant requested \$8,370,437.00 in compensatory damages, a return of commissions in an amount not less than \$500,000.00, unspecified punitive damages, lost profits, interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, a recommendation of expungement of this claim from Respondent Alan Mann's CRD record, and costs, including attorney's fees.

**OTHER ISSUES CONSIDERED AND DECIDED**

On January 7, 2005, 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 October 5, 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 January 12, 2006, Respondents objected to Claimant's witness Kathy Kosowitz testifying about gathering information for the trial for Respondent. After due deliberation, the Panel ruled that Ms. Kosowitz could answer regarding the facts concerning the amassment of documents, but could not answer regarding any communications with Respondents' attorneys preparing for the case.

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) Respondents Morgan Stanley DW Inc. and Alan Mann are liable to and shall pay Claimant the sum of \$2,475,000.00 in compensatory damages.
- 2) Respondent Alan Mann's request for expungement of this claim from his CRD record is denied.
- 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 *NASD Code of Arbitration Procedure* (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	= \$ 600.00
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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, the member firm Morgan Stanley DW Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 3,350.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 5,500.00
<b>Total Member Fees</b>	<b>= \$ 9,600.00</b>

#### **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:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: December 12, 2005 1 session	

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: March 2, 2005 1 session	

One (1) Decision on discovery-related motion submitted by Claimant on the papers to one (1) arbitrator @ \$200.00	= \$ 200.00
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Ten (10) Hearing sessions @ \$1,200.00/session	= \$ 12,000.00
Hearings:	
January 9, 2006	2 sessions
January 10, 2006	2 sessions
January 11, 2006	2 sessions
January 12, 2006	2 sessions
January 13, 2006	2 sessions

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<b>Total Forum Fees</b>	<b>= \$ 13,850.00</b>
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The Panel assessed \$13,850.00 of the forum fees jointly and severally to Respondents Morgan Stanley DW Inc. and Alan Mann.

**Fee Summary**

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

Initial Filing Fee	= \$ 600.00
<u>Less payments</u>	= \$(1,800.00)
<b>Refund Due Claimant</b>	<b>= \$(1,200.00)</b>

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

Member Fees	= \$ 9,600.00
<u>Less payments</u>	= \$(4,450.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 5,150.00</b>

3. Respondents Morgan Stanley DW Inc. and Alan Mann are charged jointly and severally with the following fees and costs:

Forum Fees	= \$13,850.00
<u>Less payments</u>	= \$ (0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$13,850.00</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.

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ARBITRATION PANEL

Barbara M. Zak	-	Public Arbitrator, Presiding Chair
Laurie J. Butler	-	Public Arbitrator
Robert P. Clifford	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures:

Barbara M. Zak  
Barbara M. Zak  
Chair, Public Arbitrator

1-17-06  
Signature Date

Laurie J. Butler  
Laurie J. Butler  
Public Arbitrator

Signature Date

Robert P. Clifford  
Robert P. Clifford  
Non-Public Arbitrator

Signature Date

1/17/06  
Date of Service

NASD Dispute Resolution  
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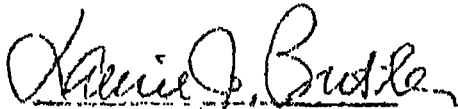
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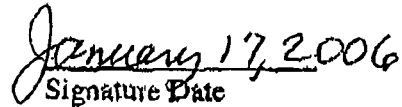
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Chair, Public Arbitrator

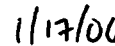
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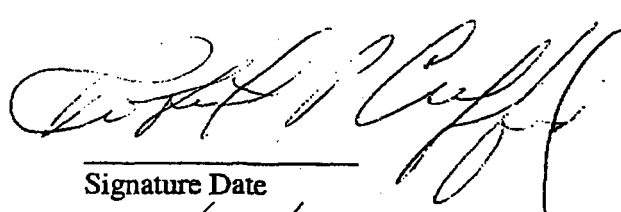
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Robert P. Clifford  
Non-Public Arbitrator

  
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Signature Date

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Date of Service